

This Instrument Was Prepared By:
Mark E. Hoffman, Esquire
Mark E. Hoffman, P.C.
2229 First Avenue North
Birmingham, AL 35203
(205) 241-9643


20080926000381750 1/40 \$128.00
Shelby Cnty Judge of Probate, AL
09/26/2008 12:16:00PM FILED/CERT

**DECLARATION OF CONDOMINIUM
FOR
INDIAN HILLS
A CONDOMINIUM**

THIS DECLARATION, made this 25th day of September, 2008, by Pelham Parkway Investors, L.L.C. (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:

W I T N E S S E T H:

WHEREAS, Developer is the owner in fee simple of certain real estate situated in the City of Pelham, Shelby County, Alabama, legally described in Exhibit "A" as containing six (6) free standing units, parking areas, and certain other improvements in accordance with the Map of Indian Hills, a Condominium, prepared by Robert W. Easley, IV on the 5th day of September, 2008.

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 Indian Hills, a Condominium, under the provisions of the Act and to impose upon the real property covered hereby mutually beneficial restrictions under a general plan for the benefit of all of the condominium units contained therein and the owners thereof.

NOW, THEREFORE, Developer, as the owner of said property, upon recording hereof, does submit that certain real property situated in the City of Pelham, 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 furtherance of a plan for the improvement of said property and the division thereof into condominium ownership and all of which shall run with the land and shall be binding on all parties (including Owners, as 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 difference meaning thereof:

- (a) "Act" shall mean the Alabama Uniform Condominium Act of 1991, Code of Alabama, § 35-8A-101, et seq., and as the same may be amended from time to time.
- (b) "Association" shall mean The Indian Hills Owners Association, Inc., a non-profit corporation, 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 "D", recorded simultaneously with this Declaration, providing for the self-government of the Condominium Property by the Association in accordance with § 35-8A-302 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 the common areas as defined herein and in the Act and shall include those parts of the Condominium Property not included within the Unit Boundaries, as more particularly described on the Plan and described in Article 1.01(p) required for the maintenance and operation of the Condominium. The Common Elements of the Condominium include the following, unless specifically included within a Unit:

- (1) The Land.

- (2) The roadways, sidewalks, common storage facilities, yard, streets, walkways, parking areas and landscaping.
 - (3) The mechanical systems and installations providing service to the Condominium Property as a whole or to more than one Unit, such as electrical power, gas, light, water, sewer disposal system, and storm sewer facilities, and including all lines, pipes, ducts, flues, chutes, conduits, cables, wires and other apparatus and installation in connection therewith, and located outside the boundaries of any Unit.
 - (4) All common maintenance facilities, common pumps, sprinkling and irrigation systems, outdoor lighting and the like.
 - (5) The Utility Easements or other easements, rights or appurtenances affecting or relating to the use of the Condominium Property as a whole.
- (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 cleaning, 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 hereof.
- (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 Pelham Parkway Investors, L.L.C., its respective successors and any assignee, other than an Owner, who shall receive by assignment from said company all, or a

portion of its 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 "B" 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. The Private Elements of each Unit shall only include all aspects and components of the integral structure of the building and attachments thereto (exclusive of any Land), including the following:
 - (1) Foundation and footings;
 - (2) Exterior walls and their covering;
 - (3) Roof;
 - (4) Girders, beams, supports;
 - (5) Balconies, stoups and porches;
 - (6) Entry areas.

The boundaries of the Units shall coincide with and shall be all of the exterior surfaces of the building and other components thereof noted above, or otherwise. Such boundaries are sometimes referred to herein the Unit Boundaries.

- (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 and as defined herein, 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 six (6) free standing Units and Common Elements. A plot plan of the Land and a graphic description of the improvements comprising the Units, identifying each Unit by a building number, all in sufficient detail to identify the Commons Elements and Private Elements of each Unit and their relative locations and approximate dimensions are set forth in the Plan attached hereto as Exhibit "B".

