

OFFERING STATEMENT FOR THE CONDOS AT MILL CREEK, A CONDOMINIUM

Defined terms as used herein shall have such meaning as may be described herein, in the Act, in the Condominium Documents referenced herein and attached to this Offering Statement, and the Purchase Agreement given to a prospective Purchaser in connection with the prospective purchase of a Unit.

1. Developer and Project/Condominium Conversion: The name of the Declarant (also described herein as the "Developer") is Tigertown Investments, Inc., as the Manager of RPM/Millcreek, LLC, an Alabama limited liability company, whose principal address is 472 North Dean Road, Suite 100, Auburn, Alabama 36830. The name of the Condominium is "The Condos at Mill Creek, a Condominium", and the address of the Condominium Buildings will be 3297 South College Street, Auburn, Alabama 36832.

This disclosure is given to comply with §35-8A-406 of the Alabama Uniform Condominium Act of 1991, Code of Alabama (1975), §35-8A-101, *et. seq.* (the "Act"): The Condominium contains Conversion Buildings containing Units that may be occupied for residential use. Accordingly, the Declarant makes the following representations:

- (a). To the best of Declarant's knowledge, the approximately age of the structural components and mechanical and electrical installations which are material to the use and enjoyment of the Buildings are three (3) years of age; and
- (b). There are no outstanding notice of uncured violations of any building code or other municipal regulations and, accordingly, no costs are to be expended or reserved to cure such violations.

2. Description of the Condominium:

(a) General: The Condominium is located at 3297 South College Street, Auburn, Alabama and contains seven (7) residential unit buildings (the "Buildings") containing eight (8) Units each, for a maximum total of fifty-six (56) Units. The Buildings are currently operated as an apartment complex known as "Golfview Apartments" and will be converted by the Declarant to the Condominium form of ownership pursuant to the Act. The Buildings (sometimes referred to herein individually or collectively as a "Building") are comprised of a mixture of buildings containing one-bedroom Units, a one-bedroom handicap Unit, two-bedroom Units, a two bedroom handicap Unit and three-bedroom Units, together with a Clubhouse Building, an adjacent Exercise Room and meeting room, swimming pool and pavilion, laundry facility, carwash area, and access and appurtenant facilities described in the Declaration of Condominium attached hereto and made a part hereof as Exhibit "A" (hereinafter referred to as the "Declaration"). There are also four buildings containing garage units and some garage units include a storage facility (a total of fifteen garage units and twelve of the garage units include storage facilities) which will also be made available to Unit Owners at an additional price as further described herein and in the Declaration. Ownership of

a Unit does not entitle a Unit Owner to use of the garage units or storage facilities which are to be sold and purchased separately.

The Buildings are shown as Building "A", Building "B", Building "C", Building "D", Building "E", Building "F", and Building "G" on the Plans attached to the Declaration and are further described as follows:

- (i) Building "A" is comprised of eight (8) three (3) bedroom Units with each Unit having two (2) bathrooms each;
- (ii) Buildings "B", "C", "D", "E", and "F" are comprised of eight (8) two (2) bedrooms Units each with each Unit having two (2) bathrooms each. Unit Number 104 in Building "B" is a two bedroom handicap Unit having two (2) bathrooms.
- (iii) Building "G" is comprised of eight (8) one (1) bedroom Units with each Unit having one (1) bathroom each. Unit Number 102 in Building "G" is a one bedroom handicap Unit having one (1) bathroom.

Each Unit has an outside storage closet area located on the porch (if a ground floor unit) or patio (if a second floor unit) of such Unit. The makeup of the Buildings is further described as follows:

Building	No. of Units	No. of Bedrooms/Unit	No of Bathrooms/Unit
"A"	8	3	2
"B"	8	2	2
"C"	8	2	2
"D"	8	2	2
"E"	8	2	2
"F"	8	2	2
"G"	8	1	1
	56		

As described above, the Project contains four (4) garage buildings described as Building 1, Building 2, Building 3 and Building 4 on the Plan (said buildings are sometimes referred to herein as the "Garage Buildings") which contain Garage Units ("Garage Units") together with, if so indicated on the Plan, storage facilities being further described as follows:

- (i) Building 1 contains four (4) Garage Units described as G1, G2, G3 and G4 and each Garage Unit in Building 1 includes a storage facility located at the ends of the Garage Building and labeled correspondingly with the Garage Units on the Plans as G1, G2, G3 and G4;
- (ii) Building 2 contains four (4) Garage Units described as G5, G6, G7 and G8 and each Garage Unit in Building 2 includes a storage facility located at the ends of the Garage Building and labeled correspondingly with the Garage Units on the Plans as G5, G6, G7 and G8;
- (iii) Building 3 contains five (5) Garage Units described as G9, G10, G11, G12 and G13 and Garage Unit 9 and Garage Unit 10 in Building 3 will include a storage facility located at the end of the Garage Building and labeled correspondingly with the Garage Units on the Plan as G9 and G10. Garage Units G11, G12 and G13 do not include a storage closet; and
- (iv) Building 4 contains two (2) Garage Units described as G14 and G15 and both G14 and G15 in Building 4 include a storage closet labeled correspondingly with the Garage Units on the Plans as G14 and G15.

Garage Units will be offered for sale on a first-come-first-serve basis to Unit purchasers at an additional price. Not all Garage Units include a storage facility. Storage facilities shall only be included with the Garage Unit if so labeled correspondingly on the Plans. Garage Units G11, G12, and G13 in Building 3 do not include storage facilities. Purchase of a Unit in the Project does not entitle the owner thereof to use of a Garage Unit unless such Garage Unit is also purchased by the Unit Owner. Ownership of a Garage Unit does not entitle the owner thereof to a vote in the Association separate and distinct from the voting rights associated with a Unit. Garage Units can only be used by Unit Owners which purchase such Garage Units. Garage Units are offered separate from the Units. Once a Garage Unit is purchased by a Unit Owner, such Garage Unit and the storage facility if such Garage Unit includes a storage facility, shall be deemed a part of the Unit and can only be sold or transferred in conjunction with the sale or transfer of a Unit by the Unit Owner. A Unit Owner may not own a Garage Unit or storage facility separate and apart from the ownership of a Unit.

The Condominium further contains a Clubhouse Building containing an office and storage facility and an adjacent building connected by a breezeway with an exercise room and meeting room. Building 4 contains a laundry facility, storage room and a covered car wash area for the benefit of Unit Owners. The Declarant has reserved the right to utilize the Office in the Clubhouse Building (which is approximately 14' x 14') for the sale of Units so long as the Declarant still owns or retains any Units in the Condominium development.

(b) Units: All Units of the Condominium shall be for residential use only. Parking areas and Garage Units shall be for the personal use only of the Unit Owners and shall not be for any

commercial purposes. "Building A" consists of eight (8) Units comprised of three (3) bedroom Units with two (2) bathrooms each and a porch or patio each if so indicated on the Plans. "Building B" consists of eight (8) Units comprised of two (2) bedroom Units with two (2) baths each and porch each if so indicated on the Plans. Unit Number 104 in Building "B" is a two bedroom handicap Unit having two (2) bathrooms and a patio. "Building C" consists of eight (8) Units comprised of two (2) bedroom Units, two (2) bathrooms each and a porch or patio each, if so indicated on the Plans. "Building D" consists of eight (8) Units comprised of two (2) bedroom Units, two (2) bathrooms each and a porch or patio each, if so indicated on the Plans. "Building E" consists of eight (8) Units comprised of two (2) bedroom Units, two (2) bathrooms each and a porch or patio each, if so indicated on the Plans. "Building F" consists of eight (8) Units comprised of two (2) bedroom Units, two (2) bathrooms each and a porch a patio each, if so indicated on the Plans. "Building G" consists of eight (8) Units comprised of one (1) bedroom Units with one (1) bathroom each and a porch or patio if so indicated on the Plans. Unit Number 102 in Building "G" is a one bedroom handicap Unit having one (1) bathroom and a patio.

Each Unit has a separate storage closet located on the porch if a ground floor Unit or patio if a second floor Unit which shall be deemed part of the Unit although access thereto shall be through the Limited Common Element of the porch or patio.

The porch or patio shall be deemed a Limited Common Element part of the Unit but shall not be enclosed, and must be maintained by Unit Owners as provided for by the Declaration and by the Association. Exterior porches or patios will be maintained by the Unit Owner; provided, however, the Association shall determine the exterior color scheme of porches or patios. Developer reserves the right to use the Clubhouse or a Unit or Units (prior to the sale of same) for sales purposes.

(c) Construction Schedule: All Units are currently constructed and will be for sale upon conversion of the Golfview Apartment Complex to Condominium form of ownership by filing of the Declaration which is anticipated to occur on or about August 1, 2004.

(d) Amenities: Amenities include a Clubhouse Building, an adjacent building connected with a breezeway containing an exercise facility and meeting room, a gunite swimming pool with a pavilion, a laundry facility, a car wash area, storage room and parking areas.

(e) Common Elements and Limited Common Elements: The Common Elements are all portions of the Condominiums other than the Units and the Limited Common Elements and shall include generally all areas other than the Buildings containing the Units (with the exception of the stairwells located in such Buildings which are Common Elements and the Common Areas and facilities located substantially as shown on the Plans, a copy of which is attached to the Declaration attached hereto. Such Common Elements will include the following unless specifically included within a Unit:

A. All of the Real Property (described herein as the "Real Property") being described as

follows:

Lot Number One (#1) of Mill Creek Park, according to and as shown by map or plat of said subdivision of record in Town Plat Book 22, at Page 169, in the Office of the Judge of Probate of Lee County, Alabama.

LESS AND EXCEPT the following described property: A part of the SW 1/4 of NE 1/4, Section 14, Township 18N, Range 25E, identified as Tract No. 10 on Project No. STPOAF-0015(505) in Lee County, Alabama and being more fully described as follows:

PARCEL NO. 1 OF 1:

A part of Lot 1, Millcreek Park Subdivision, as recorded in PB 22, PG 169, in the Office of the Judge of Probate in Lee County, Alabama described as follows: Commencing at the NE corner of Section 14; thence S 27°25'27" W and along a line a distance of 2924.38 feet to a point on the required R/W line (said line between a point that is offset 110' and perpendicular to a project centerline at station 68+99.76 and a point that is offset 85' and perpendicular to project centerline at station 60+50) and the grantor's northeast property line, which is the point of BEGINNING; thence S 23°19'27" W and along the required R/W line a distance of 80.04 feet to a point on the grantor's southwest property line; thence N 68°26'35" W and along the grantor's property line a distance of 51.68 feet to a point on the present R/W line; thence N 21°39'0" E and along the present R/W line a distance of 80.00 feet to a point on the grantor's northwest property line; thence S 68°26'35" E and along the grantor's property line a distance of 54.02 feet to a point and place of BEGINNING containing 0.10 acre, more or less.

B. All improvements and parts of the Real Property which are not a Unit or part of a Unit or Private Elements including the area shown on the Plan as Detention Pond and the access area from U.S. Highway Number 29.

C. All parking areas, driveways and other means of ingress and egress located on the Real Property.

D. Electrical power units, gas, water lines, sanitary and storm sewer facilities including all lines, pipes, ducts, flues, chutes, conduits, cables, wires and all other apparatus and installations in connection therewith, located in the Common Elements, except when situated entirely within a Unit for service only of that Unit.

E. All tangible personal property required for the maintenance and operation of the Condominium including any pool equipment and for the common use and enjoyment of the Unit Owners.

F. All foundations, slabs, columns, beams and supports of any Buildings located on the Real Property and such component parts of exterior walls and walls separating Units, roofs, floors,

and ceilings as are not described as Private Elements.

G. Stairwells in each one of the Buildings. Stairwells are for the benefit of each of the Units located in each Building and the Declarant has chosen to treat such stairwells as Common Elements.

H. Clubhouse area, exercise and meeting room area, pool area and pavilion, car wash area and storage room located adjacent to the car wash area and laundry facility.

I. Lawn areas, landscaping, walkways, sidewalks, curbs and steps.

J. Exterior steps, ramps, handrails, decks.

K. All area, outdoor and exterior lights not metered to individual Units and supports and all entrance and related type signs.

L. All other parts of the Condominium Property existing for the common use or necessity of the existence, maintenance and safety of the Condominium.

M. All easements, rights, or appurtenances affecting or relating to the use of the Condominium property, unless specifically included in any Unit.

(I) The Limited Common Elements located on the Property and the Unit to which they are assigned are as follows: front doorsteps, sidewalks and walkways providing access to Units which are served by such doorsteps, sidewalks or walkways, and porches or patios of each Unit.

3. The Number of Units in the Condominium: The Condominium is comprised of seven (7) Buildings containing eight (8) Units each, for a total of no more than fifty-six (56) Units comprised of a mixture of one-bedroom, two-bedroom and three-bedroom Units, together with access and appurtenant facilities described in the Declaration of Condominium attached hereto and made a part hereof as Exhibit "A". The Buildings (sometimes referred to herein individually or collectively as a "Building") are comprised of a mixture Buildings containing one-bedroom, two-bedroom and three-bedroom Units, together with a Clubhouse Building, adjacent exercise and meeting room, swimming pool, laundry facility, carwash area and related amenities, access and appurtenant facilities described in the Declaration of Condominium attached hereto and made a part hereof as Exhibit "A" (hereinafter referred to as the "Declaration"). There are also four buildings housing garages and storage facilities (a total of fifteen (15) garage units, twelve (12) of which include storage facilities located in the same buildings) which will also be made available to Unit Owners at an additional price as further described herein and in the Declaration. Ownership of a Unit does not entitle a Unit Owner to use of the garage units or storage facilities which will be sold and may be purchased separately.

