

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
APPLEGATE TOWNHOUSE

THIS DECLARATION made on the date hereinafter set out by APPELATE REALTY, INC., an Alabama corporation, hereinafter referred to as "Declarant", or "Developer".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property in the City of Alabaster, County of Shelby, State of Alabama, which is more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Declarant will convey the said property subject to certain protective covenants, conditions, easements, restrictions, reservations, liens and charges as set forth in the plats attached hereto as Collective Exhibit "B" and made a part hereof and as hereinafter set forth:

NOW, THEREFORE, Declarant hereby declares that the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These easements, covenants, restrictions, and conditions shall run with the property and be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to Applegate Townhouse Association, Inc., a non-profit, non-stock corporation incorporated under the laws of the State of Alabama, its successors and assigns. The Association's Articles of Incorporation are attached hereto as Exhibit "C". The Bylaws of the Association are attached hereto as Exhibit "D".

Section 2. "Property" shall mean and refer to that certain real property described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Asso-

BOOK 063, PAGE 634

ciation. The plats of the property are attached hereto as Collective Exhibit "B".

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association. The Common Area is described as follows:

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Lot C, according to the Survey of Applegate Manor Subdivision, as recorded in Map Book 9 at Page 125 of the Probate Office of Shelby County, Alabama.

Section 4. "Lot" shall mean and refer to a Lot shown on the revised plat filed in Map Book 9 at Page 125 in the Probate Office of Shelby County, Alabama, and all amendments and rerecordings thereof, and improvements on said Lot. Conveyance of Lots may be by metes and bounds description or by Lot number. Ownership of a Lot hereunder shall include an undivided pro rata interest in the Common Area owned by the Association.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to Applegate Realty, Inc., an Alabama corporation, its successors and assigns.

Section 8. "Improvements" shall mean the structures, walls, pavement, plantings and other additions built or placed on the Lots. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within said Lot. In the event, that by reason of construction, settlement, reconstruction or shifting of the Improvements, any minor part of the improvements reasonably intended for a particular Lot lie outside that Lot, an easement of use shall apply thereto in favor of the Lot to be benefited.

ARTICLE II.

ROADS AND SEWERS

The roads and sewers within Applegate Townhouse Subdivision are public.

ARTICLE III.

MEMBERSHIP

Every Owner of a Lot which is subject to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an ownership interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

ARTICLE IV.

VOTING RIGHTS AND CLASSIFICATION OF MEMBERS

Members shall be divided into two classes denominated as Class A Members and Class B Members, defined as follows:

Class A Members shall be all Owners as defined in Article I with the exception of Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article I. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B Member(s) shall be the Declarant, who shall be entitled to fifteen (15) votes for each lot in which it holds the interest required for membership by Article I. The Class B membership shall cease and be converted to Class A membership upon the first to occur of the following: (a) Seventy-five (75%) per cent of the lots are sold to Owners; or (b) two (2) years from the date of recording of this Declaration; provided, however, that if the Developer is unable to fully develop the Property and sell all recorded Lots to Owners by reason of any ban, moratorium or restriction imposed by any government, governmental agency, or public utility, then this date shall be extended for a period equal to the period between the date on which such ban, moratorium or restriction commenced, and the date upon which such ban, moratorium or restriction terminates or is rescinded, but in no event shall such period be extended for more than five (5)

years. From and after the happening of these events, whichever occurs first, the Class B Member(s) shall be deemed to be Class A Member(s) entitled to one vote for each Lot in which it holds the interest required for membership.

The Association membership shall hold an organizational meeting at the call of the Developer. The organizational meeting of the Association membership shall be held for the purposes of electing a Board of Directors and establishing procedures for the proper functioning of the Association.

ARTICLE V.

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, and each easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions.

(a) The right of the Association to limit the number of members and guests in the use of the Common Area;

(b) The right of the Association to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said property.

(c) The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot is delinquent, or during which a Member is in violation of published rules and regulations adopted by the Association.

(d) The right of the Association to dedicate, transfer, or grant easements over all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes hereof has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance of such dedication or transfer;

(e) The right of the Association to enforce the easements and rights-of-way created hereby.

Section 2. Delegation of Use. Any Member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers, all of whom must reside on the Property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successor and assigns, that it will convey fee simple to the Common Area to the Association, subject only to standard easements and restrictions that appear of record and that appear in the title insurance commitment which shall show title to be vested in the Association.

Section 4. Reciprocal Easements. Each Lot Owner grants to each other Lot Owner easements for the following uses and purposes:

(a) Maintenance, repair and replacement. An easement over and across and through each Lot for the maintenance, repair and replacement of Improvements. Use of this easement, however, for access to individual Lots shall be limited to reasonable hours, except that access may be had any time in case of emergency.

(b) Utilities. An easement for water and sewage for Improvements to all Lots.

(c) Easement for Encroachment. The Developer proposes to construct on each of the aforesaid Lots zero-lot line townhomes. In the matter of the construction and completion of each of said townhouses certain eaves, roof overhangs, brick veneer or other wooden siding or other building materials that may be attached to the structural walls will or may encroach over onto either the air space or the real estate of an adjoining or contiguous Lot. There is hereby created on each of said Lots so effected an easement for said encroachments or overhangs created by said construction. In addition to the valid easements for each of said encroachments or overhangs there is also granted the right to maintain and repair the same so long as said encroachments and overhangs shall and do exist. In the further

event that any structure comprising a said town house is totally destroyed and then rebuilt, the Owners of said town house so effected agree that said encroachments and easements shall be permitted in the matter of the reconstruction and the right of maintenance shall continue to exist.

ARTICLE VI.

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants and agrees to pay to the Association, and each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) regular assessments or charges, to be collected either monthly, quarterly, or annually, and (2) special assessments for capital improvements or other purposes, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The regular and special assessments, together with interest, cost and reasonable attorney's fees, if delinquent, shall be a charge and a continuing lien upon the property against which the assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, if delinquent, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the benefit, health, safety, and welfare of the residents of the Property and for the improvement and maintenance of the Common Area. Neither a Lot Owner nor Declarant shall have the right to receive back any assessment or contribution notwithstanding sale or other disposition of a Lot(s).

Section 3. Regular Assessments. Until January, 1986, the maximum monthly assessment shall not exceed \$10.00 per lot. Thereafter, the regular assessment for each calendar year, and

the basis for payment thereof, shall be determined by the Association at the annual meeting of the Association as called for in the Bylaws.

Section 4. Special Assessments. In addition to the assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement, including fixtures and personal property, provided that any such assessment shall have the affirmative vote of two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both regular and special assessments must be fixed at a uniform rate for all Lots and may be collected on a yearly, quarterly or monthly basis. Each Lot shall be assessed 1/104 of the total assessments due.

Section 6. Quorum for any Action Authorized under Sections 3 and 4. At any annual or called meeting for the purposes set out in Sections 3 and 4 hereof, the presence at the meeting of Members or of proxies entitled to cast sixty (60%) per cent of all the votes of the membership shall constitute a quorum. If the required quorum is not present at any meeting, an adjourned meeting may be called, subject to any notice requirements set forth in the Bylaws or this Declaration, and the required quorum of any such adjourned meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such adjourned meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The regular assessments provided for herein shall commence and shall be due as to each Lot on the first day of the month following the conveyance of the Common Area. For subsequent years, the annual assessment and basis for payment shall be fixed at the annual meeting of the Association. The annual

assessment period shall be from January 1 to December 31st of the following year. The Association shall upon request furnish a certificate in writing signed by a representative of the Association setting forth whether the assessments on a Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent and shall be a continuing lien upon the Lot(s) until paid. If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest from the due date at the rate set by the Association, plus a penalty equal to five (5%) per cent of the amount of the assessment. For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his or her Lot at public outcry to the highest and best bidder for cash.