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 and 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 non-exclusive easement for the use of the parking areas depicted on the Plan or otherwise existing within the Common Elements. The Association may grant to an Owner an exclusive easement or license for the use of one or more parking spaces, and the aforesaid non-exclusive parking easements shall be subject and subordinate to the exclusive parking rights granted by the Association. Any such exclusive or non-exclusive 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 Common Elements or the Condominium 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 for pedestrian and, where appropriate, vehicular traffic over and through all restrooms, 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 deviation 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 negligent 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 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 "C" attached hereto.

2.04. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit shall not be separated therefrom and shall pass with the title to such Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, except as elsewhere herein

provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to the Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall be allowed, except as provided herein with respect to termination of the Condominium.

ARTICLE III

ORGANIZATION AND MANAGEMENT

3.01. Management of the Condominium Property. Operation and administration of the Condominium Property shall be performed by The Indian Hills 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) The 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 existing under this Declaration and the laws of the State of Alabama;
- (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. All present and future Owners, tenants and occupants of the Units shall be subject to and shall comply with the provisions of the Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. The 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 "D" 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 therefore 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 proceeding 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 on 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 purchase or mortgage 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 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 corporation 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 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 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.

- (a) The Common Elements; and
- (b) Incidental damage caused to a Unit by work done, performed on or maintenance of the Common Elements 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 consequent of the negligence or willful misconduct of such Unit Owner, his guests or invitees. The costs of repair for any damage so caused by the Unit Owner, his guest 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 expenses, 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 outlet and electric fixtures within the Unit; interior doors, windows, screening and glass; all the exterior doors; 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.

(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 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 claims 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. Alteration, Additions, and Improvements by the Association. Except in the case of loss or damage to the Common Elements as contemplated by Article VIII of this Declaration, the Association shall not make any material structural alteration, capital additions or capital improvements to the Common Elements (other than for the purpose 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 \$5,000.00 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 of the members of the Association present at any regular or

special meeting of the Unit Owners called for that purpose at which a quorum is present and approved by a majority of the Mortgagees (based on one vote for each Mortgagee). 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 costs of such alteration or additions shall be assessed against and collected solely from the Unit Owners exclusively, or substantially exclusively, benefiting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors of the Association. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alteration or additions shall be made 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, benefiting therefrom and a majority of the Mortgagees having Mortgages on said Units (based 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. 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 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 in the zoning category for the Condominium Property of the City of Pelham, consistent with its zoning regulations.
- (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 to the other Owner.
- (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 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 thereof 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 to 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 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 \$10,000.00; (c) any condemnation of all or a portion of the Condominium Property; and (d) any proposed action that requires the consent of a specified percent 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 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, furnishing 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 for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements.
- (b) Other Insurance. The Association shall obtain and maintain such other insurance coverage as the Board of Directors of the Association, in its sole discretion, may determine from time to time to be in the best interest of the Association and the Owners of all Units.

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 be business in the State of Alabama.
- (b) Exclusive authority to adjust all claims under the policies hereafter in force on the Common Elements shall be vested in the Association or its authorized representatives.

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 increased 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 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, lien, 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 Shelby 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.

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

- (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.