4. Attached Documents: Attached to this Offering Statement are copies of the following

(herein collectively referred to as the Condominium Documents): (a) Proposed Declaration of Condominium of The Condos at Mill Creek, a Condominium, together with proposed plans (Exhibit "A"); (b) Proposed Articles of Incorporation of The Condos at Mill Creek Homeowners' Association, Inc., a Non-Profit Corporation (Exhibit "B"); (c) Proposed By-Laws of The Condos at Mill Creek Homeowners' Association, Inc. (Exhibit "C"); (d) Proposed Rules and Regulations of The Condos at Mill Creek Homeowners' Association, Inc. (Exhibit "D"), and (e) Management Agreement between The Condos at Mill Creek Homeowners' Association, Inc. and Tigertown Investments, Inc.

5. Projected Budget: A copy of the Projected Budget for the Association is attached hereto and made a part hereof as Exhibit "E". The Projected Budget was prepared by the Developer. The Projected Budget assumes the occupancy of one hundred percent (100%) of the Units. Other than as may be contained in the Projected Budget, the Developer does not contemplate any services to be performed by Developer or expenses that Developer may pay to become a Common Expense of the Association and therefore such services or expenses are not reflected in the Proposed Budget. Reserves for paving, roofing and other contingencies, which include repairs and replacements are shown on the Projected Budget. There is no current balance sheet for the Association. If additional Units are added to the Development on additional property or through the movement of Unit boundaries, the Projected Budget will be modified such that expenses and assessments will be borne proportionately by the number of Units in the Development.

6. Expenses that May Become Common Expense of the Association : There are no services that the Declarant provides not reflected in the Budget, or expenses that it pays, or that it expects may become at any subsequent time, a common expense of the Association.

7. Initial Fees Due by Purchaser at Closing: The Purchaser will be obligated to pay the Closing costs Purchaser agrees to pay provided for under the Purchase Agreement. Additionally, the Purchaser will pay to the Association, at Closing, the assessment for Common Expenses provided for in the Purchase Agreement. The first payment for the assessment shall be made at Closing and shall be for the remainder of the month during which the Closing takes place. The first payment for the assessment will be prorated for the period beginning with the Closing date and ending with next assessment payment date following the Closing. Any pre-paid insurance expenses incurred by the Association will also be prorated and due at Closing. In addition, the Purchaser will be obligated to pay the Association at Closing, the sum equal to a two (2) month installment of said assessment fee as a non-refundable contribution to the initial working capital of the Association, which shall not be considered an advance on the monthly assessments due the Association. Such payment shall be deemed a part of the working capital for the Association. Any surplus in the budget shall be utilized as part of the budget for subsequent years. The Purchaser's assessment shall be an amount set by the Association and shall be a proportionate share of the Common Expenses and shall bear the same ratio as the Purchaser's percentage ownership in the Common Elements.

8. Title to Condominium Property: The following is a legal description of the Real Property to be developed and a brief description of any liens, known defects or encumbrances

affecting the title to the condominium:

Lot Number One (#1) of Mill Creek Park, according to and as shown by map or plat of said subdivision of record in Town Plat Book 22, at Page 169, in the Office of the Judge of Probate of Lee County, Alabama.

LESS AND EXCEPT the following described property: A part of the SW 1/4 of NE 1/4, Section 14, Township 18N, Range 25E, identified as Tract No. 10 on Project No. STPOAL-0015(505) in Lee County, Alabama and being more fully described as follows:

PARCEL NO. 1 OF 1:

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The Real Property is subject to the following:

- (a) Permitted Encumbrances shown on Exhibit "F" attached hereto and made a part hereof being further described as follows:
 - (i) Easement for Utilities shown on the Plat of Survey made by Alva T. Webb, II dated October 2, 1990 and referenced in the Deed recorded at Book 1549 at Page 199 in the Office of Judge of Probate of Lee County, Alabama;
 - (ii) Easements for Sanitary Sewer granted to the City of Auburn, as recorded at Deed Book 1189, at Page 510 in the Office of Judge of Probate of Lee County, Alabama; and Deed Book 1189, at Page 524 in the Office of Judge of Probate of Lee County, Alabama;
 - (iii) Easement to the Water Works Board of the City of Auburn as recorded in Deed Book 1527, at Page 332 in the Office of Judge of Probate of Lee County, Alabama dated July 30, 1990;

- (iv) Right of Way and Easement in favor of South Central Bell Telephone Company from Spirit of Auburn, Inc. recorded in Book 1605 at Page 208 in the Office of Judge of Probate of Lee County, Alabama dated February 28, 1991; and
 - (v) Building Setback Lines and Easements for Drainage and Utilities as shown on the Survey of T. Richard Fuller, L.S., Alabama Registration Number 7384 dated February 24, 2000 as referenced in the Deed recorded at Book 2196 at Page 205 in the Office of Judge of Probate of Lee County, Alabama.
- (b) Zoning, planning and other restrictions or regulations upon the use of the Real Property as may be imposed by the City of Auburn, Alabama, or any other governmental authorities having jurisdiction over the Real Property.
 - (c) Development Rights and Special Declarant Rights granted Developer by the Condominium Documents and by the Act.
 - (d) All ad valorem taxes and assessments.
 - (e) The rights of eminent domain and other governmental rights of police power.
 - (f) Easements or claims of easements not shown by the public records.
 - (g) Encroachments, overlaps, boundary line disputes, and any other matter shown on the Survey prepared by Grady L. Jimmerson, Jr., Alabama License Number 19746 dated June 30, 2004.
 - (h) Terms and conditions of all permits and licenses of Federal, State and local government, including applicable agencies and departments and private and quasi governmental agencies having jurisdiction over the Real Property.
 - (i) Rights of other parties, the United States of America or the State of Alabama.

9. Purchaser's Financing. The Developer does not offer or arrange any mortgage financing for any Unit Purchaser. If the Sales Contract does not contain a provision conditioning the Purchaser's obligation to perform the contract upon obtaining financing, the Purchaser will forfeit any deposits he/she has paid, if the Purchaser requires financing but does not qualify for such financing.

10. Limitations of Warranties: No express warranties are made by the Developer to a Purchaser of a Unit. The Units are being sold by the Developer in "AS-IS" condition, without any warranty, express or implied, except for warranties of title, which shall be provided for under the Deed from Developer to a Purchaser and the express warranties provided for under Ala. Code §35-

8A-413 of the Act pertaining to Condominiums, including the warranties (i) that Plans and Specifications of or for improvements, creates the warranty that the Condominium will substantially conform to any model or description of the project; (ii) the warranty that the real estate comprising the Condominium, as shown on the Plans, creates the warranty that the Condominium will conform to the description shown on the Plans subject to customary tolerances; and (iii) the warranty that the Purchaser of a Unit may put a Unit only to a residential use which use is a lawful use thereof.

11. Cancellation and Rescission. (a) Within seven (7) days after a receipt of this Offering Statement, a Purchaser, before conveyance, may cancel any Contract for purchase of a Unit from the Developer.

(b) If the Developer fails to provide an offering statement to a Purchaser before conveying a Unit, the purchaser may rescind the conveyance within seven (7) days after first receiving the Offering Statement; and

(c) If a purchaser receives the Offering Statement more than seven (7) days before signing a Contract, he cannot cancel the Contract.

12. Judgments and Suits: There are no unsatisfied judgments or pending suits against the Association or the Developer. The Developer has no actual knowledge of any pending suits material to the Condominium.

13. Deposits: Any deposits made in connection with the purchase of a Unit in the condominium will be held in an Escrow Account until Closing and will be returned to the Purchaser if the Purchaser cancels the Purchase Agreement pursuant to § 35-8A-408, *Code of Alabama (1975)*. The name of the Escrow Agent shall be set out in the Purchase Agreement.

14. Restraints and Restrictions. The Declaration contains the following provisions concerning the sale or lease of any Units in the Condominium and any restrictions:

(a) Each Unit shall be used only as a residence or for residential purposes. Each Parking Space shall be for personal use only and shall not be used for any commercial purposes except that parking spaces may be used by the Developer for the staging of construction of any additional phases of the Project. Garage Units shall only be used for personal storage or vehicles of Unit Owners who shall own such Garage Units and may not be used for commercial purposes.

(b) Article XII of the Declaration provides certain restrictions upon the use and occupancy of the Units, which include:

1. Nothing shall be stored in or upon the Common Elements or Limited Common Elements without prior consent of the Board of the Association except as otherwise expressly provided in the Declaration.

2. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Board of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or in or on the Common Elements which will result in the cancellation of insurance of any Unit or any part of the Common Elements or which will be in violation of any law.

3. No waste shall be committed in or on the Common Elements.

4. Each Unit Owner shall place all garbage and trash in dumpsters to be provided by the Association.

5. No Unit Owner, occupant or guest of Unit Owners or occupant shall disturb or annoy other occupants of the Condominium Property nor shall any occupant or Unit Owner commit or permit any nuisance, noxious, offensive, immoral or illegal act in his Unit or on the Condominium Property. Any person violating this provision may be removed from the property by proper legal authority.

6. No sign of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board of the Association or the written consent of any Manager acting in accordance with the Board's direction.

7. Except as provided in the Declaration, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board of the Association.

8. No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Real Property at any time temporarily or permanently, except with the prior written consent of the Board of the Association; provided, however, that temporary structures may be erected for use in connection with the construction, repair or rebuilding of any Buildings or any portion thereof.

9. No boats or trailers may be parked in Parking Spaces or in the Common Elements. Parking of vehicles and the like in driveways, Parking Areas and Common Elements shall be subject to the Rules and Regulations of the Board of the Association applicable thereto.

10. Except within individual Units, no planting, transplanting, or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Real Property, except as approved by the Board of the Association.

11. Motorcycles, motor bikes, motor scooters, or other similar vehicles shall not be operated within the Real Property except for the purpose of transportation, it being intended that said vehicles shall not be operated within the Real Property so as to annoy or disturb persons or endanger persons or Real Property.

12. All parts of the Condominium Property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist.

13. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the Condominium Property concerned.

14. Neither the Board of the Association nor the Association shall take or permit to be taken any Action that unlawfully discriminates against one or more Owners.

15. No animals or pets of any kind shall be kept in any Unit or Condominium Property of the condominium with the exception of those pets owned by the deced Unit Owner or his or her lessee or those required for the assistance of the visual/hearing impaired. Pets of guests or occupants other than the deced Unit Owner or his or her lessee shall not be allowed in the Unit. Any pets not in accordance with the above guidelines found on the property will be removed by the local legal authority. Pets shall be subject to such rules and regulations as may be adopted by the Association.

16. The Common Elements shall be used in accordance with the Declaration and only by the Owners and their agents, tenants, family members, invitees, and licensees for access, ingress to, and egress from the respective Units and Common Area and for such other purposes incidental to the use of the Units or by the Declarant in connection with construction of the Project. However, other areas designated for a specific use shall be used for the purposes approved by the Board of the Association. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession, or easement, presently in existence or entered into by the Board of the Association at some future time, affecting any part or all of said Common Elements. Nothing shall be stored in or upon the Limited Common Elements, (excluding, however, storage of items on porches or patios which are Limited Common Elements and which are subject to the Rules and Regulations of the Association) without the prior consent of the Board of the Association.

17. The right of an Owner to sell, transfer, or otherwise convey his ownership shall not be subject to any right of first refusal or similar restriction.

18. Entire Units may be leased by the Unit Owners; provided, however, that such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Units (including a minimum or maximum number of occupants and rental period and imposition of fines in the event tenants shall be deemed disruptive by the Association) and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board of the Association deems appropriate, including the imposition of fines or (in the Association's sole discretion) eviction. Anything to the contrary notwithstanding, the Developer, and its assigns, retain

the right to maintain sales offices, management offices, leasing and operations offices and models on the Condominium Property and the Clubhouse as provided in the Declaration.

19. Reasonable regulations concerning the use of the Condominium Property may be made by the Developer and amended from time to time by the Board of the Association of Directors of the Association; provided, however, that all such amendments thereto shall be approved by not less than a majority of the votes of the Association before such shall become effective. Members not present at meetings considering such regulations or amendments thereto may express their approval or disapproval in writing. Copies of such regulation or amendment shall be furnished by the Association to all Unit Owners of the Condominium upon request.

20. The Board Directors of the Association may or may not in its discretion assign specific Parking Spaces to the Unit Owners. If an assignment is made, such assignment shall not be recorded in the public records. The Board of the Association of Directors of the Association shall have the right to change the assignment of such Parking Spaces from time to time as in its sole discretion it deems advisable.

21. Garage Units and the storage areas associated therewith shall only be used for personal storage or vehicles of Unit Owners who shall own such Garage Units and may not be used for commercial purposes.