BOOK 063 PAGE 641 The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage upon the Lot. The Association is hereby authorized to take any and all courses of action available to it for collection of the assessment which the laws of the State of Alabama allow. Any such sale shall be made after first advertising the sale of said Lot(s) for thirty (30) days by four (4) weekly publications in some newspaper circulated in the County of Shelby, City of Alabaster, State of Alabama, giving notice of the time and place of each sale and by written notice of the time and place of such sale of the Lot. Any sale of the Lot to enforce the lien for delinquent unpaid assessments shall be free from equity of redemption, homestead and dower and all other exceptions, all of which are hereby expressly waived by Lot Owners; in any such sale the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages. The proceeds of any such sale, whether under the power of sale or by

foreclosure suit, shall be applied first to the payment of the expenses of protecting the Lot and the expenses of litigation, attorney's fees, and sales commissions; and second to the payment of real estate ad valorem taxes assessed against the Lot and any prior recorded mortgages; and third, to the payment of all amounts due the Association under the taxes of the Declaration and Bylaws, and the balance, if any, to the Lot Owner, whose Lot is sold, or his assigns.

All rights, remedies and privileges granted to the Association or a Lot Owner pursuant to any terms, provisions and covenants or conditions of the Declaration and Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by the Declaration and Bylaws or at law or in equity.

The Association shall notify the holder of the first mortgage on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and any other case where the Owner of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of sixty (60) days.

Section 9. Subordination of the lien to Mortgage. The lien for assessment created hereunder upon any Lot shall be subject and subordinate to the lien of any first mortgage. The holder of a first mortgage including a third party purchaser at a foreclosure of said mortgage who comes into possession of any Lot pursuant to the remedies provided in said mortgage (whether by way of foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure) shall take the Lot free of any claims for unpaid assessments or charges against the mortgaged Lot which accrued prior to the time such holder or third party purchaser came into possession of the Lot; provided that after the foreclosure of any such mortgage, or after the granting of any deed or assignment in lieu of foreclosure, there may be a lien created on the interest

of such purchaser, grantee, or assignee to secure all subsequent assessments, whether regular or special, which may be assessed hereunder to such purchaser, assignee, or grantee as an Owner; and such subsequent assessment lien shall have the same effect and be enforced in the same manner as provided herein. Sale or transfer of any Lots shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any deed or proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such foreclosure sale or deed or assignment in lieu thereof; provided, however, the lien shall continue and attach to any proceeds from any foreclosure sale which might be due unto the mortgagor of the Lot being foreclosed. No sale or transfer of a Lot (other than ones in lieu of foreclosure of a recorded first mortgage) shall relieve such Lot from liability for any assessment or for the lien thereof and no foreclosure (or transfer in lieu thereof) of any other mortgage shall relieve any Lot Owner from personal liability for assessments recorded prior to such foreclosure or transfer in lieu thereof.

Section 10. Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

(a) General and special assessments for real estate taxes on a Lot; and

(b) The liens of any mortgage instrument or encumbrances duly recorded on the Lot prior to the assessment of the lien thereon or duly recorded on said Lot after receipt of a written statement from the Board of Directors reflecting that said liens were current as of the date of recordation of said mortgage instrument or other encumbrance.

Section 11. Exempt Property. The following property shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; and (b) the Common Area.

ARTICLE VII.

MORTGAGEE'S RIGHTS

Section 1. Written Notification. A first mortgagee of any Lot at its request is entitled to written notification from the Association of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under the Declarations, Covenants, Conditions and Restrictions, or the By-Laws, which is not cured within thirty (30) days.

Section 2. Unpaid Assessments. Any first mortgagee or third party purchaser at a foreclosure of said mortgage of a Lot who comes into possession of the Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage or deed in lieu of foreclosure, shall take the Lot free of any claims for unpaid assessments or charges against the mortgaged Lot, which accrue prior to the time such holder or third party purchaser comes into possession of the Lot (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Lots, including the mortgaged Lot).

Section 3. Prohibitions of Changing Changes. Unless all of the first mortgagees of Lots have given their prior written approval, the Association shall not be entitled to:

(a) Change the pro rata interest or obligations of any Lot for (i) purposes of levying assessments or charges or allocating distribution of hazard insurance proceeds or condemnation awards.

(b) Use hazard insurance proceeds for losses to any Improvements for other than the repair, replacement or reconstruction of such Improvements.

(c) Abandon or terminate the Association except where abandonment or termination is provided by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain.

Section 4. Examination of Books. First mortgagees shall have the right to examine the books and records of the Association and/or the project.

Section 5. Adequate Reserve Fund. An adequate reserve fund for the replacement, renovation or repair of Common Areas will be

established and funded by regular monthly payments rather than by special assessments.

Section 6. Lot Owner's Rights Subordinate to Mortgagee. No Lot Owner, or any other party, shall have priority over any rights of the first mortgagees of Lots pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or taking of Lots and/or Common Areas.

Section 7. Interest of a Mortgagee. The interest of a first mortgagee in a mortgaged Lot shall be superior to the interests of any other person, group, partnership, corporation or entity of any kind, including any interest the Board of Directors, the Declarant or any Lot Owner may have in any portion of the premises, regardless of the nature of the interest or the manner in which it is acquired.

Section 8. Additional Rights. Notwithstanding the above, any first mortgagee shall have all of the rights granted to a first mortgagee herein, and in addition shall have all of the rights granted to a first mortgagee under its mortgage, and under the laws of the State of Alabama.

Section 9. Prohibition of Partition. No Lot in the project may be partitioned or subdivided without the prior written approval of the holder of any first mortgage lien on such Lot.

Section 10. Damage or Destruction. In the event of substantial damage to or destruction of any Improvements or any part of the Common Areas, the holder of any first mortgage on a Lot will be entitled to timely written notice thereof.

ARTICLE VIII.

MAINTENANCE

Section 1. Association Responsibilities. The Association shall provide all maintenance and pay all expenses for the Common Area, including any fences or brick walls thereon. The real property taxes on the Common Area, if any, shall also be paid for by the Association, unless otherwise required by the tax assessor's office of Shelby County, Alabama.

Section 2. Owner's Responsibilities. Each Owner shall be responsible for all interior and all exterior maintenance, roofing, painting, repair and upkeep on his Lot and Improvements.

Section 3. Association as Attorney In Fact. Each Owner, by acceptance of a deed, hereby appoints the Association as its attorney-in-fact to contract for the landscaping maintenance and upkeep of the Common Area of the Property, and agrees to pay a prorated portion of such expense as a part of the monthly assessment fee.

Section 4. Color Scheme. As stated elsewhere herein, the decor and color scheme has been accepted by the Lot Owners and shall not be changed without Architectural Control Committee approval. This shall include changing the color scheme of the roof, color scheme of the exterior, trim and siding and including the installation of storm windows or decorative doors.

ARTICLE IX.

USE RESTRICTIONS

The Association shall have the right to enact rules and regulations to govern the use of the Common Area.