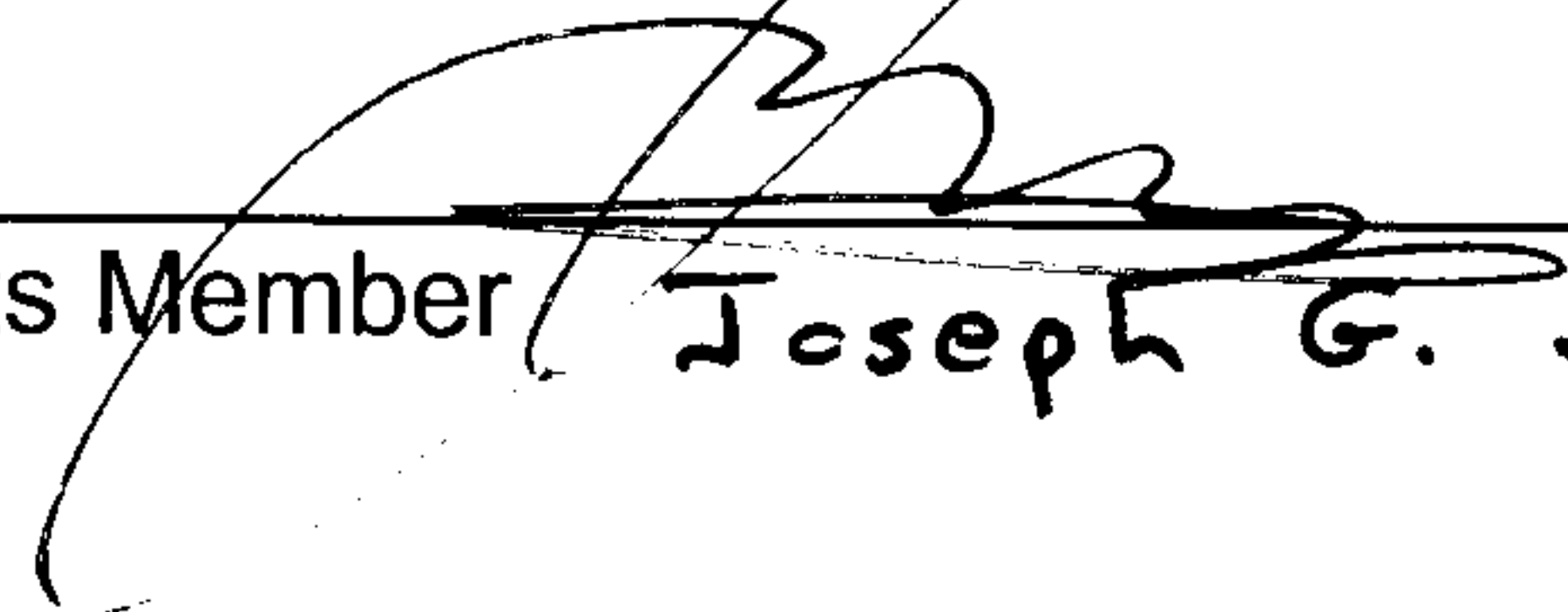
12.04. Exhibits. Exhibits A, B, C and D attached to this Declaration are on integral part of this Declaration.

12.05. Invalidity and Severability. It is the intention of the Developer that the provisions of this Declaration are severable so that if any provisions are 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.

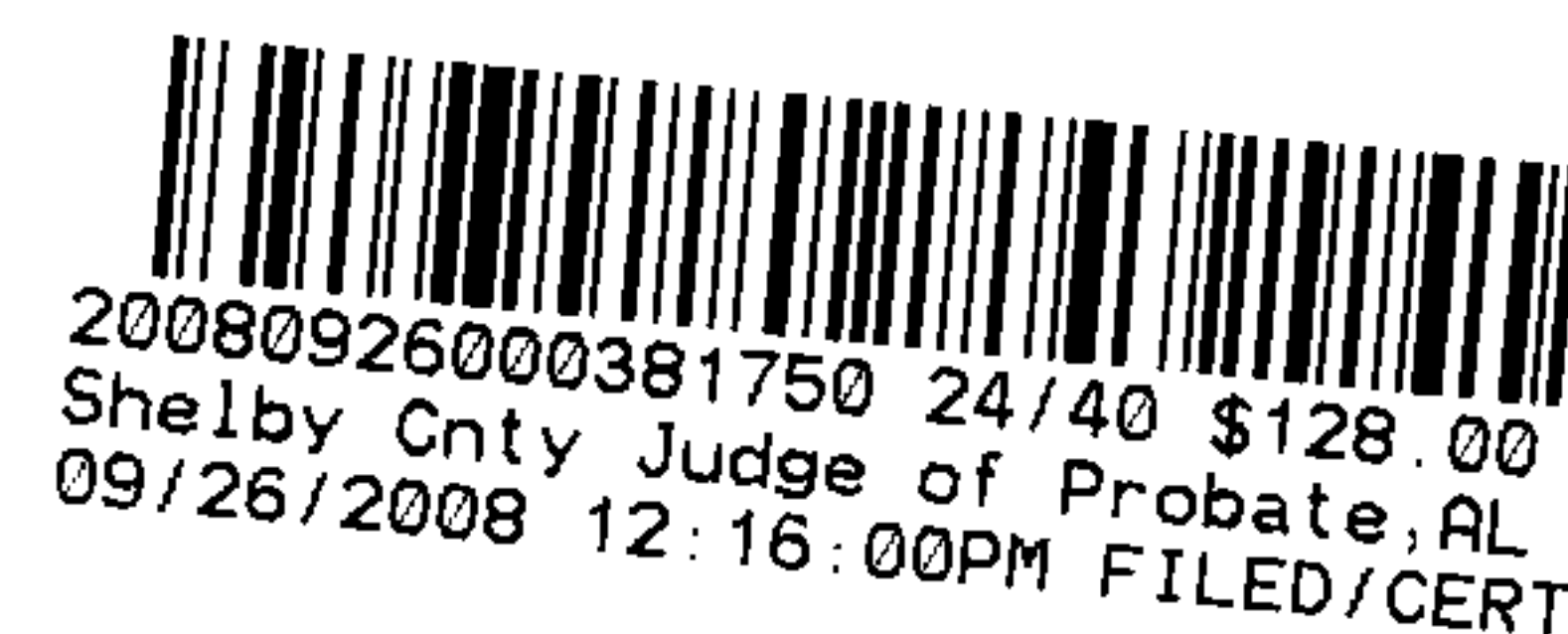
PELHAM PARKWAY INVESTORS, L.L.C.