22. Anything construed in any of the Condominium Documents to the contrary, there shall be no restrictions on the right of an Owner to mortgage his Unit.

23. Until such time as the Developer has completed and sold all of the private individual Units or any proposed future improvements (phases) as contemplated herein, or any amenities associated therewith, neither the private individual Unit owners, nor the Association, nor the users of the condominium property shall interfere with the completion of any planned improvements or the sale of the Units. The Developer may make such use of unsold Units and Common Areas as may facilitate such completion and sale.

(c) There is no restriction on the sales price of a Unit.

(d) Condemnation or Taking. Article X of the Declaration provides that any portion of the Condominium for which insurance is required by the Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless the Condominium is terminated in accordance with the Act or repair would be illegal under state or local statute covering health or safety or owners of 80% of the Condominium voting interest vote not to rebuild. If the damage is only to those parts of a Unit or Limited Common Elements which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty in a timely manner not to exceed 60 days. If proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair of the Unit and Limited Common Elements by the Association, Assessments shall be made against the Owners who own the damaged

Property as well as additional Assessments if at any time during construction the funds for the payment of the costs thereof are not sufficient.

The taking of a portion of a Unit or of the Common Elements by eminent domain or casualty shall be deemed, for purposes of determining use of proceeds to be a casualty and the determination as to whether the Condominium will be reconstructed or repaired or continued after condemnation will be determined in the manner provided for in the Act and under Reconstruction or Repair After Casualty provisions in Article X of the Declaration and the awards for such taking shall be deemed proceeds from insurance on account of the casualty and shall be deposited with the Association as Insurance Trustee as provided in Article XI of the Declaration.

Section 11.02 of the Declaration further provides if the Condominium is terminated after condemnation, the proceeds of the condemnation awards for disbursement purposes will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in the Declaration for the distribution of insurance proceeds if the Condominium is terminated after damage to the Common Elements. If the Condominium is not terminated after condemnation, the size of the Condominium Property will be reduced and the Property damaged by the taking will be made usable in the manner provided by the Act and as provided in Article XI. The proceeds of such award shall be used for such purposes and shall be disbursed in the manner provided for disbursement of funds by the Association after damage to the Common Elements.

Article XIX of the Declaration further provides that after termination of the Condominium, Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares. To the extent these provisions are inconsistent with the Act, the act shall control.

To the extent of any inconsistency with the terms and provisions of the Act, the Act shall control with respect to this Section.

15. Insurance. The requirements as to Insurance for the Condominium and Unit Owners are provided for in Article IX of the Declaration of Condominium. The Association is required to obtain, maintain and pay the premiums upon, as a Common Expense, the property insurance required by the Act and as follows. The type of policy shall be a "master" or "blanket" type policy of property insurance covering all of the Common Elements and Limited Common Elements (except land, foundation, excavation, and other items usually excluded from coverage) including fixtures and equipment to the extent they are part of the Common Elements and Limited Common Elements of the Condominium Property, building service equipment, furniture and supplies and other personal property belonging to the Association. The policy shall be in an amount deemed appropriate by the Association but not less than the greater of eighty percent (80%) of the actual cash value of the insured Property at the time the insurance is purchased or such greater percentage of such actual cash value as may be necessary to prevent the applicability of any coinsurance provision at any renewal date, exclusive of land, excavation, foundation, and other items normally excluded from property policies. The property insurance policy shall provide, as a minimum coverage and protection

against: (1) loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement. (2) all other perils which are customarily covered with respect to condominiums similar in construction shall be obtained so as to meet the requirements of the Act.

The Association must also obtain, maintain and pay the premiums upon, as a Common Expense, a comprehensive general liability insurance policy, including medical payments insurance, as required by the Act and covering all the Common Elements, space owned and leased by the Association, and public ways of the Condominium. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. However, such coverage shall be, if reasonably available, for at least one million dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, if reasonably available, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts of the Association. This policy shall also include, if reasonably available, coverage for protection against water damage liability and, if applicable, elevator collision and garage keepers liability. If required by any first mortgage holder, and if reasonably available, the policy shall include protection against such other risks as are customarily covered with respect to Condominiums similar in construction, location and use, including but not limited to host liquor liability, employers liability insurance, contractual and all written contract insurance and comprehensive automobile liability insurance;”

Other than the foregoing described insurance, each Owner shall be responsible for obtaining and maintaining insurance on his or her Unit and for his or her own benefit. To the extent these provisions are inconsistent with the Act, the act shall control.

To the extent of any inconsistency with the terms and provisions of the Act, the Act shall control with respect to this Section.

16. Use Fees. There are no current or expected fees or charges to be paid by the Unit Owners for the use of the Common Elements or other facilities related to the Condominium other than the regular assessments imposed in accordance with the Declaration. Provided, however, the Association may elect in the future to charge reasonable fees to be paid by Unit Owners for use of the Common Elements.

17. Financial Arrangements. The Developer has a Loan through First American Bank for acquisition of the Project which provides that individual Units will be released upon sale subject to the application of proceeds as provided for therein.

18. Zoning. The Property is Zoned “Multi-Family” by the City of Auburn Planning Commission. Such zoning provides generally for any retail or wholesale business or service not specifically restricted. The Condominium is located in the Comprehensive Development District (CDD) of the City of Auburn, Alabama which allows most uses by right. Such Zoning is intended

to provide the zoning and capital improvements that attract development and consist of areas where development should logically locate as a consequence of planned public facilities and associated capital expenditures. This district provide regulations that permit development of both urban and suburban character. It provides for low to moderate density residential development and for necessary commercial and institutional uses. Major uses, such as a regional shopping center, will be considered as conditional uses. Manufactured home parks, commercial support uses and road service uses are permitted conditionally, and industrial uses are not permitted.

19. Amendment. The Declaration of Condominium of The Condos at Mill Creek, a Condominium, may be amended to accordance with the requirements of §35-8A-217, *Code of Alabama* (1975) and in accordance with the Declaration of Condominium. The By-Laws of The Condos at Mill Creek Owner's Association, Inc. may be amended in accordance with the requirements of §35-8A-306, *Code of Alabama* (1975) and the Bylaws of the Association.

Section 5.02 of the Declaration of Condominium states that the Declaration may be amended by the Developer without the consent of any Unit Owner, Mortgagee, or other Person in order to exercise any Development Rights or Special Declarant Rights so long as said amendment complies with the requirements of the Act. The provision shall not apply to the Construction Lender.

Article XIII of the Declaration of Condominium states that the Declaration and the By-Laws of the Association may be amended as provided in the Act.

Section 35-8A-107 of the Act generally provides that the Association will amend the Declaration of Condominium reflecting any reallocations of a Unit interest that is due to any of the Condominium Property being acquired by eminent domain.

Section 35-8A-208 of the Act generally provides that a Limited Common Element may be reallocated by an amendment to the Declaration executed by the Unit Owners between or among whose Units the reallocation is made.

Section 35-8A-212 of the Act generally provides that the boundaries between adjoining Units may be reallocated by amendment to the Declaration.

The Declaration provides that the Condominium may be terminated in accordance with the Act, and by agreement of Unit Owners of Units to which at least ninety percent (90%) of the votes by the Association are alleged. The agreement shall be evidenced by a written instrument executed in the manner required for a deed and recorded in the public records of Lee County, Alabama. After termination of the Condominium, Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares.

The By-Laws of the Association may be amended by the affirmative vote or agreement of Unit Owners of Units to which two-third (2/3) of the votes of the Association are allocated.

Ownership of a Unit subjects the Owner to compliance with provisions of the Declaration, the Articles, By-Laws and Rules and Regulations of the Association, and any contracts to which the Association is a party, as well as to any amendments to any of the foregoing.

20. Further Provisions in the Declaration: The Declaration of Condominium of The Condos at Mill Creek, a Condominium, provides that the Condominium is subject to certain Special Declarant Rights reserved by the Developer which includes the right to add additional property and improvements to the Development, if permitted as a Special Declarant Right by the Act, in which case the Common Elements and Common Expenses will be proportionately re-divided among the then total number of Units in the Development.

[There is Nothing Further on this Page]

Offering Statement for The Condos at Mill Creek, a Condominium

EXECUTED, this the 6 day of August, 2004

RPM/Millcreek, LLC, an Alabama limited liability company

By: Tigertown Investments, Inc., an Alabama corporation, as Manager

By: Philip J. Miner L.S.
Philip J. Miner, as its Secretary/Treasurer

Copy Received by Prospective Purchaser

Date: _____

EXHIBIT "A"
[Declaration of Condominium]

**DECLARATION OF CONDOMINIUM OF
THE CONDOS AT MILL CREEK, A CONDOMINIUM**

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**DECLARATION OF CONDOMINIUM
OF
THE CONDOS AT MILL CREEK, A CONDOMINIUM**

THIS DECLARATION, made this ____ day of August, 2004, by Tigertown Investments, Inc., as Manager of RPM/Millcreek, LLC, an Alabama limited liability company, hereinafter called "Developer", for itself, its successors, grantees and assigns.

RECITALS

1. The Developer is the fee simple Owner of that certain parcel of Real Property situated in the County of Lee, State of Alabama, hereinafter more particularly described, on which is located an apartment complex known as Golfview Apartments which will be converted to a Condominium Project known as The Condos at Mill Creek, a Condominium, and Developer intends to improve said Real Property in the manner set out herein.

2. The Developer proposes to establish a Condominium pursuant to the provisions of the Alabama Uniform Condominium Act of 1991. The Condominium shall be known as The Condos At Mill Creek, A Condominium.

3. The Condominium shall be comprised of seven (7) buildings containing eight (8) Units for a maximum number of fifty-six (56) Units as shown on Exhibit "B" attached hereto and made a part hereof. The Condominium is fully located within Lee County, Alabama.

4. This disclosure is given to comply with §35-8A-406 of the Alabama Uniform Condominium Act of 1991, Code of Alabama (1975), §35-8A-101, *et. seq.* (the "Act"). The Condominium contains conversion Buildings containing Units that may be occupied for residential use. Accordingly, the Declarant makes the following representations:

- (a) To the best of Declarant's knowledge, the approximately age of the structural components and mechanical and electrical installations which are material to the use and enjoyment of the Buildings are three (3) years of age; and
- (b) There are no outstanding notice of uncured violations of any building code or other municipal regulations and, accordingly, no costs are to be expended or reserved to cure such violations.

NOW, THEREFORE, the Developer, hereby makes the following Declaration.

I. DEFINITIONS

The Recitals are incorporated into and made a part of the terms and conditions of this Agreement. The terms used in this Declaration and in the By-Laws shall have the meanings stated in the Alabama Uniform Condominium Act of 1991, and as follows, unless the context otherwise requires:

- 1.01 "Act" means the Alabama Uniform Condominium Act of 1991, Code of Alabama (1975), Section 35-8A-101, *et seq.*

- 1.02 **"Articles"** means the Articles of Incorporation of the Association, recorded in the Office of the Judge of Probate of Lee County, Alabama.
- 1.03 **"Assessment"** means proportionate share of the funds required for the payment of the Common Elements which from time to time may be levied against each Unit Owner.
- 1.04 **"Association"** means **THE CONDOS AT MILL CREEK HOMEOWNERS' ASSOCIATION, INC.**, an Alabama non profit corporation, and its successors, and is the corporation organized under the Act.
- 1.05 **"Board"** means the Board of Directors of the Association.
- 1.06 **"Building"** or collectively **"Buildings"** means the buildings designated as Building "A", Building "B", Building "C", Building "D", Building "E", Building "F", and Building "G", and all structures or structural improvements located in the Buildings on the Real Property and forming part of the Condominium.
- 1.07 **"By-laws"** means the duly adopted By-Laws of the Association, identified as "Exhibit C-2" attached hereto and made a part hereof as if set out fully herein.
- 1.07(a) **"Clubhouse"** means the building designated as the "Clubhouse" on the Plans.
- 1.09 **"Common Elements"** means all portions of the condominium other than the Units or Limited Common Elements.
- 1.9 **"Common Expenses"** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.10 **"Common Surplus"** means the excess of all receipts of the Association arising out of the Common Elements over the amount of the Common Expenses.
- 1.11 **"Condominium"** means The Condos At Mill Creek, A Condominium, and consists of the Condominium Property submitted to the Condominium form of ownership by this Declaration.
- 1.12 **"Condominium Documents"** means the Declaration, By-Laws, Articles and all Rules and Regulations adopted by the Association and all exhibits attached thereto as the same may be amended from time to time.
- 1.13 **"Condominium Property"** or **"Property"** means all property, both real and personal or mixed, which is submitted to the Condominium form of ownership as provided for herein and includes the Real Property and all improvements now existing or hereafter placed thereon and all easements, rights, interests, or appurtenances thereto, and all personal property now or hereafter used in connection therewith.
- 1.14 **"Construction Lender"** means any lender holding a mortgage or vendor's lien on any part or all of the Real Property prior to the filing of this Declaration.