Section 1. LAND USE AND BUILDING TYPE. No Lot shall be used except for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling not to exceed two and one-half stories in height. No Lot shall be subdivided or any portion thereof sold to the extent that it would violate this Declaration or the rules and regulations promulgated by the Shelby County Planning Commission and its zoning ordinance, specifically but not limited to, those requirements regarding density.

Section 2. FENCES. No fences or walls shall ever be erected nor growing hedge rows planted and maintained on any Lot without first securing Architectural Committee approval as stated elsewhere herein.

Section 3. LOT AREA AND WIDTH. No dwelling shall be erected or placed on any Lot that would violate the minimum

requirements of the City of Alabaster or the Shelby County Planning Commission.

Section 4. RECORD MAP EASEMENTS FOR UTILITIES AND PEDESTRIANS. Easements to each Lot for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. The granting of these easements of right of access shall not prevent the use of the area by the Lot Owner for any permitted purpose except for buildings. A right of pedestrian access by way of a driveway or open lawn area shall also be granted on each Lot, from the front lot line to the rear lot line to any utility company having an installation in the easement. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible. Fences shall not be allowed to be constructed over or along any easement for public utilities or walkway easements as described herein and on the record map. In addition to the easements shown on the recorded plat, there also appears an easement for pedestrian walkway. This walkway is provided so that Lot Owners may walk along the easement and down the side easement to the street right of way without necessity of securing permission from the adjoining Lot Owners.

Section 5. UNDERGROUND WIRING AND UTILITY EASEMENTS. All the Property is subject to that certain agreement and easement heretofore executed by the Developer in favor of Alabama Power Company and South Central Bell Telephone and Telegraph Company as recorded in the Probate Office of Shelby County, Alabama.

Section 6. SEWER EASEMENTS. All the Property shall be subject to the covenants, stipulations and agreements relative to the sanitary sewer system, which said covenants are recorded in the Probate Office of Shelby County, Alabama.

Section 7. NUISANCES. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No recreational vehicles, no trailers, no boats nor mobile homes shall be permitted on the Property at any

time. No vehicles shall be placed on blocks, either in the front or back yards of the Lots, nor shall junk cars be allowed to be parked anywhere on the Property. The Architectural Control Committee shall have the power and authority to have junk cars removed and by accepting a deed to the Lot, each Lot Owner herein agrees to indemnify and hold harmless the Architectural Control Committee from any such action. No Lot Owner shall be allowed to perform major maintenance on his vehicle, such as removing the engine or working on the block of the engine. Normal routine maintenance, such as changing spark plugs, changing oil, waxing the car on the premises, are allowable.

Section 8. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently, unless approved by the Architectural Control Committee.

Section 9. SIGNS. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five square feet advertising the property for sale or rent or signs used by the Developer to advertise the Property during the construction and sales period.

Section 10. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 11. LIVESTOCK AND POULTRY. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose. At all times, dogs must be on leash when outside.

Section 12. GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary

containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in clean and sanitary conditions.

Section 13. WATER SUPPLY. No individual water supply system shall be permitted on any Lot unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of both state and local public health authorities. Approval of such system as installed shall be obtained from such authority.

Section 14. SIGN DISTANCE AT INTERSECTIONS. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 15. COVENANT WITH RESPECT TO MAINTENANCE OF LOT AND IMPROVEMENTS. Each Owner shall keep his Lot and the Improvements thereon in good order and repair including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of the structure all in a manner and with such frequency as is consistent with good property management, unless the Association shall have undertaken to provide the landscaping maintenance of the Property, in which such event the Lot Owner will pay his proportionate share as a regular assessment.

No Owner of any Lot shall modify the structure on his Lot by adding a room or rooms, changing the roof lines, adding decks,

materially changing or altering the color or making other alterations in the exterior appearance of the Improvements without the express written approval of the Architectural Control Committee. Each Owner, in acquiring title to his Lot, acknowledges that the decor, color scheme and design have been selected in such a manner to be consistent and harmonious with other homes in the Property and agrees to maintain his Lot and Improvements in such a manner as to maintain and perpetuate the visual harmony within the Property. In the event Lot Owners shall hang window draperies over the windows facing the major street, said draperies shall be lined with a white sheer so as to perpetuate the visual harmony of the Improvements from the street.

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The Architectural Control Committee shall have the right to determine whether a Lot Owner is properly maintaining and repairing his Lot and Improvements and shall have the right to order inspections to verify that the required maintenance are being satisfactorily met. In the event the Architectural Control Committee determines that the Lot Owner has failed to properly maintain and repair his Lot and Improvements, the said committee shall have the power to contract the required work as it deems appropriate and charge the Lot Owner the expense of said repairs and maintenance. This charge shall become a lien against the Owner's Lot all as more particularly described in this Declaration.

Section 16. DAMAGE OR DESTRUCTION. In the event of damage or destruction to any Improvement within the Property, the respective Owner thereof agrees as follows:

(1) In the event of total destruction, the Owner shall promptly clear the Lot of debris and leave the same in a neat and orderly condition until such time as he or she might elect to rebuild and reconstruct the Improvements. Any such rebuilding and reconstruction shall be accomplished in conformity with the plans and specifications of the original Improvements so destroyed, subject to any changes or modifications as approved by the Architectural Control Committee.

(ii) In the case of partial damage or destruction, the Owner shall, as promptly as an insurance adjustment may be made, cause the damage or destruction to be repaired and restored in a first class condition in accordance with the plans and specification of the original Improvements and in conformity with its original exterior painting and decor. Any change or alteration must be approved by the Architectural Control Committee. In no event shall any damaged structure be left unrepaired and unrestored for in excess of sixty (60) days.

Section 17. ARCHITECTURAL CONTROL COMMITTEE. As above stated, no building, fence or wall shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing Improvements, and as to location with respect to topography and finish grade elevation. Approval shall be provided as hereinbelow set forth:

A. Architectural Control Committee Membership. The Architectural Control Committee is composed of Randy Goggans, Larry Guy, and Tracy Smith. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.

The Architectural Control Committee of Randy Goggans, Larry Guy, and Tracy Smith shall serve for five years from the date of the filing of this Declaration or upon the sale of all of the Lots in the Property by the Developer, or its assigns, whichever shall occur first. At any time after the expiration of five years or the sale by Developer of all Lots within the Property, the then record Owners of the majority of the Lots within the said subdivision shall have the power through a duly recorded written instrument to change the membership of the Committee, or

or to withdraw or restore to the Committee any of its powers and duties.

B. Procedure. The Committee's approval or disapproval as required in this Declaration shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted, or in any event, if no suit to enjoin construction has been commenced prior to completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

C. Standards. For the purpose of assuring the maintenance of the Lots as a neighborhood of high standards, the Developer hereby adopts the following standards for architectural control: The committee shall have the right to disapprove any plans submitted hereunder because of failure to comply with any restrictions contained herein, failure to include any information required herein, objection to exterior design, or such other matter which would render the proposed structure or in use thereof inharmonious with the Improvements located upon other Lots within the Property, or surrounding neighborhoods.

BOOK 063 PAGE 652
Section 18. Communication Equipment. No television, radio or C.B. antennae will be permitted on the roof or any portion of the Improvements or Lot without first securing permission from the Architectural Control Committee. No satellite discs may be placed or installed on the Lot.