By: 
Its Member Dwight A. Sandlin

By: 
Its Member Joseph G. Dobbs

STATE OF ALABAMA)

JEFFERSON COUNTY)



I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Dwight A. Sullivan, whose name as a Member of Pelham Parkway Investors, L.L.C., an Alabama limited liability company, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, he, as such Member and with proper authority, executed the same voluntarily for said Company on the day the same bears date.

Given under my hand and official seal of office this 25th day of September, 2008.

[Signature]
Notary Public
My Commission Expires: 8/4/09

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Joseph G. Debbis, whose name as a Member of Pelham Parkway Investors, L.L.C., an Alabama limited liability company, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, he, as such Member and with proper authority, executed the same voluntarily for said Company on the day the same bears date.

Given under my hand and official seal of office this 25th day of September, 2008.

[Signature]
Notary Public
My Commission Expires: 8/4/09

EXHIBIT "A"

20080926000381750 25/40 \$128.00
Shelby Cnty Judge of Probate, AL
09/26/2008 12:16:00PM FILED/CERT

Legal Description:

A parcel of land being a portion of Blocks 1, 2 & 3 according to the Survey of Eckmann Subdivision as recorded in Map Book 3, page 144, as recorded in the Probate Office of Shelby County, Alabama being more particularly described as followed:

Commence at the Southwest corner of the Northwest quarter of Section 31, Township 19 South, Range 2 West; thence run in a northerly direction along the West line of said quarter section line for a distance of 10.46 feet to the point of beginning; thence continue along last described course for a distance of 636.02 feet; thence turn a deflection angle to the right of 53° 54' 01" and run in a northeasterly direction for a distance of 428.24 feet to a point on the southwesterly right of way line of U. S. Highway 31; thence turn a deflection angle to the right of 90° 00' 00" and run in a southeasterly direction said right of way line for a distance of 40.00 feet; thence turn a deflection angle to the right of 90° 00' 00" and run in a southwesterly direction for a distance of 202.21 feet; thence turn a deflection angle to the left of 90° 00' 00" and run in a southeasterly direction for a distance of 314.65 feet; thence turn deflection angle to the right of 85° 39' and run in a southwesterly direction for a distance of 200.00 feet; thence turn a deflection angle to the left of 85° 39' and run in a southeasterly direction for a distance of 233.30 feet; thence turn a deflection angle to the right of 94° 21' 09" and run in a northeasterly direction for a distance of 199.90 feet; thence turn a deflection angle to the right of 94° 21' 09" and run in a southeasterly direction for a distance of 306.00 feet; thence turn a deflection angle to the right of 85° 39' and run in a southwesterly direction for a distance of 130.50 feet; thence turn a deflection angle to the right of 44° 00' 00" and run in a westerly direction along the south line of Eckmann Subdivision for a distance of 611.12 feet to the point of beginning.