- 1.14(a) **"Conversion"** or **"Conversion Building"** means a building that at any time before creation of the Condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers, including the Buildings.
- 1.15 **"Declaration"** means this Declaration of Condominium and any amendments thereto which may be made from time to time.
- 1.16 **"Developer"** means Tigertown Investments, Inc., as Manager of RPM/Millcreek, LLC, an Alabama limited liability company, and its successors and assigns.
- 1.17 **"Development"** shall have the same meaning as "Condominium Property" or "Property".
- 1.18 **"Development Rights"** shall have the same meaning as is defined in the Act and as set out in the Declaration.
- 1.18(a) **"Garage Buildings"** shall mean Building 1, Building 2, Building 3 and Building 4 as shown on the Plans attached hereto which house Garage Units and storage facilities as described herein.
- 1.18(b) **"Garage Units"** shall mean the Garage Units designated on the Plans in Building 1, Building 2, Building 3 and Building 4 and storage facilities associated therewith, if so indicated on the Plans.
- 1.19 **"Limited Common Elements"** shall have the same meaning as is defined in the Act and as set out herein in Section 5.12.
- 1.20 **"Member"** means a member of the Association, membership in which is confined to Unit Owners.
- 1.21 **"Mortgagee"** means any lender holding a mortgage or vendor's lien on any part or all of the Condominium Property.
- 1.22 **"Occupant"** means a person or persons in possession of a Unit, regardless of whether that person is the Unit Owner.
- 1.23 **"Parking Space"** means a space in the parking area for the sole purpose and use as a location to park personal automobiles and similar sized vehicles.
- 1.24 **"Parking Area"** means the improvement located in the real property and used to park personal automobiles and similar sized vehicles.
- 1.25 **"Person"** means a natural person, a corporation, a partnership, a limited partnership, a limited liability company, the Association, a Trustee, or other legal entity.
- 1.26 **"Plans"** mean the site plan, floor plans, and elevations of the Condominium prepared by Grady L. Jimmerson, Jr., Alabama License Number 19746 and Jimmerson Surveying of Auburn, Alabama and McKean & Associates Architects, LLC, which are marked "Exhibit B" and attached hereto and expressly made a part hereof as though fully set out herein. Attached

hereto as part of said Plans are the Certificates of Occupancy for the Buildings issued by the City of Auburn Public Safety Department. The Plans contain a certification by an engineer or architect that the Plans contain all information required by the Act.

- 1.27 "Real Property" means the Real Property which is submitted to the Condominium form of ownership as provided for herein being initially described on Exhibit "A" attached hereto and made a part hereof.
- 1.28 "Rules and Regulations" shall mean the Rules and Regulations that may from time to time be approved by the Association or the Board.
- 1.29 "Special Declarant Rights" shall have the same meaning as is defined in the Act and as set out in the Declaration.
- 1.30 "Unit" or "Private Element" shall have the same meaning as "Unit" as defined in the Act. The Units are designated on the Plans. In the event a Unit Owner shall purchase a Garage Unit, then such Garage Unit shall be deemed to be part of the Unit.
- 1.31 "Unit Owner" means the Owner of a Unit.
- 1.32 "Utility Services" shall include but not be limited to electrical power, gas, garbage water and sewage disposal.

When the context permits, use of the plural shall include the singular, use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

II. NAME

2.01 The name by which this Condominium is to be known is The Condos At Mill Creek, A Condominium. The Condominium is located at 3297 South College Street, Auburn, Alabama 36832.

III. THE REAL PROPERTY

3.01 The Real Property owned by the Developer which is herewith submitted to the Condominium form of ownership is the parcel of Real Property lying and being in Lee County, Alabama, and being more particularly described in Exhibit "A". The Developer may subject additional properties to the terms and conditions of the Declaration at which time the number of Units shall be adjusted.

The Real Property is subject to the following:

- (a) Zoning, planning and other restrictions or regulations upon the use of the Real Property as may be imposed by the City of Auburn, Alabama, or any other governmental authorities having jurisdiction over the Real Property.
- (b) Development Rights and Special Declarant Rights granted Developer by the Condominium documents and by the Act.
- (c) All ad valorem taxes and assessments.

- (d) The rights of eminent domain and other governmental rights of police power.
- (e) Easements or claims of easements not shown by the public records.
- (f) Covenants, restrictions, reservations, easements and rights-of-way, if any, heretofore imposed of record affecting title to said Property, including but not limited to the following:
 - (i) Easement for Utilities shown on the Plat of Survey made by Alva T. Webb, II dated October 2, 1990 and referenced in the Deed recorded at Book 1549 at Page 199 in the Office of Judge of Probate of Lee County, Alabama;
 - (ii) Easements for Sanitary Sewer granted to the City of Auburn, as recorded at Deed Book 1189, at Page 510 in the Office of Judge of Probate of Lee County, Alabama; and Deed Book 1189, at Page 524 in the Office of Judge of Probate of Lee County, Alabama;
 - (iii) Easement to the Water Works Board of the City of Auburn as recorded in Deed Book 1527, at Page 332 in the Office of Judge of Probate of Lee County, Alabama dated July 30, 1990;
 - (iv) Right of Way and Easement in favor of South Central Bell Telephone Company from Spirit of Auburn, Inc. recorded in Book 1605 at Page 208 in the Office of Judge of Probate of Lee County, Alabama dated February 28, 1991; and
 - (v) Building Setback Lines and Easements for Drainage and Utilities as shown on the Survey of T. Richard Fuller, L.S., Alabama Registration Number 7384 dated February 24, 2000 as referenced in the Deed recorded at Book 2196 at Page 205 in the Office of Judge of Probate of Lee County, Alabama.
- (g) Encroachments, overlaps, boundary line disputes, and any other matter which would be disclosed by an accurate survey and inspection of the Real Property.
- (h) Encroachments, overlaps, boundary line disputes, and any other matter shown on the Survey prepared by Grady L. Jimmerson, Jr., Alabama License Number 19746 dated June 30, 2004.
- (i) Terms and conditions of all permits and licenses of Federal, State and local government, including applicable agencies and departments and private and quasi governmental agencies having jurisdiction over the Real Property.
- (j) Rights of other parties, the United States of America or the State of Alabama.

IV. PURPOSE

4.01 The Developer hereby submits the Real Property described above together with all improvements, buildings, structures, and all other permanent fixtures thereon, and all rights and privileges belonging or in any way pertaining thereto, to the Condominium form of ownership and use in the manner provided for by the "Alabama Uniform Condominium Act of 1991", Code of Alabama (1975), Section 35-8A-101, et seq. There shall be no more than fifty-six (56) Units included within the Condominium, subject to the

development rights retained by the Declarant to dedicate additional property to the Product, as set forth herein. The Condominium shall be located in Lee County, Alabama.

V. DEVELOPMENT PLAN

5.01 **Plans.** The improvements have been substantially completed as evidenced by the Certificate of Occupancy issued by the Codes Enforcement Division of the City of Auburn Public Safety Department, a copy of which is attached hereto as Exhibit "B" as part of the Plans.

5.02 **Amendments.** This Declaration may be amended by the Developer without the consent of any Unit Owner, Mortgagee, or other Person in order to exercise any Development Rights or Special Declarant Rights so long as said amendment complies with the requirements of the Act. This provision shall not apply to the Construction Lender.

5.03 **Agreement.** Each Person or entity who shall acquire any Unit in the Condominium or interest in or lien upon any such Unit shall be deemed, by accepting a conveyance of or otherwise acquiring such Unit interest or lien, to have agreed and consented, within the meaning of this Declaration and of the Act to be bound by the terms and provisions hereof and to have further agreed and consented that any amendment to this Declaration executed by the Developer alone pursuant hereto shall be binding and effective as written notwithstanding the fact that the undivided interest of the Unit Owners in the Common Elements will be changed thereby.

5.04 **Easements.** Easements are reserved to the Developer throughout the Common Elements as may be reasonably necessary for the purpose of discharging the Developer's obligations or exercising any Development Rights or Special Declarant Rights. Further, the Developer, its successors and assigns, reserves a perpetual nonexclusive easement for access, ingress and egress in, over and through all drives, access routes, parking areas and other common areas for its guests, licensees, lessees, customers and employees to and from any adjacent and contiguous property for the purpose of real estate sales or any other business operated by the Developer on such property. Developer also reserves to itself the right to use an office located in the Clubhouse in the approximate size of 196 square feet for real estate sales so long as the Developer owns or manages Units in the Condominium. Developer reserves to itself, Tenants, assigns, its licensees, lessees, customers, employees, purchasers of Units and their tenants, servants, employees, agents, visitors, invitees, or licensees, a perpetual nonexclusive easement for access, ingress and egress in, over and through all drives, access routes, and parking areas.

A. **Utilities and Drainage:** Easements are reserved throughout the Condominium Property as may be required for Utility Services and drainage in order to adequately serve the Condominium; provided, however, such easements to a Unit shall be only in accordance with the Plans unless approved in writing by the Unit Owner. Each Unit shall have an easement as may be required to drain the Condominium Property adequately. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use all pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Association shall have a right of access to each Unit to inspect the same, to remove violations therefrom, and to maintain, repair or replace the Common Elements contained therein or elsewhere on the Condominium Property; provided such right of access, except in the event of emergency, shall not unreasonably interfere with the Unit Owners permitted use of that Unit, and except in the event of emergency, entries shall not be made without prior notice to the Unit Owner.

B. **Encroachments:** If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any Building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as such Building stands. In the event any Building, any Unit, any adjoining Unit, or any adjoining Common Element 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 rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance therefore shall exist so long as such Building or Buildings shall stand.

C. **Support:** Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and of necessity in favor of all other Units, and the Common Elements.

D. **Access:** Each Unit shall have an easement for pedestrian traffic over, through, and across sidewalks, paths, walks, walkways, and lanes, and light passage ways, as the same may from time to time exist in the Common Elements; and for ingress and egress over, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes, but the same shall not give or create in any Person the right to park on any portion of the Condominium Property not designated as a parking area nor shall it give or create in any Person the right to use or occupy a Limited Common Element designated for the exclusive use of others. This easement shall be non-exclusive and shall include the right of ingress and egress to a public street or highway upon and over Common Elements providing such access and as shown on the Plans.

5.05 **Description of the Condominium:**

(a) **General:** The Condominium is located at 3297 South College Street, Auburn, Alabama and contains seven (7) residential unit buildings (the "Buildings") containing eight (8) Units each, for a maximum total of fifty-six (56) Units. The Buildings are currently operated as an apartment complex known as "Golfview Apartments" and will be converted by the Declarant to the Condominium form of ownership pursuant to the Act. The Buildings (sometimes referred to herein individually or collectively as a "Building") are comprised of a mixture of buildings containing one-bedroom Units, a one-bedroom handicap Unit, two-bedroom Units, a two bedroom handicap Unit and three-bedroom Units, together with a Clubhouse Building, an adjacent Exercise Room and meeting room, swimming pool and pavilion, laundry facility, carwash area, and access and appurtenant facilities described herein. There are also four buildings containing garage units and some garage units include a storage facility (a total of fifteen garage units and twelve of the garage units include storage facilities) which will also be made available to Unit Owners at an additional price as further described herein. Ownership of a Unit does not entitle a Unit Owner to use of the garage units or storage facilities which are to be sold and purchased separately.

The Buildings are shown as Building "A", Building "B", Building "C", Building "D", Building "E", Building "F", and Building "G" on the Plans attached hereto as Exhibit "B" and are further described as follows:

- (i) Building "A" is comprised of eight (8) three (3) bedroom Units with each Unit having two (2) bathrooms each;

- (ii) Buildings "B", "C", "D", "E", and "F" are comprised of eight (8) two (2) bedroom Units each with each Unit having two (2) bathrooms each. Unit Number 104 in Building "B" is a two bedroom handicap Unit having two (2) bathrooms.
- (iii) Building "G" is comprised of eight (8) one (1) bedroom Units with each Unit having one (1) bathroom each. Unit Number 102 in Building "G" is a one bedroom handicap Unit having one (1) bathroom.

Each Unit has an outside storage closet area located on the porch (if a ground floor unit) or patio (if a second floor unit) of such Unit. The makeup of the Buildings is further described as follows:

Building	No. of Units	No. of Bedrooms/Unit	No of Bathrooms/Unit
"A"	8	3	2
"B"	8	2	2
"C"	8	2	2
"D"	8	2	2
"E"	8	2	2
"F"	8	2	2
"G"	8	1	1
	56		

As described above, the Project contains four (4) garage buildings described as Building 1, Building 2, Building 3 and Building 4 on the Plan (said buildings are sometimes referred to herein as the "Garage Buildings") which contain Garage Units ("Garage Units") together with, if so indicated on the Plan, storage facilities being further described as follows:

- (i) Building 1 contains four (4) Garage Units described as G1, G2, G3 and G4 and each Garage Unit in Building 1 includes a storage facility located at the ends of the Garage Building and labeled correspondingly with the Garage Units on the Plans as G1, G2, G3 and G4;
- (ii) Building 2 contains four (4) Garage Units described as G5, G6, G7 and G8 and each Garage Unit in Building 2 includes a storage facility located at the ends of the Garage Building and labeled correspondingly with the Garage Units on the Plans as G5, G6, G7 and G8;
- (iii) Building 3 contains five (5) Garage Units described as G9, G10, G11, G12 and G13 and Garage Unit 9 and Garage Unit 10 in Building 3 will include a storage facility located at the end of the Garage Building and labeled correspondingly with the Garage Units on the Plan as G9 and G10. Garage Units G11, G12 and G13 do not include a storage closet; and

- (iv) Building 4 contains two (2) Garage Units described as G14 and G15 and both G14 and G15 in Building 4 include a storage closet labeled correspondingly with the Garage Units on the Plans as G14 and G15.