Section 19. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. All enforcement provisions referred to in this Declaration shall be applicable in enforcing these Use Restrictions, including but not limited to, the collection of a reasonable attorneys fee for the prosecution of said action along with the establishment of a lien against the Lot of the individual so affected.

Section 20. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no wise effect any

of the other provisions which shall remain in full force and effect.

Section 21. AMENDMENT. Anything contained herein to the contrary notwithstanding, the Developer reserves the right to modify, release or amend all the use restrictions contained herein, except those contained in Section 1 of Article 9 hereof, until such time as it has sold ninety (90%) percent of all Lots or the expiration of five (5) years, whichever should first occur. In any event, such amendment shall be subject to the approval of Veterans Administration and Federal Housing Administration. After ninety (90%) percent of all of the Lots have been sold by the Developer, this Declaration may be modified and amended by the vote of at least ninety (90%) percent majority of Lot Owners, including the Developer herein, each Lot to carry one vote, except that Section 1 of Article 9 hereof may be amended only with the prior written consent of the Mayor and the City Council of the City of Alabaster, Alabama, or the Planning Commission of Shelby County. Any such modification must be in writing and filed for record in the Office of the Judge of Probate of Shelby County, Alabama.

ARTICLE X.

INSURANCE

The Association shall secure and maintain in effect a policy of property damage insurance providing coverage in an amount not less than the full replacement value as determined annually by the Board of the improvements located within the Common Area. The policy shall include an "agreed amount endorsement" or its equivalent, if available, or an "inflation guard endorsement", if available. Such coverage shall afford protection against all risks. In addition thereto, the Association shall be required to maintain in effect a comprehensive general public liability insurance policy covering loss or damage resulting from an occurrence on the Common Area in such amounts as may be required by the Board, but not less than \$1 million covering all claims for bodily injury or property damage or both arising out of a single

occurrence, with such coverage to include protection against personal injury resulting from use of the swimming pool or clubhouse facilities.

ARTICLE XI.

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law, or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Association and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended by an instrument signed by not less than seventy-five (75%) per cent of the Lot Owners. Any amendment must be properly recorded.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT FOR A PERIOD OF ONE (1) YEAR FROM THE DATE HEREOF TO UNILATERALLY AMEND THIS DECLARATION IN WHOLE OR IN PART TO CONFORM THIS DECLARATION TO THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL, AND FOR THE REQUIREMENTS OF ANY MORTGAGE LENDER, OR IF IN THE SOLE OPINION OF THE DECLARANT AN AMENDMENT IS REQUIRED TO INSURE THE ORDERLY DEVELOPMENT OF THE PROPERTY.

ARTICLE XII.

DISSOLUTION

The Association may be dissolved with the consent given in writing and signed by not less than one hundred percent (100%) of each class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets, both real and personal, of the Association shall be dedicated to an appropriate agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed this 31st day of December, 1985.

APPLEGATE REALTY, INC.

BY: Randall H. Gogans
ITS PRESIDENT

BOOK 063 PAGE 655
STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that Randall H. Gogans, whose name as President of APPLEGATE REALTY, INC., a corporation, is signed to the foregoing Declaration and who is known to me, acknowledged before me on this day, that being informed of the contents of said Declaration, he, as such officer and with full authority, executed same voluntarily for and as the act of APPLEGATE REALTY, INC.

WITNESS my hand and seal this the 31st day of December, 1985.

[Signature]
NOTARY PUBLIC

MY COMMISSION EXPIRES: 5/30/88

JOINDER OF MORTGAGEE

National Bank of
Commerce, herein called the Mortgagee, the holder of a mortgage on the land described in Exhibit "A" as referenced on page 1 of the Declaration of Covenants, Conditions and Restrictions for Applegate Townhouse, which mortgage is recorded in the Probate Office of Shelby County, Alabama, in Book 45 at Page 131, joins in submitting said land to the Declaration of Covenants, Conditions and Restrictions for Applegate Townhouse.

National Bank of Commerce

BY: David W. Farr
ITS Vice President

ATTEST:

BY: Reid W. Jenkins
ITS Commercial Loan Officer

STATE OF ALABAMA

COUNTY OF Jefferson

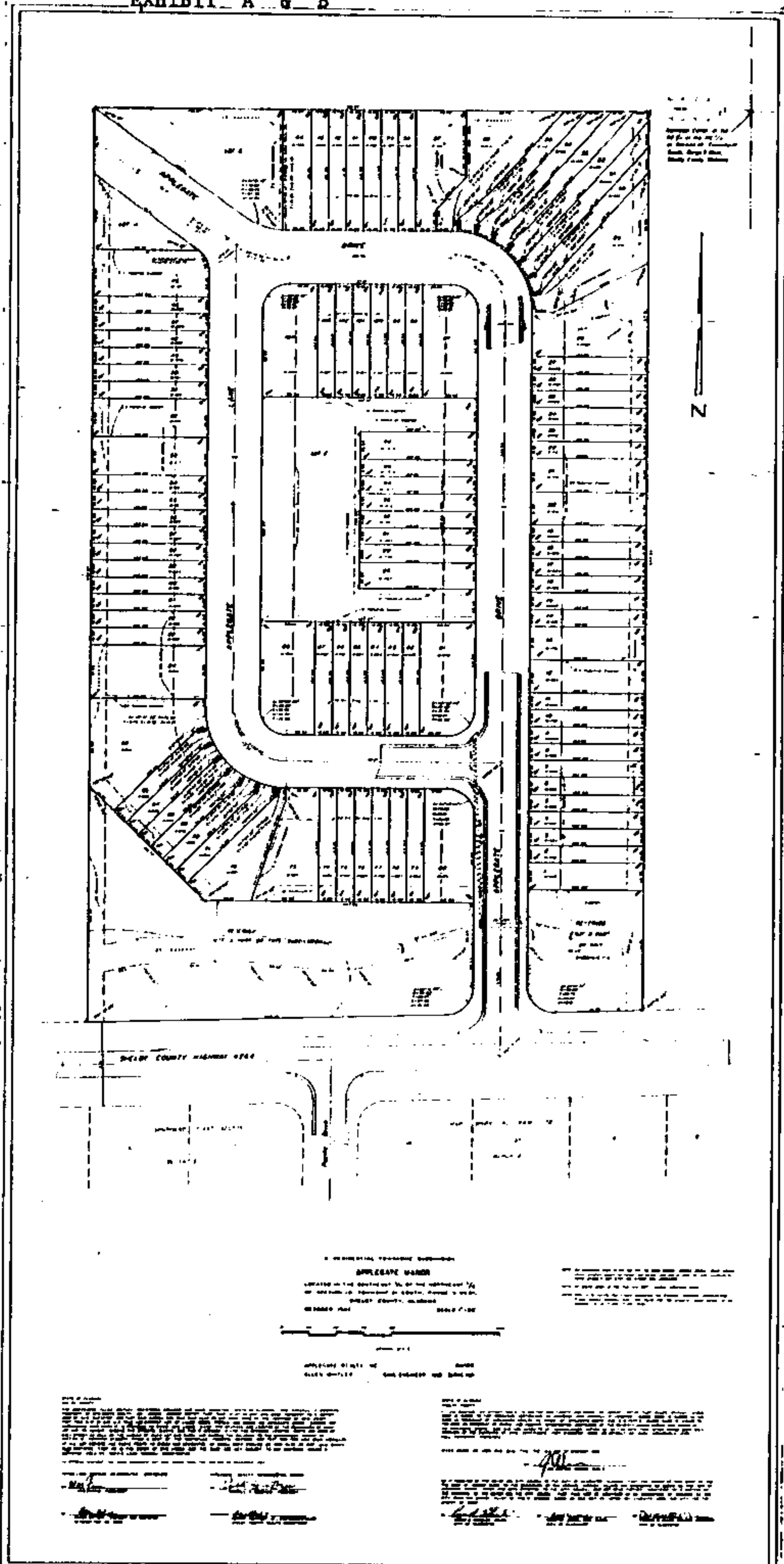
I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that David W. Farr whose name as Vice President of National Bank of Commerce, a National Banking Association is signed to the foregoing Declaration and who are known to me, acknowledged before me on this day, that being informed of the contents of said Declaration, he, as such officer, and with full authority, executed same voluntarily for and as the act of said corporation.