Less and except the following:

A parcel of land being a portion of Blocks 1 & 2 according to the Survey of Eckmann Subdivision as recorded in Map Book 3, Page 144 as recorded in the Probate Office of Shelby County, Alabama being more particularly described as follows:

Commence at the Southwest corner of the Northwest quarter of Section 31, Township 19 South, Range 2 West; thence run in a Northerly direction along the West line of said quarter section for a distance of 10.46 feet; thence turn a deflection angle to the right of 93° 33' 01" and run in an easterly direction for a distance of 85.00 feet to the point of beginning; thence turn a deflection angle to the left of 43° 34' 13" and run in a Northeasterly direction for a distance of 336.69 feet; thence turn a deflection angle to the right of 93° 55' 13" and run in a southeasterly direction for a distance of 58.00 feet; thence turn a deflection angle to the left of 94° 21' 09" and run in a northeasterly direction for a distance of 199.90 feet; thence turn a deflection angle to the right of 94° 21' 09" and run in a southeasterly direction for a distance of 306.00 feet; thence turn a deflection angle to the right of 85° 39' 00" and run in a Southwesterly direction for a distance of 130.05 feet; thence turn a deflection angle to the right of 44° 00' 00" and run in a westerly direction for a distance of 526.11 feet to the point of beginning.

EXHIBIT "C"
TO
DECLARATION OF CONDOMINIUM
FOR INDIAN HILLS
A CONDOMINIUM


20080926000381750 27/40 \$128.00
Shelby Cnty Judge of Probate, AL
09/26/2008 12:16:00PM FILED/CERT

PERCENTAGE OWNERSHIP
OF EACH UNIT IN THE
COMMON ELEMENTS

<u>UNIT NUMBER</u>	<u>PERCENTAGES</u>
100	12.5%
200	12.5%
300	12.5%
400	25.1%
500	24.9%
600	12.5%

EXHIBIT "D"

This Instrument Prepared By:
Mark E. Hoffman, Esquire
Mark E. Hoffman, P.C.
2229 First Avenue North
Birmingham, Alabama 35203


20080926000381750 28/40 \$128.00
Shelby Cnty Judge of Probate, AL
09/26/2008 12:16:00PM FILED/CERT

BYLAWS

OF

THE INDIAN HILLS OWNERS ASSOCIATION, INC.

These Bylaws of The Indian Hills Owners Association, Inc. are promulgated pursuant to the Alabama Uniform Condominium Act of 1991, Code of Alabama, 1975, Section 35-8A-101, et seq., as amended, for the purposes of governing The Indian Hills Owners Association, Inc., a not-for-profit corporation ("Association") organized under the provisions of the Alabama Non-Profit Corporation Act, Code of Alabama, 1975, Section 10-3A-1, et seq., as amended, as an association of members of The Indian Hills Condominium (the "Condominium").

The provisions of these Bylaws are applicable to the Property of the Condominium and to the use and occupancy thereof. The term "Property" as used herein shall include the land made subject to the Declaration of the Condominium (subject to the easements and restrictions therein set forth or reserved), and all improvements and structures now existing or hereafter placed thereon, all easements, rights or appurtenances thereto, and all personal property now or hereafter provided by Declarant and intended for use in connection therewith. Capitalized terms used in these Bylaws are defined in the Declaration.

All present and future owners, mortgagees, lessees and occupants of the Units in the Condominium 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 of the Condominium, the Rules and Regulation and all covenants, agreements, restrictions and easements of record ("title conditions"). The acceptance of a deed to a Unit 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 3545 Market Street, Hoover, Alabama 35226.

The fiscal year of the Association shall end on the last day of December of each

year, unless otherwise determined by the Board of Directors.