Garage Units will be offered for sale on a first-come-first-serve basis to Unit purchasers at an additional price. Not all Garage Units include a storage facility. Storage facilities shall only be included with the Garage Unit if so labeled correspondingly on the Plans. Garage Units G11, G12, and G13 in Building 3 do not include storage facilities. Purchase of a Unit in the Project does not entitle the owner thereof to use of a Garage Unit unless such Garage Unit is also purchased by the Unit Owner. Ownership of a Garage Unit does not entitle the owner thereof to a vote in the Association separate and distinct from the voting rights associated with a Unit. Garage Units can only be used by Unit Owners which purchase such Garage Units. Garage Units are offered separate from the Units. Once a Garage Unit is purchased by a Unit Owner, such Garage Unit and the storage facility if such Garage Unit includes a storage facility, shall be deemed a part of the Unit and can only be sold or transferred in conjunction with the sale or transfer of a Unit by the Unit Owner. A Unit Owner may not own a Garage Unit or storage facility separate and apart from the ownership of a Unit.

The Condominium further contains a Clubhouse Building containing an office and storage facility and an adjacent building connected by a breezeway with an exercise room and meeting room. Building 4 contains a laundry facility, storage room and a covered car wash area for the benefit of Unit Owners. The Declarant has reserved the right to utilize the Office in the Clubhouse Building (which is approximately 14' x 14') for the sale of Units so long as the Declarant still owns or retains any Units in the Condominium development.

5.06 **Units - Private Elements:** The portion of the Development which the Unit Owner shall have exclusive use thereof, is the Unit which is owned by the Unit Owner. Unless otherwise provided herein, the Unit boundaries shall be as provided for under Ala. Code §35-8A-202. The boundaries of the Units are further described as follows:

A. **Horizontal Boundaries. -(Planes).** The upper and lower boundaries extended to their planer intersections with the vertical boundaries of each Unit shall be:

(1) **Upper Boundary.** The area below or what is customarily below (the lower surface) any ceiling within the upper floor of a Unit.

(2) **Lower Boundary.** The horizontal plane of the unfinished upper interior surface of the lowest floor of a Unit.

B. **Vertical Boundaries. -(Planes).** The vertical boundaries of each Unit shall be the vertical planes of the interior surfaces of exterior windows and the interior surfaces of the entry doors bounding a Unit, and the inner studs within the walls of the Unit perimeter, excluding paint, wall paper, and light coverings, sheetrock and paneling extended to their planer intersections with each other and with the upper and lower boundaries.

5.07 **Unit Floor Plans.** The floorplans of the Units are shown on the Plans attached hereto as Exhibit "B".

5.08 **Unit Ownership.** Each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit Owner shall have the unrestricted right of ingress and egress to his Unit, which right shall be an appurtenance to his Unit. The private elements of each Unit shall consist of the

following:

A. The air space of the area of the Building lying within the Unit boundaries, less and except the Limited Common Elements as described herein lying within the Unit boundaries.

B. The surfacing materials on the interior of the exterior walls and on interior walls separating one Unit from another Unit. This is intended to include the sheetrock or paneling on any common-party walls falling between Units. Such sheetrock or paneling is a private element.

C. The structural components and surfacing materials of all interior walls located within the boundaries of the Unit.

D. The surfacing materials of the floors and ceilings of the Unit.

E. Any toilets, sinks or other appliances installed within a Unit by a Unit Owner, lighting fixtures and all hardware and interior and exterior wall fixtures except those exterior lighting fixtures assigned to the common use of the Condominium.

F. All interior trim and finishing materials within the confines of the Unit.

G. The Unit shall include a storage closet located off the porch (if a second floor Unit) or patio (if a ground floor Unit) of such Unit which porch or patio is part of the Limited Common Elements. In the event a Unit Owner purchases a Garage Unit then such Garage Unit shall be deemed part of the Unit.

5.09 **Surfaces.** A Unit Owner shall not be deemed to own the structural components of the perimeter and/or load-bearing walls, nor the windows and doors bounding the Units. A Unit Owner, however, shall be deemed to own and shall have the exclusive right and duty to repair and maintain sheetrock, paneling, paint, repaint, tile, wax, paper, or otherwise finish and decorate the surfacing materials on the interior of exterior walls and on window screens; and all appurtenant installations, including all pipes, ducts, wires, cables, and conduits used in connection therewith, for services such as power, light, telephone, sewer, water, heat and air conditioning, whether located in the boundaries of the Unit or in common areas, which are for the exclusive use of the Unit; and all ceilings and partition walls. A Unit Owner shall have the exclusive right and duty to wash and keep clean the exterior and interior surfaces of windows and doors bounding his Unit.

5.10 **Changes.** The Developer reserves the right to change the interior design and arrangement of any and all Units owned by it. The Developer further reserves the right to alter the boundaries between Units, which said change shall be reflected by an amendment of this Declaration and shall be known as a Special Declarant Right, which may be executed by the Developer alone, notwithstanding the procedures for amendment described herein. However, no such change of boundaries shall increase or decrease the number of Units, nor alter the boundaries of the Common Elements without amendment of this Declaration in the manner described herein. If the boundaries of more than one (1) Unit are altered, the Developer shall appropriately reapportion the shares of the Common Elements which are allocated to the altered Units; provided, however, the Special Declarant Right granted by this section must be exercised on or before ten (10) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Lee County, Alabama or in the case of Developer's exercise of the right to add subsequent phases of the Project, ten (10) years from the date of such submission of a subsequent phase to the terms and conditions of this Declaration. No assurance is made concerning whether or not any Unit will be or will not be changed by the Developer nor is any assurance made concerning the nature, character, or quality of said change. The exercise by the Developer of the Special

Declarant Right to change a Unit or number of Units does not obligate the Developer to exercise said right in any one or all of any other Unit in the Condominium. Developer reserves the right as a Special Declarant Right to add additional property to the Development if such right is allowed as a Special Declarant Right pursuant to the Act, in which case the Common Elements and Common Expenses shall be adjusted accordingly.

5.11 **Common Elements.** Any right, title or interest in a Unit shall automatically carry with it as an appurtenance and without the necessity of specific reference thereto its respective undivided share of the Common Elements and a right to use the Common Elements in conjunction with the other Owners. The Common Elements of the Condominium are all portions of the Condominium other than the Units and will include the common areas and facilities located substantially as shown on the Plans and Plat. Such common areas and facilities will include the following:

- A. All of the Real Property.
- B. All improvements and parts of the Real Property which are not a Unit or Private Element.
- C. All parking areas, driveways and other means of ingress and egress.
- D. Electrical power Units, gas, water lines, sanitary and storm sewer facilities, and including all lines, pipes, ducts, flues, chutes, conduits, cables, wires and all other apparatus and installations in connection therewith, located in the Common Elements, except when situated entirely within a Unit for service only of that Unit.
- E. All tangible personal property required for the maintenance and operation of the Condominium and for the common use and enjoyment of the Unit Owners.
- F. All foundations, slabs, columns, beams and supports of the Building and such component parts of exterior walls and walls separating Units, roofs, floors, and ceilings as are not described herein as Private Elements.
- G. Lawn areas, landscaping, walkways, sidewalks, curbs and steps.
- H. Exterior steps, ramps, and handrails, stairs and stairwells and stoops.
- I. The Clubhouse, adjacent building containing a fitness room and meeting room, pool, pavilion, laundry facility, storage room, the car wash area shown the Plans shown on Exhibit "B" attached hereto and stairwells in each Building. The Developer has chosen to treat the stairwell as a Common Element instead of a Limited Common Element even though such stairwells benefit the particular Building in which such stairwell is located. Accordingly, the maintenance of the stairwells shall be a Common Expense of Unit Owners in accordance with their ownership of the Common Elements.

- J. All area, outdoor and exterior lights not metered to individual Units and supports and all entrance and related type signs.
- K. The Unit entry ways and stoops affixed to each Unit, even though designated as Limited Common Element.
- L. All other parts of the Condominium Property existing for the common use or necessity of the existence, maintenance and safety of the Condominium.
- M. All other items listed as such in the Act.

5.12 **Limited Common Elements.** The Limited Common Elements located on the Property and the Unit to which they are assigned are as follows: front door steps, sidewalks and walkways, porches and patios on each Unit, if any, providing access to Units which are served by such doorsteps, sidewalks or walkways.

VI. COMMON ELEMENTS

6.01 **Ownership.** A schedule setting forth the percentage of undivided interest of each Unit in the Common Elements is attached hereto, marked "Exhibit D" and by reference made a part hereof. The percentage of undivided interest of each Unit in the Common Elements is determined in accordance with the size of the Unit dependent upon the number of bedrooms located in the Unit and by dividing one by the component factor for a one bedroom, two bedroom and three bedroom Unit as shown on Exhibit "D" attached hereto. For purposes of percentage of ownership in the Common Elements, percentage of Common Expenses, and percentage of Common Surplus, and voting on all matters requiring Action by the Owners, each Unit shall be entitled to one (1) vote. The ownership interest in the Common Elements shall be an undivided interest, and except as provided in the Act and this Declaration shall remain undivided. No Owner shall bring any Action for partition or division of the Common Elements. The ownership interest in the Common Elements shall not be conveyed, transferred, encumbered or otherwise affected separate from the ownership of the Unit, and any agreement to the contrary shall be void. Each Owner, and the holder of any Mortgage or lien on or other interest in any Unit, with the exception of the Construction Lender, shall be deemed by the acceptance of a conveyance of, title to, or Mortgage or lien on such Unit, to have agreed and consented, within the meaning of this Declaration and the Act to such change or changes in the Unit's interest in the Common Elements and any Common Surplus and each Unit's share of the Common Expenses as may result from the addition, if any, of further phases, and to have so agreed and consented to any amendment or amendments to this Declaration effectuating the same. Developer has reserved the right as a Special Declarant Right to add additional phases to the Development, if such Special Declarant Right is allowed under the Act, in which case the Common Elements and Common Expenses shall be adjusted accordingly.

6.02 **Use.** Each Owner shall have the right to use the Common Elements to include the drive, open area and common parking areas and restricted to the exclusive use of and as an appurtenance to a Unit and subject to any portion subject to leases made by or assigned to the Board in conjunction with the Owners of other Units as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the Condominium Property. The right to use the Common Elements shall be subject to and governed by the provisions of the Act, Condominium Documents, and the Rules and Regulations of the Association. In addition, the Association shall have the authority to grant easements with respect to parts of the Common Elements subject to the provisions of the Declaration and By-Laws.

6.03 Share of Common Expenses and Limited Common Expenses. Each Owner shall be assessed and is individually liable for a proportionate share of the Common Expenses and the proportionate share of the Common Expenses shall be the same ratio as the Owner's percentage ownership in the Common Elements as the case may be. Payment of Common Expenses shall be in such amounts and at such times as determined in the By-Laws. Assessments shall be collected by the Association on a monthly basis. No Owner shall be exempt from payment of his or her proportionate share of the Common Expenses or Limited Common Expenses by waiver or nonuse or non-enjoyment of the Common Elements or Limited Common Elements, or by abandonment of his Unit. Common Expenses and Limited Common Expenses shall include but shall not necessarily be limited to expenditures made or liabilities incurred by the Association, together with payments or obligations to reserve accounts. So long as the Developer shall have the right to appoint, remove or designate any officer or member of the Board of Directors, each Owner, other than the Developer, shall pay his or her proportionate share of the Common Expenses or Limited Common Expenses as assessed and Developer shall have the option to either (1) pay all other costs associated with the operation of the Association, or (2) pay the proportionate share of Common Expenses or Limited Common Expenses as assessed to each Unit owned by Developer.

6.04 Late Payment of Assessments. Assessments for Common Expenses and Limited Common Expenses, and installments thereon, paid on or before fifteen (15) days after the date when due shall bear no interest, but all sums not paid on or before fifteen (15) days after the date when due shall bear such late charges, penalties, interest and other costs and expenses, at a rate set by the Board, but not to exceed the maximum legal rate, together with all expenses, including Attorney's fees incurred by the Association in any undertaking to collect such unpaid Assessments and expenses. All payment upon account shall be first applied to such late charges, penalties, interests and other costs and expenses, including Attorney's fees, and then to the Assessment payment due. The Association may, in the manner provided for in the By-Laws, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws, and Rules and Regulations of the Association.

6.05 Liens for Assessments. The Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements and upon the goods, furniture and effects belonging to the Unit Owner and located in such Unit, which lien shall secure and does secure the monies due for all Assessments now or hereafter levied or subject to being levied against the Unit Owner which lien shall also secure such late charges, penalties and interest, if any, which may be due on the amount of any delinquent Assessment owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant undivided interest in the Common Elements. Said lien is subordinate to preexisting mortgage liens as provided in 6.06 herein.