WITNESS my hand and seal at office this 6th day of March, 1986.

Lusie B. Collins
NOTARY PUBLIC

MY COMMISSION EXPIRES:

MY COMMISSION EXPIRES MAY 8, 1989



ARTICLES OF INCORPORATION
OF
APPLEGATE TOWNHOUSE ASSOCIATION, INC.

STATE OF ALABAMA)
SHELBY COUNTY)

We, the undersigned, all of whom are residents of Alabama and all of whom are of full age, in compliance with the Non-Profit Corporation Act of the State of Alabama, hereby associate ourselves together for the purpose of becoming incorporated under the laws of the State of Alabama as a corporation not for profit, and hereby adopt the following Articles of Incorporation:

ARTICLE I

The name of this corporation shall be APPLEGATE TOWNHOUSE ASSOCIATION, INC., which shall hereafter be referred to as the "Association". The corporation's principal office shall be at 150 Olde Towne Road, Birmingham, Alabama 35216.

ARTICLE II

The corporation shall have perpetual succession and shall exist until it is dissolved pursuant to these Articles or to law.

ARTICLE III

This Association does not contemplate monetary gain or profit to its members and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the common area within that certain tract of property described as:

The Applegate Manor Subdivision, as recorded
in Map Book 9 at Page 125 of the Probate
Office of Shelby County, Alabama.

and to promote the health, safety and welfare of the residents as it pertains to the Common Areas within the above-described property and any addition thereto as may hereafter be brought within the jurisdiction of this Association and for this purpose the Association shall exercise the following powers:

(a) To exercise all of the powers and privileges and perform all of the duties and obligations of the Association set forth in that certain declaration of covenants, conditions and

restrictions, hereinafter called the "Declaration" applicable to the property recorded or to be recorded in the Office of the Judge of Probate, Shelby County, Alabama, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

(b) To make, levy and collect payment by any lawful means, all charges or assessments against members of the Association pursuant to the terms of the Declaration;

(c) To use the proceeds of assessments in the exercise of the Association's powers and duties, including the payment of all expenses in connection therewith, licenses, taxes or governmental charges levied or imposed against the property of the Association;

(d) To purchase insurance upon the Association property and upon the property of the residential lot owners as provided in the Declaration and to purchase insurance for protection of the Association and its members as lot owners;

(e) To construct, reconstruct and improve the Association property and property of the residential lot owners as provided for in the Declaration and the By-Laws;

(f) To enforce by legal means the provisions of the Declaration, these Articles, the By-Laws of the Association and the rules and regulations for the use of the residential lots and the common areas in the property herein described;

(g) To contract for the management of the residential lots and common areas and to delegate to the Manager all powers and duties of the Association except such as are specifically required by the Declaration to have approval of the Board of Directors or the members of the Association;

(h) To employ personnel to perform the services required for proper operation of the Association;

(i) To acquire by gift, purchase or otherwise, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(j) To borrow money, and with the consent of two-thirds (2/3) of each class of members, pledge, mortgage or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(k) To dedicate, sell or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been duly signed by two-thirds (2/3) of each class of members, agreeing to such dedication, sale or transfer;

(l) To participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional property and common area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of each class of members;

(m) To have and to exercise any and all rights, powers and privileges as are prescribed by the Alabama Non-Profit Corporation Act, General Acts of the Alabama Legislature of the year 1955, page 1254 through 1258, and any amendments thereof, and to perform any acts permitted thereby.

ARTICLE IV.

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenant of record to assessment by the Association, including contract sellers, shall be a member of the Association. Persons or entities who hold an interest in any lot which is subject by covenant of record to assessments by the Association merely as security for the performance of an obligation shall not be and are not members of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

ARTICLE V.

The Association shall have two classes of voting membership:

CLASS A

Class A members shall be lot owners with the exception of APPELEGATE REALTY, INC., its successors and assigns, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they may among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

CLASS B

The Class B member(s) shall be APPELEGATE REALTY, INC., a corporation, its successors and assigns, the declarant, and shall be entitled to fifteen (15) votes for each lot owned. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occur earlier:

(a) When 75% of the Lots are sold by Developer to Owners, or

(b) Two years from the date of recording of the Declaration.

ARTICLE VI.

The affairs and business of this Association shall be conducted by a Board of Directors which shall consist of not less than three (3) nor more than eight (8) members. The names and addresses of the persons who shall act as Directors until their successors are duly elected are:

<u>NAME</u>	<u>ADDRESS</u>
Randy Goggans	150 Olde Towne Road Birmingham, Alabama 35216
Gordy Robinson	P. O. Box 968 Birmingham, Alabama 35201
Tracy Smith	150 Olde Towne Road Birmingham, Alabama 35216

At the first annual meeting the members of the Association shall elect Directors such that the terms of office of at least one-third (1/3) of the Directors shall expire one year from the date of election, the term of office of at least one-third (1/3) of the Directors shall expire two years from the date of election and the term of office of the remaining Directors shall expire three (3) years from the date of election. At each annual meeting thereof, Directors shall be elected to replace the Directors whose term of office has expired.

ARTICLE VII.

Officers of the Association shall be elected at each annual meeting of the Board of Directors and shall hold office at the pleasure of the Board. Any officer may be removed with or without cause at any meeting by the affirmative vote of the majority of the members of the Board of Directors and any office may be filled by the Board at any meeting thereof.

The names of the officers who are to serve until their successors are duly elected are:

<u>OFFICE</u>	<u>NAME</u>
President	Randy Goggans 150 Olde Towne Road Birmingham, AL 35216
Vice President	Gordy Robinson P. O. Box 968 Birmingham, AL 35201
Secretary and Treasurer	Tracy Smith 150 Olde Towne Road Birmingham, AL 35216

ARTICLE VIII.

The resident agent office address is 150 Olde Towne Road, Birmingham, Alabama 35216, and Randy Goggans is hereby appointed to accept service of process as resident agent of this Association at such address.

ARTICLE IX.

AMENDMENTS

Amendments of these Articles shall require the consent of seventy-five (75%) per cent of the entire membership.

ARTICLE X.

DISSOLUTION

The Association may be dissolved with the consent given in writing and signed by not less than one hundred percent (100%) of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets, both real and personal, of the Association shall be dedicated to an appropriate agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE XI.

NOTICE AND QUORUM

For those actions, which by the provisions of these Articles, require a vote of the members of the Association, there must be a duly held meeting. Notice of said meeting setting forth the purpose of the meeting must be given to all members in writing not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

The presence of members or of proxies entitled to cast sixty (60%) per cent of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth herein, and the required quorum at such subsequent meetings shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting at which time a quorum was not present. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership, if any, are not present in person or by proxy, members not present may give their written assent and approval to the action taken thereat.