20080926000381750 29/40 \$128.00
Shelby Cnty Judge of Probate, AL
09/26/2008 12:16:00PM FILED/CERT

20080926000381750 30/40 \$128.00
Shelby Cnty Judge of Probate, AL
09/26/2008 12:16:00PM FILED/CERT

ARTICLE I

MEMBERSHIP AND MEMBERSHIP MEETINGS

1. **Qualifications.** There shall be one (1) member of the Association for each Unit within the Condominium Property.

2. **Change of Membership.** Change of 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 Unit in the Condominium, 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. If a Unit is owned by more than one (1) person, the member for the Unit shall be designated by a certificate signed by all of the record owners of the Unit and filed with the Association.

3. **Voting Rights.** Voting shall be on a Unit by Unit basis, with each Unit of the Condominium entitled to one vote. If only one of the multiple owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit. If more than one of the multiple owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless either the Declaration or Bylaws expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

4. **Annual Meetings.** Annual meetings of members shall be held at the office of the Association, on the third Monday in November of each year, at 1:00 P.M., or such other day and time as the Board may designate in the notice thereof. The annual meeting shall be held for the purpose of electing directors and transacting any other business authorized to be transacted by the members.

5. **Special Meetings.** Special meetings of the members may be called by the Board of Directors, the president or by a member of the Association, for the purpose of considering and acting upon any matters of interest to the Association and its membership, and taking any other action not inconsistent with these Bylaws and the Articles of Incorporation, including the adoption of resolutions declaring the desirability of any further action recommended by the membership.

6. **Notice of Meetings.** Notice of all members' meetings stating the date, time, place and subject for which the meeting is called shall be mailed to each member not less than ten (10) nor more than thirty (30) days prior to the date of such meetings. 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 meeting may be waived either before or after meetings.

7. **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. Votes allocated to a Unit may be cast pursuant to a proxy duly executed by the Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed proxy. A Unit Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy is valid only for the meeting specified therein.

8. **Quorum.** At a meeting of members, a quorum shall consist of persons entitled to cast a simple majority of the votes of the entire membership.

9. **Vote Required to Transact Business.** When a quorum is present at any meeting, the holders of a majority of the votes represented 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 law, the Declaration of Condominium, Articles of Incorporation, or the Bylaws, a different number is required, in which case the express provision shall govern and control the decision in question.

10. **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.

11. **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.

12. **Order of Business.** The order of business at annual members' meetings and, as far as practical, at all other members' meetings shall be according to the latest addition of Robert's Rules of Order.

ARTICLE II

BOARD OF DIRECTORS

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

2. **Number, Tenure and Qualifications.** The number of directors of the Association shall consist of not less than three (3) directors.

3. **Election of Directors.**

(a) 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 his votes for each of as many nominees as there are

vacancies to be filled at the time of the election. There shall be no cumulative voting.

(b) Notwithstanding the provisions of subparagraph (a) above, the Declarant (as defined in the Declaration), its successors and assigns, shall elect all the members of the Board of Directors of the Association, and in the event of vacancies, the Declarant shall fill the vacancies, until such time as the earlier of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than a Declarant or (ii) two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business. Not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the board must be elected by Unit Owners other than the Declarant. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than a Declarant, not less than fifty percent (50%) of the members of the Board must be elected by Unit Owners other than the Declarant. Within sixty (60) days before the date of termination of control of the Association by the Declarant, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the Membership for the purpose of electing the members of the Board of Directors.

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.

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

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.

7. **Quorum.** A majority of the number of directors fixed by Section 2 of this Article II 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.

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.

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.

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.

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, but may not be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as a Director. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association nor preclude the contracting with a director for the management of the Condominium.

12. **Committees.** The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each of which shall consist of two or more directors and which to the extent provided in said resolution or resolutions or in the By-Laws of the Association shall have and may exercise all of the powers of the Board of Directors in the management of the activities and affairs of the Association to be affixed to all papers which may require it; except that no such committee shall the authority of the Board of Directors in reference to amending, altering or repealing the By-Laws; electing, appointing or removing any member of any such committee or any director or officer of the Association; amending the Articles, restating the Articles, adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of assets of the Association; or amending, altering or repealing any action or resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation of such committee or committees or the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual director of any responsibility imposed upon it or him by law.