6.06 Priority of Lien. The Association shall have a lien for nonpayment of Common Expenses as is provided by the Act. In any suit for the foreclosure of a lien for Assessments, the Association shall be entitled to rental from the Owner from the date on which the payment of any Assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said Unit, without notice to the Owner. The rental required to be paid shall be equal to the rental charged on comparable type Units in the area in which the Condominium is located. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at a rate set by the Board or the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at a rate set by the Board or the Association but in no case shall said interest exceed the maximum legal rate on

any such advances made for such purposes. All Persons, firms, corporations or entities 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 granted to the Association. A lien for Common Expenses shall not be affected by any sale or transfer of a Unit, except as herein provided. A sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall extinguish a subordinate lien for Assessments which became payable prior to such sale or transfer; Provided, however, a sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall not extinguish the lien of the Association to the extent of the Common Expense Assessments based on the periodic budget adopted by the Association pursuant to the Act which would have become due in the absence of acceleration during the six months immediately preceding the institution of an Action to enforce the lien. However, any such delinquent Assessments which were extinguished pursuant to the foregoing provision may be reallocated and assessed to all of the Owners as a Common Expense. Any such sale or transfer pursuant to foreclosure does not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any Assessments made thereafter. Notwithstanding the foregoing, assessment liens of the Association shall be subordinate to any mortgage of record and outstanding as of the date of the filing of this Declaration.

6.07 **Disposition of Surplus.** Each Unit shall carry with it a proportionate share of any Common Surplus and the proportionate share of any Common Surplus shall be the same ratio as that Owners' percentage ownership of the Common Elements; or in the alternative, such surplus or any portion thereof may be added to a reserve fund for maintenance, repair, and replacement of the Common Elements, at the sole discretion of the Association.

VII. THE ASSOCIATION

7.01 **Powers and Duties.** The operation and administration of the Condominium shall be by the Association of the Owners, pursuant to the provisions of the Act and the Bylaws of the Association. The Association shall be a not for profit Alabama Corporation incorporated by Articles of Incorporation recorded in the Office of the Judge of Probate of Lee County, Alabama. The Association shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or non-exercise of its powers. The Association shall have exclusive authority and power to maintain a class action and to settle a cause of Action on behalf of Owners of the Condominium with reference to the Common Elements or the Limited Common Elements, the roof and structural components of a Building or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a Building as distinguished from mechanical elements serving only a Unit; and with reference to any and all other matters in which all the Unit Owners have a common interest. The Association shall have all the powers and duties set forth in the Act, as well as all the powers and duties granted to or imposed on it under the By-Laws and other Condominium Documents as they may be amended from time to time. The Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other Person or Persons. The Association shall have a reasonable right of entry upon any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Development and further, shall have the right to grant permits, license, and easements over the common areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Development. The Board shall have the authority and duty to levy and enforce the collection of general and specific Assessments for Common Expenses and Limited Common Expenses and is further authorized to provide adequate remedies for failure to pay such Assessments.

7.02 **Name.** The name of the Association shall be The Condos At Mill Creek Homeowners' Association, Inc.

7.03 **Members.** Each Unit Owner shall be a Member of the Association as long as he or she is a Unit Owner. An Owner's membership shall immediately terminate when he or she ceases to be a Unit Owner. The membership of a Unit Owner cannot be assigned or transferred in any manner except as an appurtenance to the Unit.

7.04 **Voting Rights.** Each Unit shall be entitled to one (1) vote, which vote is not divisible. The total number of votes is fifty-six (56). In the event additional property is added to the Project, the number of votes shall be adjusted accordingly. The vote for a Unit shall be cast by the Owner thereof in the manner provided for herein and in the By-Laws. However, should the Association be an Owner, it shall not have the voting right for that Unit.

7.05 **Designation of Voting Representative.** In the event a Unit is owned by one (1) Person, his right to vote shall be established by the record title to the Unit. If a Unit is owned by more than one (1) Person, the Person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record Owners of the Unit and filed with the Secretary of the Association. If a Unit is owned by a corporation, partnership, limited partnership, or limited liability company, the officer, employee or individual entitled to cast the vote for the Unit shall be designated by a certificate of appointment signed by the president or vice president and attested by the secretary or assistant secretary of the corporation (in the case of a corporation) or by the general partner or partners if more than one (in the case of a partnership or limited partnership) or the managing member if a limited liability company, which certificate shall be filed with the secretary of the Association. If such a certificate is not on file with the Secretary of the Association for a Unit owned by more than one (1) Person or by a corporation, partnership, limited partnership or limited liability company, the membership or vote of the Unit concerned may be cast in accordance with the Act. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned is effected. A certificate designating the Person entitled to cast the vote of a Unit may be revoked by any Owner thereof.

7.06 **Restraint Upon Assignment of Shares in Assets.** The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to the Unit.

7.07 **Board of Directors.** The affairs of the Association shall be conducted by a Board of Directors which shall consist of such number not less than three (3) nor more than seven (7) as shall, from time to time, be determined and fixed by a vote of a majority of the voting rights present at any annual meeting of the Members.

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

7.09 **Limitation of Liability.** Notwithstanding the liability of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage caused by a latent condition of the Property to be maintained and repaired by the Association nor for injury or damage caused by or upon the common elements, or by other Owners or Persons.

7.10 **By-Laws.** The Association and its Members shall be governed by the By-Laws.

7.11 **Proviso.** Subject to the provisions herein, until the earlier of (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units then covered by this Declaration which may be created to Unit Owners other than the Developer; (ii) two (2) years after the Developer, its successors or assigns have ceased to offer Units for sale in the ordinary course of business; or (iii) two (2) years after any Developer's exercise of the Special Declarant Right to add new Units was last exercised, the By-Laws and rules adopted by the Developer shall govern and the Developer shall have the exclusive right to appoint, remove, and designate the officers and members of the Board of Directors, and neither the Unit Owners nor the Association nor the use of the Condominium Property by Unit occupants shall interfere with the completion of the contemplated improvements and the sale of the Units. The Developer may voluntarily surrender the right to appoint and remove officers and members of the Board, but, in that event, the Developer may require, for the duration or the period of developer control, that specified Actions of the Association or Board, as described in a recorded instrument executed by the Developer, be approved by the Developer before they become effective. Provided, however, not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units to Owners other than the Developer, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than the Developer. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than the Developer, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Unit Owners other than the Developer. Except as provided for in the Act, not later than the termination of any period of Developer control, the Unit Owners shall elect a Board of at least five (5) members, at least a majority of whom must be Owners other than the Developer. So long as the Developer shall have the exclusive right to appoint, remove, and designate the officers and members of the Board of Directors of the Association, the Developer may increase or reduce the number of members of the Board.

The Developer may make such use of the unsold Units and of the Common Elements and facilities as may facilitate such completion and sale, including but not limited to showing of the property and the display of signs. The Developer may maintain sales offices, management offices, leasing and operation offices, and models in the Clubhouse or any Unit of the Condominium or on Common Elements in the Condominium without restriction as to the number, size, or location of said sales offices, management offices, leasing and operations offices, and models. The Developer shall be permitted to relocate said sales offices, management offices, leasing and operations offices, and models from one Unit location to another or from one area of the Common Elements to another area of the Common Elements in the Condominium. The rights of the Developer as provided for in this paragraph shall cease and terminate ten (10) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Lee County, Alabama or if additional phases are added to the Project, then ten (10) years from the adding of any such additional phase to the Project.

7.12 **Contracts.** If entered into before the Board elected by the Owners pursuant to the Act takes office, any management contract, employment contract, or lease of recreational or parking areas or facilities and any other contract or lease between the Association and the Developer may be terminated without penalty and upon not less than ninety (90) days notice to the other party by the Association at any time after the Board elected by the Owners pursuant to the Act takes office.

7.13 **Availability of Records.** The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act. The Association shall make reasonably available in the county where the Condominium is located for examination by Owners, prospective purchasers, first mortgagees and insurers of first mortgagees of any Unit, or their authorized agents, current copies of the declaration, By-Laws, Rules and Regulations and other books, records, financial statements and the most recent annual financial statement of the Association. Reasonably available shall mean available for inspection upon request during normal business hours or under reasonable circumstances.

7.14 **Reserves for Replacements.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and Limited Common Elements. The fund shall be maintained out of regular Assessments for Common Expenses and Limited Common Expenses.

VIII. MAINTENANCE

8.01 **Maintenance by the Association.** The Association is responsible for maintenance, repair, and replacements of the Common Elements.

8.02 **Maintenance by Unit Owner.** Each Unit Owner is responsible for the maintenance, repair, and replacement of his Unit. Each Unit Owner is responsible for the maintenance, repair and replacement of any Limited Common Elements, if any, attached to his Unit as provided in Paragraph 5.11 above.

8.03 **Addition, Alteration and Improvement of the Common Elements.** Except as may be prohibited by the Act, and except as to the Development Rights and Special Declarant Rights provided for in this Declaration, after the completion of the improvements included in the Common Elements or Limited Common Elements which are contemplated by this Declaration, there shall be no addition, alteration, change, or further improvement of Common Elements or Limited Common Elements (except by development of additional phases as elsewhere provided herein) without prior approval of the Association.

8.04 **Unit Owner's Covenants.** Each Unit Owner covenants and agrees as follows:

A. To perform all maintenance, repairs and replacements that are the Unit Owners' obligations under this Declaration and the Act.

B. To pay for all the Unit Owner's utilities, including power, water, sewer, gas, cable and telephone used within the Unit and all taxes levied against the Unit Owner's Unit.

C. Not to make, or cause to be made, any repairs, to any plumbing, heating, ventilation or air conditioning systems located outside the Unit Owner's Unit but required to be maintained by the Unit Owner pursuant to the provisions hereof, except by properly insured and licensed plumbers or electricians authorized to do such work by the Association or its agent.

D. Not to make any addition or alteration to a Unit or to the Common Elements or to the Limited Common Elements or to do any Act that would impair the structural soundness or safety of any part of the Condominium Property. Structural alterations within a Unit may be made only with the written consent of the Association.

E. To make no alterations, additions, improvements, repairs, replacements, or changes to

the Common Elements or the Limited Common Elements or to any outside or exterior portion of the Building or porches, specifically including, but not limited to screening or enclosing balconies or porches, installing exterior doors or affixing shutters to windows, without the prior written consent of the Association, which shall be in the Association's sole discretion. If consent is granted, the Unit Owner shall use only a licensed contractor who shall comply with the Rules and Regulations with respect to the work which may be adopted by the Association. The Unit Owner shall be liable for all damages to another Unit and to the Common Elements or Limited Common Elements caused by any contractor employed by such Unit Owner or by the subcontractor or employees of such contractor, whether said damages are caused by negligence, accident or otherwise.

F. To allow the Association, its delegates, agents, or employees at all reasonable times to enter into any Unit or Limited Common Element for the purpose of maintaining, inspecting, repairing, or replacing Common Elements or Limited Common Elements or for repairing, maintaining or replacing any plumbing, heating, ventilation or air conditioning system located within such Unit but serving other parts of the Condominium Property; or to determine, in case of emergency, the circumstances threatening Units or Common Elements or Limited Common Elements and to correct the same; or, to determine compliance with the provisions of the Condominium Documents.

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

H. To reimburse the Association for any repairs or replacements of the Condominium Property which are made necessary because of abuse or negligent use by a Unit Owner, their agents, family members, invitees or licensees. The costs of such repair or replacement may be assessed against such Unit Owner.

I. To comply with all of the obligations of a Unit Owner under the Act.

8.05 **Contracts for Maintenance.** The Association may enter into a contract with any firm, Person or corporation, or may join with other entities in contracting for the maintenance and repair of the Condominium Property, and may delegate to such agent all or any portion of the powers and duties of the Association, except such as are specifically required by the Condominium Documents to have the approval of the Members of the Association. This paragraph shall be subject to the provisions of Paragraph 7.12 above.

8.06 **Exterior Surface.** The Association shall determine the exterior color scheme of the Condominium Property, including porches or balconies, and shall be responsible for the maintenance of such exterior surfaces, except as may be otherwise provided for herein and except for porches and balconies which shall be maintained by the Unit Owners in accordance with rules adopted by the Association. No Owner shall paint any exterior surface or add or replace anything thereon or affix thereto without the written consent of the Association. Owners shall not affix or attach pictures, flags or banners to windows and/or glass sliding doors that may be seen from streets or parking areas.

8.07 **Exterior Furnishings.** The color schemes of all Exterior furniture and accessories on Exterior porches and balconies shall be approved by the Board prior to placement.

IX. INSURANCE

To the extent of any inconsistency with the terms and provisions of the Act, the Act shall control with respect to this Section.

9.01 **Purchase of Insurance.** Commencing not later than the time of the first conveyance of a Unit to a Person other than the Developer, the Association shall maintain insurance upon the Condominium Property to the extent reasonably available as provided for in the Act and as follows.

9.02 **Location of Policies.** The Association shall retain the original of all insurance policies in a place of safe keeping such as a safe or a safety deposit box.

9.03 **Copies to Mortgagees.** One copy of each insurance policy and of all endorsements thereto shall be furnished by the Association to any first Mortgagee requesting a copy.

9.04 **Authorization to do Business.** All policies of insurance must be issued by companies specifically authorized by the laws of the State of Alabama to transact such business.