IN WITNESS WHEREOF, we have hereunto set our hands and seals and acknowledged the execution of these Articles of Incorporation

under the laws of the State of Alabama on this 17th day of March, 1986.

Randy Goggans (SEAL)
RANDY GOGGANS

Gordy Robinson (SEAL)
GORDY ROBINSON

Tracy Smith (SEAL)
TRACY SMITH

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that Randy Goggans, Gordy Robinson, and Tracy Smith, whose names as incorporators of Applegate Townhouse Association, Inc., are signed to the foregoing Articles of Incorporation and who are known to me, acknowledged before me on this day that each of them is over the age of 21 years and that being informed of the contents of the Articles of Incorporation, they, in their capacity as such incorporators, executed the same voluntarily on the day the same bears date.

Given under my hand this 17th day of March, 1986.

Arthur W. Mason
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Robert R. Sexton
Barnett, Tingle, Noble & Sexton
1600 City Federal Building
Birmingham, AL 35203
(205) 322-0471

BYLAWS
OF
APPLEGATE TOWNHOUSE ASSOCIATION, INC.

These Bylaws of APPLEGATE TOWNHOUSE ASSOCIATION, INC., are promulgated for the purposes of governing APPLEGATE TOWNHOUSE ASSOCIATION, INC., a not-for-profit corporation, organized under the provisions of the Alabama Non-Profit Corporation Act, Section 10-311, et seq., Code of Alabama 1975, as amended, as an association of members of Applegate Townhome ("Association").

The terms used herein shall have the same meaning attributed to them in the Declaration of Covenants, Conditions and Restrictions of APPLEGATE MANOR SUBDIVISION, filed in the Office of the Judge of Probate of Shelby County, Alabama, at Real Volume _____, Page _____, et seq., ("Declaration"), to which a copy of these Bylaws is made Exhibit C. The provisions of these Bylaws are applicable to the Property of the Association and the use and occupancy thereof, and all easements, rights or appurtenances thereto, and all personal property now or hereafter used in connection therewith.

All present and future Owners, mortgagees, lessees and occupants of the Lots in the subdivision and their employees, and any other persons who may use the facilities of the Property in any manner are subject to these Bylaws, the Declaration, the Rules and Regulations and all covenants, agreements, restrictions and easements of record ("title conditions"). The acceptance of a deed or the occupancy of a Lot shall constitute an agreement that these Bylaws and the title conditions, as they may be hereafter amended, are accepted and ratified, and will be complied with.

The address of the office of the Association shall be 150 Old Towne Road, Birmingham, Alabama 35216.

The fiscal year of the Association shall be January 1 to December 31.

ARTICLE I

Membership and Membership Meetings

Section 1. Qualifications. The Members of the Association shall consist of all of the record Owners of fee title to any Lot in the Subdivision.

Section 2. Change of Membership. Membership in the Association shall be established by the recording in the public records of Shelby County, Alabama, of a deed or other instrument establishing a record title to a Lot in the Subdivision, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a Member of the Association. The membership of the prior Owner shall be thereby terminated.

Section 3. Voting Rights. The vote for a Lot shall be cast by the Owner thereof, or by his proxy designated in the manner hereinafter provided for. Each Lot Owner is entitled to one vote for each Lot owned. The Declarant shall be entitled to fifteen votes for each Lot owned and unsold until such time as 75% of the Lots are sold; or two years from the recording of the Declaration, whichever shall first occur, after which time Declarant shall be entitled to one vote for each Lot owned and unsold.

Section 4. Designation of Voting Representative. In the event a Lot is owned by one (1) person, his right to vote shall be established by the record title to his Lot. If a Lot is owned by more than one (1) person, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by all of the record Owners of the Lot and filed with the secretary of the

Cahala Title

Association. If a Lot is owned by a corporation, partnership, trust, or other legal entity, the officer or agent thereof entitled to cast the vote for the Lot shall be designated by a certificate of appointment signed by the duly authorized representative of the board of directors or other governing body of such entity and filed with the secretary of the Association. If such a certificate is not filed with the secretary of the Association for a Lot owned by more than one (1) person, or by a corporation, partnership, trust or other legal entity owner a Lot, in advance of any meeting of the membership, the vote of the Lot concerned shall nor be considered in determining the requirement for a quorum nor for any purpose requiring the approval of the person entitled to cast the vote for the Lot. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Lot concerned is effected. A certificate designating the person entitled to cast the vote of a Lot may be revoked by any Owner thereof. Upon the revocation of a certificate of appointment herein provided for the vote of the Lot concerned shall not be considered in determining the requirement for a quorum nor for any purpose requiring the approval of the person entitled to cast the vote for the Lot until a new certificate of appointment shall have been duly filed in the manner herein provided for.

Section 5. Annual Meetings. Annual meetings of Members shall be held at the office of the Association, at such time and date in the month of January of each year as the Board shall designate. The annual meeting shall be held for the purpose of electing directors and of transacting any other business authorized to be transacted by the Members.

Section 6. Special Meetings. Special meetings of the Members may be called by the Board, the president of the Association, or by Members of the Association holding twenty per cent (20%) of the votes entitled to be cast at meetings of the Members of the Association, for the purpose of considering the acting upon any matters of interest to the Association and its Members, and taking any other action not inconsistent with these Bylaws and the Articles of Incorporation.

Section 7. Notice of Meetings. Notice of all meetings of the Members stating the date, time, place and object for which the meeting is called shall be mailed to each Member not less than thirty (30) nor more than sixty (60) days prior to the date of such meeting. 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, postage prepaid. Notice of meetings may be waived either before or after meetings.

Section 8. Voting in Person or by Proxy. A Member may vote in person or by proxy executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid except for the particular meeting designated therein, and no proxy shall be honored unless filed with the secretary of the Association before the appointed time of the meeting.

Section 9. Quorum. At a meeting of Members, a quorum shall consist of persons entitled to cast a majority of the votes of the entire membership. As used in these Bylaws the term "majority" means sixty percent (60%) of the votes in accordance with the percentages established by the Declaration.

Section 10. Vote Required to Transact Business. When a quorum is present at any meeting, the holders of a majority of the voting rights present in person or represented by written proxy shall decide any questions brought before the meeting, unless the question is one upon which, by express provision of the Declaration, a different number is required, in which case the express provision shall govern and control the decision in question.

Section 11. Consents. Any action which may be taken by a vote of the Members may also be taken by written consent to such action signed by the Members required to take such action if such Members were present and voting.

Section 12. Adjourned Meetings. If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

Section 13. The Order of Business. The order of business at annual meetings of Members and, as far as practical, at all other meetings shall be:

- (a) Call to order,
- (b) Calling of the roll and certifying of proxies,
- (c) Proof of notice of meeting or waiver of notice,
- (d) Reading and disposal of any unapproved minutes,
- (e) Reports of officers,
- (f) Reports of committees,
- (g) Election of directors,
- (h) Unfinished business,
- (i) New business, and
- (j) Adjournment.

BOOK 063 PAGE 667

ARTICLE II

Board of Directors

Section 1. Membership. The affairs of the Association shall be governed by a Board of Directors composed of such number, not less than three (3) persons, nor more than eight (8), as shall from time to time be determined and fixed by majority vote at any annual meeting of the members. Until the Developer has sold 75% of the Lots, or two years from the recording of the Declaration, it may appoint directors who need not be Lot Owners.