13. **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 Secretary of 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.

14. 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.

15. 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 Secretary 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 III

OFFICERS

1. Election. At each annual meeting of the Board of Directors, the Board of Directors shall elect the following officers of the Association:

(a) A president, who shall be a director and who shall preside over the meetings of the Board of Directors and of the members, and who shall be the chief executive officer of the Association.

(b) A vice-president, who shall, in the absence or disability of the president, perform the duties and exercise the powers of the president.

(c) A secretary, who shall keep the minutes of all meetings of the Board of Directors and of the members, and the minute book wherein resolutions enacted at such meetings shall be recorded, and who shall, in general, perform all the duties incident to the office of secretary.

(d) A treasurer, who shall keep the financial records and books of account.

(e) Such additional officers as the Board of Directors shall see fit to elect.

(f) Consolidation of different officers is permitted. An officer does not have to be a member of the Association.

2. Powers. The respective officers shall have the general powers usually vested in such officer of a not-for-profit corporation; provided that the Board of Directors may delegate any specific powers to any other officer or impose such limitation or restrictions upon the powers of any officer as the Board of Directors may see fit.

3. **Term.** Each officer shall hold office for the term of one (1) year until his successor shall have been elected and qualified.

4. **Vacancies.** Vacancies in any office shall be filled by the Board of Directors at special meetings thereof. Any officer may be removed at any time by a majority vote of the Board of Directors at a special meeting thereof.

5. **Compensation.** The officers shall receive no compensation for their services unless otherwise expressly provided in a resolution duly adopted by the Board of Directors.

ARTICLE IV

BOOKS AND RECORDS

1. **Accounting.** The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the members, Board of Directors and committees thereof and shall keep at its registered or principal office in Alabama a record of the names and addresses of members entitled to vote, directors and officers. The accounting records shall be maintained in accordance with generally accepting 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 shall be credited and charged to the appropriate account as set forth below.

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

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

(b) **Member Accounts.** An account for each member shall be maintained setting forth the name and address of the member, the interest percentage in the Common Elements, 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.

2. **Budget.** Within thirty (30) days prior to the beginning of each calendar year, the Board of Directors shall adopt a proposed budget for each calendar year that shall include the estimated funds required to defray the Common Expenses and to provide and maintain funds for the foregoing accounts and reserves according to good accounting

practices. Within thirty (30) days of adoption of the proposed budget, copies of the budget and proposed assessments shall be transmitted to each member of the Association and a date set for a meeting of the Unit Owners to consider ratification of the budget, not less than fourteen (14) days nor more than thirty (30) days after delivery of the budget to the Unit Owners. Unless at the meeting a majority of all Unit Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time a new budget is ratified.

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.

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 thirty (30) days after such notice in such manner as the Board of Directors of the Association may require in the notice of assessment.

5. **Audit or Compilation.** An audit or compilation of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the audited report shall be made available for review by each member.

6. **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. The premiums of such bonds shall be paid by the Association.

ARTICLE V

WAIVER OF NOTICE

Whenever any notice is required to be given to any member or director of the Association under the provisions of these Bylaws, the Articles of Incorporation, the Declaration, the provisions of the Alabama Nonprofit Corporation Act, and any act amendatory thereof, supplementary thereto or substituted therefor, the provisions of the Alabama Uniform Condominium Act of 1991, 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 VI

FISCAL YEAR

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

Directors.



20080926000381750 37/40 \$128.00
Shelby Cnty Judge of Probate, AL
09/26/2008 12:16:00PM FILED/CERT

ARTICLE VII

INDEMNIFICATION

1. **Association's Indemnification.** 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 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 lawful. 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.

2. **Expenses.** 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, officer, 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 subsections (a) and (b), 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.

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.

3. **Decisions About Indemnification.** Any indemnification under 1 and 2 above (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, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in 1 and 2. Such determination shall be made (i) 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 (ii) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in written opinion; or (iii) by the membership.

4. **Indemnification Not Exclusive.** 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 bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE VIII

AMENDMENT

1. **Amendment to Bylaws.** These Bylaws 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 three-quarters (3/4) of the outstanding votes.