9.05 **Coverage.** The Association is required to maintain the following insurance coverage:

A. **Property and Casualty.** The Association must obtain, maintain and pay the premiums upon, as a Common Expense, the property insurance required by the Act and as follows. The type of policy shall be a "master" or "blanket" type policy of property insurance covering all of the Common Elements and Limited Common Elements (except land, foundation, excavation, and other items usually excluded from coverage) including fixtures and equipment to the extent they are part of the Common Elements and Limited Common Elements of the Condominium Property, building service equipment, furniture and supplies and other personal property belonging to the Association. All references herein to a "master" or "blanket" type of policy of property insurance are intended to denote single entry Condominium insurance coverage. In addition, any fixtures, equipment, or other Property within the Units which are to be financed by a first Mortgagee (regardless of whether or not such Property is a part of the Common Elements) must be covered by such "master" or "blanket" policy, if required by said first Mortgagee. The policy shall be in an amount deemed appropriate by the Association but not less than the greater of eighty percent (80%) of the Actual cash value of the insured Property at the time the insurance is purchased or such greater percentage of such Actual cash value as may be necessary to prevent the applicability of any coinsurance provision at any renewal date, exclusive of land, excavation, foundation, and other items normally excluded from property policies. The policy shall include an "Agreed Amount Endorsement" or its equivalent and, if available, an "Inflation Guard Endorsement." If there shall be a construction code provision that requires changes to undamaged portions of the Condominium Property even when only part of the project is destroyed by an insured hazard, the policies shall include construction code endorsements. The property insurance policy shall provide, as a minimum coverage and protection against:

(1) Loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement.

(2) All other perils which are customarily covered with respect to condominiums similar in construction shall be obtained so as to meet the requirements of the Act.

B. **Liability Insurance.** The Association must obtain, maintain and pay the premiums upon, as a Common Expense, a comprehensive general liability insurance policy, including medical payments insurance, as required by the Act and covering all the Common Elements, space owned and leased by the Association, and public ways of the Condominium. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. However, such

coverage shall be, if reasonably available, for at least one million dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, if reasonably available, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts of the Association. This policy shall also include, if reasonably available, coverage for protection against water damage liability and, if applicable, elevator collision and garage keepers liability. If required by any first mortgage holder, and if reasonably available, the policy shall include protection against such other risks as are customarily covered with respect to Condominiums similar in construction, location and use, including but not limited to host liquor liability, employers liability insurance, contractual and all written contract insurance and comprehensive automobile liability insurance.

C. **Flood Insurance.** If any part of the Condominium Property shall be deemed to be in a special flood hazard area, as defined by the Federal Emergency Management Agency or other governmental agency, the Association shall, if reasonably available, obtain, maintain, and pay the premiums upon, as a Common Expense, a "master" or "blanket" type of flood insurance policy. The policy shall cover the Common Elements falling within the designated flood hazard area. The insurance shall be in an amount deemed appropriate by the Association, but not less than an amount equal to the lesser of:

(1) Eighty percent (80%) of the Actual cash value of the insured property located within the flood hazard area; or

(2) The maximum coverage available for the Property under the National Flood Insurance Program. The policy shall be in a form which meets the criterion set forth in the most current guidelines issued on the subject by the Federal Government.

D. **Personnel Coverages.** Should the Association employ personnel, all coverages required by law, including workman's compensation, shall be obtained so as to meet the requirements of the law.

E. **Fidelity Bonds.** The Association, if reasonably available, shall obtain, maintain and pay the premiums upon, as a Common Expense, a fidelity bond to protect against loss of money by dishonest Acts on the parts of all officers, directors and employees of the Association and all other persons handling, or responsible for, funds of the Association or funds administered by the Association. Where a management agent has the responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The fidelity bond shall name the Association as the obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than one hundred and fifty percent (150%) of the estimated annual Common Expenses. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of the "employees," or similar terms or expressions. The premiums on all bonds required herein to be maintained by the management agent shall be paid by the management agent from the funds of the Association. The bond shall provide that any first Mortgagee shall receive notice of cancellation or modification of the bond.

F. **Other Insurance.** The Association shall obtain other insurance required by the Act and shall have authority to obtain such other insurance as it deems desirable, in such amounts, from such

sources and in such forms as it deems desirable. The premiums for such insurance shall be a Common Expense.

If the Insurance described above which is required to be maintained, is not reasonably available, the Association promptly shall give notice of that fact to be hand delivered or sent prepaid by United States Mail to all Unit Owners.

9.06 **Individual Insurance.** Nothing contained herein shall be construed to prevent a Unit Owner from obtaining insurance for his own benefit.

9.07 **Provisions.** Insurance coverage, if reasonably available, must comply with the requirements of the Act and this Declaration and shall in substance and effect:

A. Provide that the policy shall be primary, even if the Owner has other insurance that covers that same loss, and further provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, pro-ratio or contribution by reason of any other insurance obtained by or for any Owner.

B. Contain no provision relieving the insurer from liability for a loss occurring because the hazard to such Building is increased, whether or not within the knowledge or control of the Association, or because of any breach of warranty or condition or any other Act or neglect by the Association or any Owner or any other Persons under either of them.

C. Provide that such policy may not be canceled or substantially modified and the insurer may not refuse to renew said policy (whether or not requested by the Association) except by the insurer giving at least thirty (30) days prior written notice thereof to the Association, the Owner, each holder of a first mortgage on an individual Unit, and every other Person in interest who shall have requested such notice of the insurer.

D. Contain a waiver by the insurer of any right of subrogation to any right of the Association, or either against the Owner or lessee of any Unit.

E. Contain a standard Mortgagee clause which shall:

(1) Provide that any reference to a Mortgagee in such policy shall mean and include the Construction Lender and all holders of mortgages of any Unit, whether or not named herein; and

(2) Provide that such insurance, as to the interest of any Mortgagee, shall not be invalidated by any Act of neglect of the Association, Unit Owners or any Persons under any of them; and

(3) Waive any provisions invalidating such Mortgagee clause by reason of the failure of the Mortgagee to notify the insurer of any hazardous use or conveyance, any requirement that the Mortgagee pay any premium thereon, and any contribution clause.

9.08 **Liabilities and Responsibilities of Unit Owner.** An Owner shall be liable for any claim, damage, or judgment entered as a result of the use or operation of his Unit caused by his conduct. Each Owner shall be responsible for obtaining insurance for his own benefit.

9.09 **Insurance Premiums.** Insurance premiums maintained by the Association shall be paid by the Association as a Common Expense. Should the Association fail to pay such insurance premiums when due, or should the Association fail to comply with other insurance requirements of the Construction Lender or Mortgagee, the Construction Lender or Mortgagee shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance. To the extent of any money so advanced, the Construction Lender and Mortgagee shall be subrogated to the Assessment and the lien rights of the Association and against the individual Owners for the payment of such item of Common Expense.

9.10 **Insurance Trustee: Share of Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their Mortgagees as their interest may appear, and shall provide that all proceeds covering Property losses shall be paid to the Association, as Insurance Trustee for each of the Owners in the percentages as established by the Declaration, which said Association, for the purpose of these provisions, is herein referred to as the Insurance Trustee. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purpose elsewhere stated herein and for the benefit of the Construction Lender and Owners and their Mortgagees. The Insurance Trustee shall have the power to adjust all claims arising under insurance policies purchased by the Association; to bring suit thereon in its name and/or in the name of other insured; to deliver releases on payment of claims; to compromise and settle such claims; and otherwise to exercise all the rights, powers, and privileges of the Association and each Owner and any other holder of an insured interest in the Condominium Property under such insurance policies, however, the Actions of the Insurance Trustee shall be subject to the approval of any first Mortgagee if the claim shall involve more than one Unit, and only if one Unit is involved, such Actions shall be subject to approval of any first Mortgagee holding a mortgage and encumbering such Unit.

9.11 **Shares of Proceeds.** The Association as Insurance Trustee shall receive such insurance proceeds as are paid to it and shall hold the same in trust for the purposes stated herein and for the benefit of the Construction Lender and Owners and their Mortgagees in the following shares:

A. **Common Elements.** An undivided share of the proceeds on account of damage to Common Elements shall be held for each Owner, which such share's portion of the total proceeds being the same percentage as the share of the Common Elements appurtenant to his Unit.

B. **Units and Limited Common Elements.** Except as provided elsewhere in this Declaration,

(1) When the Condominium Unit Property is to be restored, the proceeds shall be held for the Unit Owners of damaged Units and damaged Limited Common Elements, with the share of each in the total proceeds being in the proportion that the cost of repairing the damage suffered by such Unit Owner bears to the total cost of repair, which cost shall be determined by the Board.

(2) When the Condominium Property is not to be restored, the proceeds shall be held for the Owners in the undivided shares that are the same as their respective shares in the Common Elements.

C. **Mortgagees.** In the event a Mortgagee endorsement has been issued with respect to a Unit, the share of the Owner of that Unit shall be held in trust for the Mortgagee and the Unit Owner as their interest may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination of whether or not any damaged Property shall be reconstructed or repaired except as may be specifically provided to the contrary elsewhere in this Declaration.

9.12 **Distribution of Proceeds.** Proceeds of insurance policies received by the Association as Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners:

A. **Reconstruction or Repair.** First, if the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, with remittances to Owners and Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by any such Mortgagee.

B. **Failure to Reconstruct Repair.** If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners with remittances to the Construction Lender, Unit Owners and their Mortgagee being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by any such Mortgagee.

X. RECONSTRUCTION OR REPAIR AFTER CASUALTY

To the extent of any inconsistency with the terms and provisions of the Act, the Act shall control with respect to this Section.

10.01 **Determination to Reconstruct or Repair.** Any portion of the Condominium for which insurance is required under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- A. The Condominium is terminated in accordance with the Act.
- B. Repair or replacement would be illegal under any state or local statute or ordinance covering health or safety; or
- C. Owners of Eighty percent (80%) of the Condominium voting interest vote not to rebuild. The cost of repair or replacement of a Common Element in excess of insurance proceeds and reserves is a Common Expense as provided in this Declaration.

10.02 **Plans.** Any reconstruction or repair must be substantially in accordance with the Act and in accordance with the Plans for the original improvements or as the Condominium Property was last constructed; or if not, then according to Plans approved by the Board of Directors of the Association and by one hundred percent (100%) of the Unit Owners.

10.03 **Responsibility.** If the damage is only to those parts of a Unit or Limited Common Elements for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty in a timely manner not to exceed 60 days. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

10.04 **Estimate of Cost.** Immediately after a casualty causing damage to the Condominium Property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

10.05 **Assessments.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair of the Unit and Limited Common Elements by the Association, Assessments shall be made against the Owners who own the damaged Property or have the exclusive right to use the Limited Common Element attached to his Unit, and against all Owners in the case of damage to Common Elements and facilities in sufficient amounts to provide funds to pay the estimated costs. If any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the Unit Owners who own the damaged Unit and have exclusive right to use the Limited Common Elements attached to his Unit, and against all Unit Owners in the case of damage to Common Elements and facilities in sufficient amounts to provide funds for the payment of such costs. Such assessments for reconstruction and/or repair of damage to Units and Limited Common Elements shall be in proportion to the costs of reconstruction and repair of their respective Units or Limited Common Elements. Such assessments for reconstruction and/or repair of damage to Common Elements and facilities shall be in proportion to the Owners' share in the Common Elements. Assessments for reconstruction and repair may be collected, and the collection enforced, in the same manner as provided for Assessments elsewhere herein.

10.06 **Construction Funds.** The funds for payment of costs of reconstruction and repair after casualty for which the Association is responsible, which shall consist of proceeds of insurance held by the Association as Insurance Trustee and funds collected by the Association from Assessment against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

A. **Disbursement.** The construction fund shall be disbursed in payment of such costs on the order and in the manner provided by the Board or the Association.

B. **Unit Owner.** If there is a balance of insurance proceeds after the payment of the costs of reconstruction and repair that are the responsibility of the Association, this balance shall be distributed to Unit Owners of damaged Units or damaged Limited Common Elements who are responsible for the reconstruction and repair of the damaged portions of their Units or Limited Common Elements. The distribution to each Unit Owner shall be made in the proportion that the estimated costs of reconstruction and repair of such damage to his Unit or Limited Common Element bears to the total of such estimated costs in all damaged Units and Limited Common Elements. However, no Unit Owner shall be paid an amount in excess of such estimated cost for his Unit or Limited Common Element. If there is a first Mortgagee, the distribution shall be paid to the Unit Owner and to the first Mortgagee jointly.

C. **Surplus.** It shall be presumed that the first monies distributed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed first to replace any revenue funds used in the reconstruction, then to the beneficial Owners of the fund.

XI. EMINENT DOMAIN

To the extent of any inconsistency with the terms and provisions of the Act, the Act shall control with respect to this Section.

11.01 **Proceeds.** The taking of a portion of a Unit or of the Common Elements by eminent domain shall be deemed, for purposes of determining use of proceeds, to be a casualty and the determination as to whether the Condominium will be reconstructed or repaired or continued after condemnation will be

determined in the manner provided for in the Act and under Reconstruction or Repair after casualty and the awards for such taking shall be deemed proceeds from insurance on account of the casualty and shall be deposited with the Association as Insurance Trustee. Even though the awards may be payable to an Owner, the Owner shall deposit the awards with the Association as Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association an Assessment shall be made against a defaulting Owner in the amount of his award, or the amount of such award shall be set off against the sums hereafter made payable to such Owner.