Section 2. Election and Term of Office. At the first annual meeting the members of the Association shall elect Directors such that the terms of office of at least one-third (1/3) of the Directors shall expire one year from the date of election, the term of office of at least one-third (1/3) of the Directors shall expire two years from the date of election and the term of office of the remaining Directors shall expire three (3) years from the date of election. At each annual meeting thereof, Directors shall be elected to replace the Directors whose term of office has expired.

Section 3. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person elected shall be a Director until a successor is elected at the next annual meeting of the Association.

Section 4. Removal of Directors. At any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of the owners and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting.

Section 5. Organizational Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order

legally to constitute such meeting, providing a majority of the whole Board shall be present.

Section 6. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least three (3) Directors.

Section 8. Waiver of Notice. No notice of a Board meeting shall be required if the directors meet by unanimous written consent. The directors may, by resolution duly adopted, establish regular monthly, quarter-annual or semi-annual meetings. If such resolution is adopted, no notice of such regular meetings of the Board shall be required. Any required notice may be waived in writing signed by the person entitled to such notice whether before or after the time stated therein.

Section 9. Quorum. A quorum at a director's meeting shall consist of a majority of the entire Board. The acts approved by a majority of those present at a meeting at which a quorum is present, shall constitute the act of the Board, except when approval by a greater number of directors is required by statute or by the Declaration, Articles or these Bylaws.

Section 10. 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.

Section 11. Joinder in Meeting by Approval of Minutes. The joinder of a director in any action taken at a meeting in which such director is absent shall be evidenced by affixing his signature to the minutes of that meeting, and the same shall constitute the presence of such director for the purpose of determining a quorum.

Section 12. Presiding Officer. The presiding officer of a directors' meeting shall be chairman of the Board, if such an officer has been elected; otherwise, the President of the Association shall preside. In the absence of the presiding officer, the directors present shall designate one of their number to preside.

ARTICLE III

Officers

Section 1. Officers. The executive officers of the Association shall be a President, Vice President, Treasurer, and Secretary, each of whom shall be elected at the annual meeting of the Board of Directors. Any two (2) or more of said offices may be held by one person except that the President shall not also be the Secretary or an Assistant Secretary of the Association. The Board may elect more than one Vice President. The Board may appoint such other officers and agents that it may deem necessary, who shall hold office at the pleasure of the Board and have

such authority and perform such duties as from time to time may be prescribed by said Board.

Section 2. Qualifications. No person shall be entitled to hold office except a Lot Owner. No officer except the President need be a member of the Board. This provision shall not apply to the Developer prior to the expiration of the events stated in Article II, Section 1.

Section 3. Term. The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of three-fourths (3/4) of the voting members present at any meeting of members of the Association.

Section 4. The President. The President shall be the chief executive officer of the Association; he shall preside at all meeting of the members and directors; shall appoint any necessary committees from among the members; shall be an ex-officio member of all standing committees; shall have general management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect.

Section 5. The Secretary.

(a) The Secretary shall keep the minutes of the members' meetings and of the Board of Directors' meetings in one or more books provided for that purpose. Resolutions shall be maintained in one such minute book.

(b) The Secretary shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.

(c) The Secretary shall be custodian of the corporate records, except those of the Treasurer, and of the seal of the corporation, and shall affix the seal to instrument requiring it when duly signed.

(d) The Secretary shall keep a register of the post office address of each member, which shall be furnished to the Secretary by such member.

(e) In general, the Secretary shall perform all duties incident to the Office of the Secretary and such other duties as may be assigned to him by the President or by the Board of Directors.

Section 6. The Treasurer.

(a) The Treasurer shall keep full and accurate accounts of all financial records of the Association including receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association in such depositories as may be designated by the Board of Directors or these Bylaws. The Treasurer shall keep a detailed, accurate account for each Lot, setting forth any shares of Common Area Expenses or Limited Common Area Expenses or other charges due, the due dates thereof, the present balance due, and any interest in Common Area Surplus or Limited Common Area Surplus; and he shall perform all other duties incident to the Office of Treasurer. The records, books of account, and the vouchers authorizing payments, shall be available for examination by members of the Association at reasonable time.

(b) The Treasurer shall disburse the funds of the Association as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors at the regular meetings of the Board, an account of all his transactions as Treasurer, and of the financial condition of the corporation.

Section 7. The Vice President. The Vice President shall be vested with all the powers and required to perform all the duties of the President in his absence, and such other duties as may be prescribed by the Board of Directors.

Section 8. Vacancies. If any office becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining directors, by a majority vote, may choose a successor or successors who shall hold such office for the unexpired term.

Section 9. Resignations. Any officer may resign his office at any time. Such resignation shall be made in writing, and shall take effect at the time of its receipt by the Association, unless some time be fixed in the resignation, and then from that date. The acceptance of a resignation shall not be required to make it effective.

Section 10. Compensation. The officers of the Association shall receive no compensation as officers.

ARTICLE IV

Assessments

Section 1. Accounting Records. The board of directors shall provide for the maintenance of accounting records for the Association, such records to be maintained in accordance with generally accepted accounting principles.

Section 2. Annual Budget. The board of directors shall cause to be prepared an estimated annual budget for each fiscal year of the Association, which budget shall take into account both the capital budget and the operating budget for the ensuing year, which together shall constitute the Common Area Expenses constituting an Assessment against each Lot and Lot Owner as provided for in the Declaration and elsewhere. The capital and operating budgets shall be established as follows:

(a) Capital Budget. The board of directors shall cause to be prepared an estimated capital budget for each fiscal year of the Association. Such budget shall take into account the number and nature of the replaceable assets comprising the Common Area, the expected life of each such asset, the expected repair and/or replacement cost, and all other information required to establish the capital repair and replacement reserve fund provided for in the Declaration for the ensuing year. The board shall set the required capital contribution, if any, in an amount sufficient to meet the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing, by equal annual assessments over the period of the budget. The capital contribution required shall be as fixed by the board and shall constitute a component of the annual Assessment for the Common Area Expenses of the Association. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

(b) Operating Budget. The board of directors shall cause to be prepared an estimated operating budget for each fiscal year of the Association. Such budget shall take into account the estimated expenses and cash requirements for the year, including

BOOK 063 PAGE 670

salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power and other expenses (as distinguished from individual mortgage payments real estate taxes, and individual expenses for utility services billed or charged to the separate Lot Owners on an individual or separate basis rather than a common basis.) The operating budget shall also take into account the estimated net available cash income for the year, if any, and shall also provide for amounts required to make up for any deficit in any prior year and a general reserve for contingencies for the year. To the extent that the Assessments and other cash income collected from the Lot Owners during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account.