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

ARTICLE IX

MISCELLANEOUS

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 otherwise.

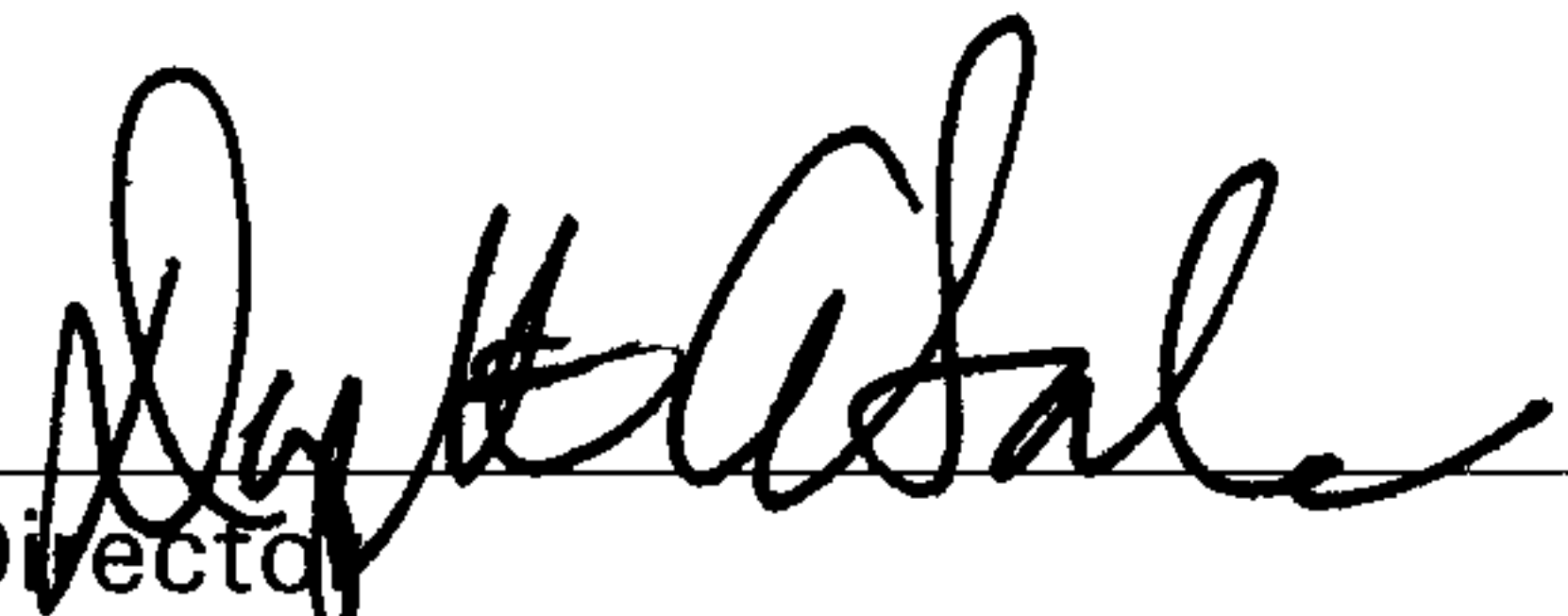
2. **Bank Accounts.** The Board of Directors may, from time to time, by resolution authorize the maintenance of one or more deposit accounts by the Association. All checks, drafts or other orders for the payment of money issued in the name of the Association shall be signed by such officer or officers, 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.

3. **Notice.** Whenever any notice or demand is required to be given by these Bylaws or the Declaration, any notice or demands so required shall be deemed sufficient if given by depositing the same in the United States Mail, postage, prepaid, addressed to the person entitled thereto at his last known post office address according to the records of the Association, and such notice shall be deemed given on the day of such mailing.

4. **Waiver of Notice.** Whenever any notice whatsoever 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.

CERTIFICATION

The undersigned, Dwight A. Sandlin, hereby certifies that the By-Laws have been properly adopted and approved by the Board of Directors as of the day and year noted above.



Director