Section 3. Assessments. The estimated annual budget each fiscal year shall be approved by the board of directors, and copies thereof shall be furnished by the board to each Lot Owner not later than ninety (90) days after the beginning of such year. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget each Lot Owner shall pay, as his respective monthly assessment for the Common Area Expenses, one-twelfth (1/12) of his share of the Common Area Expenses for such year as shown by the annual budget. The Assessments of the Common Area Expenses shall be as set forth in the Declaration. The board of directors may cause to be sent to each Lot Owner on or before the first day of each month a statement of the monthly assessment of such Lot Owner for such month, but the failure to send or to receive such monthly statement shall not relieve any Lot Owner of his obligation to pay his monthly Assessments on or before the first day of each month. If the board of directors shall not approve an estimated annual budget or shall fail to determine new monthly Assessments for any year, or shall be delayed in doing so, each Lot Owner shall continue to pay each month the amount of his monthly Assessment as last determined. Each Lot Owner shall pay his monthly Assessment on or before the first day of each month to the manager or managing agent or as may be otherwise directed by the Board. No Lot Owner shall be relieved of his obligation to pay his Assessment by abandoning or not using his Lot or the Common Area Elements. In the event of any failure by a Lot Owner to pay his monthly Assessment in a timely manner as herein provided for the Board may accelerate all remaining monthly Assessments due for the balance of the term covered by the annual budget, and the same shall thereupon become immediately due and payable.

Section 4. Proration of Assessments. For the first fiscal year, the annual budget shall be as approved by the first board of directors. If such first year, or any succeeding year, shall be less than a full year, then the monthly Assessment for each Lot Owner for the Common Area Expenses shall be proportional to the number of months and days in such period covered by such budget. Commencing with the date of closing of his Lot by each Lot Owner, he shall pay his Assessment for the following month or fraction of a month, which Assessment shall be in proportion to his ownership interest in the Common Area Elements and the number of months and days remaining of the period covered by the current annual budget, and which Assessment shall be as computed by the board of directors.

Section 5. Annual Statements. Within ninety (90) days after the end of each year covered by an annual budget, or as soon thereafter as shall be practicable, the board of directors shall cause to be furnished to each Lot Owner a statement for such year so ended, showing the receipts and expenditures and such other information as the board may deem desirable.

Section 6. Accounts. The board of directors shall cause to be kept a separate account record for each Lot Owner showing the Assessments charged to and paid by such Lot Owner, and the status of his account from time to time. Upon ten (10) days notice to the board of directors any Lot Owner shall be furnished a statement of his account setting forth the amount of any unpaid Assessments or other charges due and owing from such Lot Owner. A Lot Owner shall make no more than one such request per month.

Section 7. Supplemental Budget and Assessments. If during the course of any year, it shall appear to the board of directors that the monthly Assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated Common Area Expenses for the remainder of such year, then the board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Lot Owner, and thereupon a supplemental Assessment shall be made to each Lot Owner for his proportionate share of each supplemental budget.

Section 8. Payment of Assessments. It shall be the duty of every Lot Owner to pay his proportionate share of the Common Area Expenses assessed in the manner herein provided. If any Lot Owner shall fail or refuse to make any such payments when due, the Association and the board of directors shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Declaration or these Bylaws, or otherwise available at law or in equity, for the collection of all unpaid Assessments.

Section 9. Records. The board of directors shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Area Elements, specifying and itemizing the expenses incurred, and such records and the vouchers authorizing the payments of such expenses shall be available for examination by the Lot Owners or their authorized representatives at convenient hours of week days. Such payment vouchers may be approved in such manner as the board of directors may determine.

Section 10. Liens. The board of directors may cause the Association to discharge any mechanic's lien or other encumbrance which, in the opinion of the board, may constitute a lien against the Property, the Common Area Elements, or any Lot, and the Association shall thereupon have a lien in such amount, together with the amount of any costs and attorneys fees incurred in connection therewith, on each Lot responsible for the payment thereof in accordance with the provisions of the Declaration, and the board of directors shall thereupon perfect any such lien by recording an appropriate claim of lien prepared and filed for record in accordance with the provisions of said Declaration.

ARTICLE V

Mortgages

Section 1. Notice to Board of Directors. A Lot Owner who mortgages his lot shall notify the secretary of the Association who shall maintain a record of such information.

Section 2. Notice of Unpaid Common Charges. The board of directors, whenever so requested in writing by a mortgagee of a Lot, shall promptly report any then unpaid Assessments due from, or any other default by, the owner of a mortgaged Lot as provided for in the Declaration.

Section 3. Examination of Books. The holder of a mortgage on any Lot shall have the same right to examine the books and records of the Association afforded a Lot Owner.

ARTICLE VI

Use and Occupancy Restrictions

The use of the Lots and the Property shall be in accordance with terms of the Declaration, and the Rules and Regulations from time to time established by the Board.

ARTICLE VII

Rules and Regulations

Section 1. Authority and Enforcement. The Board of Directors shall have the authority to make and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of the Common Area Elements, provided that copies of all such Rules and Regulations be furnished to all Owners. The Board shall have the power to impose reasonable fines which shall constitute a lien upon the Lot and to suspend an Owner's right to use the Common Area Elements and to vote for violation of any duty imposed under the Declaration, these Bylaws or any Rules and Regulations duly adopted hereunder.

Section 2. Procedure. The Board shall not impose a fine, suspend voting, or infringe upon any other rights of a Member or other occupant for violation of rules unless and until the following procedure is followed:

(a) **Demand.** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one or a statement that any further violation of the same rule may result in the imposition of sanction after notice and hearing if the violation is not continuing.

(b) **Notice.** Within twelve months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board shall serve the violator with written notice of a hearing to be held by the Board in session. The notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice; (iii) an invitation to attend the hearing and produce any statement, evidence and witnesses on his or her behalf; and (iv) the proposed sanction to be imposed.

(c) **Hearing.** The hearing shall be held in executive session pursuant to this notice affording the member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer

BOOK 063 PAGE 673

or director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

ARTICLE VIII

Miscellaneous

Section 1. Seal. The seal of the Association shall be circular in form and shall contain the name of the Association and the year of its creation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 2. Fiscal Year. The fiscal year of the Association shall be that period from January 1 to December 31.

Section 3. Bank Accounts. The board of directors may, from time to time, by resolution authorize the maintenance of one or more deposit accounts by the Association. All checks, drafts, or other orders for the payment of money issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association, and in such manner as shall be determined from time to time by resolution of the board of directors.

Section 4. Notice. Whenever any notice or demand is required to be given by these Bylaws the same shall be given in the manner provided for in the Declaration.

Section 5. Waiver of Notice. Whenever any notice whatever is required to be given under the provisions of any law, or under the provisions of the Articles of Incorporation, these Bylaws or the Declaration, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto.

Section 6. Conflict. In the event of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall govern.

ARTICLE IX

Amendments

These Bylaws may be amended or modified from time to time by the vote of a majority of the board of directors, any amendment to be set forth in writing, signed by the Secretary of the board of directors and recorded in the Shelby County Probate Office. Upon recording each such amendment shall be effective.

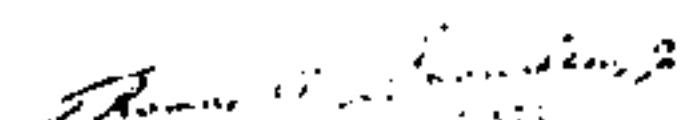
The foregoing were adopted as the Bylaws of Applegate Townhouse Association, Inc., an Alabama not-for-profit corporation, at the first meeting of the board of directors on March 5, 1986.



SECRETARY

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1986 MAR 11 PM 12:18


JAMES H. HAMILTON, JR.
JUDGE OF PROBATE

1. Deed Tax	\$ _____
2. Mtg. Tax	_____
3. Recording Fee	<u>102.50</u>
4. Indexing Fee	<u>1.00</u>
TOTAL	<u>103.50</u>