11.02 **Disbursement of Funds.** If the Condominium is terminated after condemnation, the proceeds of the condemnation awards for disbursement purposes will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in this Declaration for the distribution of insurance proceeds if the Condominium is terminated after damage to the Common Elements. If the Condominium is not terminated after condemnation, the size of the Condominium Property will be reduced and the Property damaged by the taking will be made usable in the manner provided by the Act and as provided below. The proceeds of such award shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Association after damage to the Common Elements.

11.03 **Unit Reduced but Habitable.** If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

A. **Restoration of Unit.** The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, and the Owner of the Unit does not within a reasonable period of time provide the additional funds required for restoration, such additional funds may, at the discretion of the Board of Directors, be extended for restoration by the Association and be assessed against the Unit Owner as an Assessment.

B. **Distribution of Surplus.** The balance of the award, if any, shall be distributed to the Owner of the Unit and to any first Mortgagee of a Unit, the remittance being made payable jointly to the Unit Owner and any such first Mortgagee.

C. **Adjustment of Shares in Common Elements.** If the floor area of the Unit is reduced by the taking, then the percentage representing the share in the Common Elements, the Common Expenses and the Common Surplus appertaining to the Unit shall be reduced in accordance with the Act.

11.04 **Unit Made Unhabitable.** If the taking is of the entire Unit, or so reduces the size of the Unit such that it cannot be used practically or lawfully for any purpose permitted by the Declaration, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium.

A. **Payment of Award.** The award shall be paid first to any first Mortgagee in an amount sufficient to pay off its mortgage on such Unit; and then jointly to the Unit Owner and other Mortgagees of the Unit in an amount not to exceed the market value of the Condominium parcel immediately prior to the taking as diminished by any sums from the award previously reserved for any first Mortgagee; and the balance, if any, to the repairing and replacing of the Common Elements damaged by the taking.

B. **Addition to Common Elements.** The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in condition for use by all of the Owners in the

manner approved by the Board of Directors; provided that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner elsewhere required in this Declaration for further improvement of the Common Elements.

C. **Adjustment of Shares in Common Elements, Common Expenses, and Common Surplus.** The shares in the Common Elements, the Common Expenses, and the Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the other shares among the reduced number of Owners. This adjustment shall be done by restating said share of the continuing Owners as percentages aggregating one hundred percent (100%) so that the shares appurtenant to the continuing Owners shall be in the same proportions to each other as before the adjustment.

D. **Assessments.** If the balance of the award (after payments to the Owner and such Owners' Mortgagees as above provided) for the taking is not sufficient to finance the alteration of the remaining portion of the Unit for use as part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all the Owners who will continue as Owners after the changes in the Condominium effected by the taking. Such Assessments shall be made in proportion to the shares of those Owners in the Common Elements after the changes effected by the taking.

E. **Arbitration.** If the market value of a Condominium parcel prior to the taking cannot be determined by agreement between the Owners, Mortgagees of the Unit, and the Association within thirty (30) days after notice by either party, the value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination on an average of their appraisals of the Condominium parcels; and a judgment of specific performance on the decision rendered by the arbitrators may be entered into any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all Owners prior to the taking in proportion to the shares of the Owners in the Common Elements as they exist prior to the changes effected by the taking. Construction Lender shall not be bound by arbitration as provided for herein and shall retain the right to litigate.

11.05 **Taking of Common Elements.** Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board of Directors; provided that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner required elsewhere in this Declaration for further improvement of the Common Elements. The balance of the awards for the taking of the Common Elements, after adjustment of these shares on account of the condemnation, except that if a Condominium parcel is encumbered by a first mortgage, the distribution shall be paid jointly to the Construction Lender, Owner and the first Mortgagee of the Condominium parcel.

11.06 **Conflict with Act.** If there is any conflict with the provisions of this article and the Act, the provisions of the Act shall control.

XII. USE RESTRICTIONS

The Use of the Condominium Property shall be in accordance with the provisions of this Declaration and with the following provisions so long as the Condominium exists.

12.01 **Units.**

A. Each Condominium Unit shall be occupied for residential purposes only.

B. Each Parking Space shall be for personal and Unit rental use only and shall not be used for any commercial purposes except that parking spaces may be used for the staging of construction of additional phases of the Project.

C. Garage Units shall only be used for personal storage or vehicles of the Unit Owners who own such Garage Units or their lawful tenants, and shall not be used for any other purposes, including without limitation, commercial or industrial uses.

12.02 Miscellaneous Restrictions.

A. Nothing shall be stored in or upon the Common Elements or Limited Common Elements without prior consent of the Board except as may be otherwise herein expressly provided.

B. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in or on the Common Elements which will result in the cancellation of insurance of any Unit or any part of the Common Elements or which will be in violation of any law.

C. No waste shall be committed in or on the Common Elements.

D. Each Unit Owner shall place all garbage and trash in dumpsters to be provided by the Association.

E. No Unit Owner, occupant or guest of Unit Owners or occupant shall disturb or annoy other occupants of the Condominium Property nor shall any occupant or Unit Owner commit or permit any nuisance, noxious, offensive, immoral or illegal Act in his Unit or on the Condominium Property. Any person violating this provision will be removed from the property by proper legal authority.

F. No sign of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board or the written consent of the Managing Agent Acting in accordance with the Board's direction.

G. Except as expressly provided hereinabove, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.

H. No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the construction, repair, or rebuilding of the Buildings or any portion thereof.

I. Parking of vehicles in driveways and Parking Areas shall be subject to the Rules and Regulations of the Board applicable thereto.

J. Except within individual Units, no planting, transplanting, or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property, except as approved by the Board.

K. Motorcycles, motor bikes, motor scooters, or other similar vehicles shall not be operated within the Property except for the purpose of transportation, it being intended that said vehicles shall not be operated within the Property so as to annoy or disturb persons or endanger persons or Property.

L. All parts of the Property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist.

M. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the Condominium Property concerned.

N. Neither the Board nor the Association shall take or permit to be taken any Action that unlawfully discriminates against one or more Owners.

O. No boats or trailers may be parked in Parking Spaces or Common Elements. Parking of vehicles and the like in driveways and Parking Areas shall be subject to the Rules and Regulations of the Board of the Association applicable thereto.

12.03 **Pets.** No animals or pets of any kind shall be kept in any Unit or Property of the condominium with the exception of those pets owned by the deeded Unit Owner or such Unit Owner's lessee or those required for the assistance of the visual/hearing impaired. Pets of guests or occupants other than the deeded Unit Owner or such Unit Owner's lessee shall not be allowed in the Unit. Any pets not in accordance with the above guidelines found on the property will be removed by the local legal authority.

12.04 **Use of Common Elements and Limited Common Elements.** The Common Elements shall be used in accordance with this Declaration and only by the Owners and their agents, tenants, family members, invitees, and licensees for access, ingress to, and egress from the respective Units and Common Area and for such other purposes incidental to the use of the Units. However, other areas designated for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession, or easement, presently in existence or entered into by the Board at some future time, affecting any part or all of said Common Elements. Nothing shall be stored in or upon the Limited Common Elements without the prior consent of the Board of the Association.

12.05 **Unrestricted Right of Transfer.** The right of an Owner to sell, transfer, or otherwise convey his ownership shall not be subject to any right of first refusal or similar restriction.

12.06 **Leases.** Entire Units may be leased by the Unit Owners; provided, however, that such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Units (including a minimum or maximum number of occupants and rental period and imposition of fines in the event tenants shall be deemed disruptive by the Association) and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including eviction. Anything to the contrary notwithstanding, the Developer, and its assigns, retain the right to maintain sales offices, management offices, leasing and operations offices and models on the Condominium Property as provided in Paragraph 7.11 above.

12.07 **Regulations.** Reasonable regulations concerning the use of the Condominium Property may be made by the Developer and amended from time to time by the Board of Directors of the Association; provided, however, that all such amendments thereto shall be approved by not less than a majority of the votes of the Association before such shall become effective. Members not present at meetings considering such regulations or amendments thereto may express their approval or disapproval in writing. Copies of such regulation or amendment shall be furnished by the Association to all Unit Owners of the Condominium upon request.

12.08 **Parking.** The Board of Directors of the Association may or may not in its sole discretion assign specific Parking Spaces to the Unit Owners. If an assignment is made, such assignment shall not be recorded in the public records. The Board of Directors of the Association shall have the right to change the assignment of such Parking Spaces from time to time as in its sole discretion it deems advisable.

12.09 **No Restrictions on Mortgaging Units.** Anything construed in any of the Condominium Documents to the contrary, there shall be no restrictions on the right of an Owner to mortgage his Unit.

12.11 **Construction of Additional Improvements.** Until such time as the Developer has completed and sold all of the Units of the Project or any proposed future improvements on additional property as contemplated herein, or any amenities associated therewith, neither the Unit Owners, nor the Association, nor the users of the Condominium Property shall interfere with the completion of the planned improvements or the sale of the Units. The Developer may make such use of unsold Units and Common Areas as may facilitate such completion and sale.

12.12 **Limitation On the Amount by Which Unit May be Sold.** Developer has imposed no limit on the amount or purchase price by which a Unit or Garage Unit may be sold. Garage Units may be sold only as part of a Unit.

12.13 **Prohibition of Time Shares.** No ownership or occupancy of any Units may be in the form of time shares.

XIII. AMENDMENT

13. This Declaration and the By-Laws of the Association may be amended as provided in the Act.

XIV. PURCHASE OF CONDOMINIUM UNIT BY ASSOCIATION

14.01 **Decision.** The decision of the Association to purchase a Condominium Unit shall be made by the Board of Directors without the approval of the Members except as provided in this Article.

14.02 **Limitation.** If at any time the Association is already the Owner of or has agreed to purchase one or more Condominium Units, it may not purchase any additional Condominium Units without the prior written approval of Members holding seventy-five percent (75%) of the votes of those Members eligible to vote thereon, except as provided in this Article. A Member whose Condominium Unit is the subject matter of the proposed purchase shall be ineligible to vote thereon. Notwithstanding the foregoing, however, the foregoing limitations shall not apply to a Condominium Unit either to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent Assessments where the bid of the Association does not exceed the amount found due the Association, or to be acquired by the Association in lieu of foreclosure of

such lien if the consideration therefore does not exceed the amount required for cancellation of such lien. In any event, the Board of Directors or a designee thereof, Acting on behalf of the Association, may only purchase a Condominium Unit in accordance with this Article, or as the result of a sale pursuant to the foreclosure of:

- (1) a lien on the Condominium Unit for unpaid taxes;
- (2) a lien of a mortgage;
- (3) the lien for unpaid Assessments;
- (4) or any other judgment lien or lien attaching to such Condominium Unit by operation of law.

XV. NOTICE OF LIEN ON UNIT

15.01 **Notice of Lien.** A Unit Owner shall give notice in writing to the Secretary of the Association of every lien on his Condominium Unit, other than liens for first mortgages, taxes and special Assessments, within five (5) days after he receives notice of the attaching of the lien.

15.02 **Notice of Suit.** An Owner shall give notice in writing to the Secretary of the Association of every suit or other proceeding that may affect the title to his Condominium Unit, with such notice to be given within five (5) days after the Owner obtains knowledge thereof.

15.03 **Failure to Comply.** Failure to comply with this section will not affect the validity of any judicial proceeding.

XVI. RULES AND REGULATIONS

16.01 **Compliance.** Each Owner and the Association shall be governed by and shall comply with the terms of the Condominium Documents and the Rules and Regulations applicable to the Condominium Property. Ownership of a Unit subjects the Owner to compliance with provisions of the Declaration, the Articles, the By-Laws, the Rules and Regulations of the Association, and any contracts to which the Association is a party, as well as to any amendments to any of the foregoing. Failure of the Owner to comply therewith shall entitle the Association or other Owners to an Action for damages or injunctive relief, or both, in addition to other remedies provided in the Condominium Documents and the Act.

16.02 **Enforcement.** The Association, through the Board of Directors, is hereby empowered to enforce the Condominium Documents and all Rules and Regulations of the Association by such means as are provided by the Act, including the imposition of reasonable fines (after reasonable notice and opportunity to be heard) from time to time as set forth in the By-Laws. In the event an Owner fails to maintain his Unit in the manner required in the Condominium Documents and any Rules and Regulations of the Association, the Association, through the Board of Directors, shall have the right to assess the Owner of the Unit for the sums necessary to do the work required to effect compliance and to collect, and enforce the collection of a Special Assessment therefore as provided in this Declaration. In addition, the Association shall have the right, for itself and its employees and agents, to enter such Owner's Unit and perform the necessary work to effect compliance.

16.03 **Negligence.** An Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or by that of any member of his family, his lessees, or his or their guests, invitees, employees, or agents, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire or casualty insurance rates occasioned by the use, misuse, occupancy or abandonment of a Unit, or the Common Elements. The liability for such increases in insurance rates shall equal five times the first resulting increase in the annual premium rate for such insurance.

16.04 **No Waiver of Rights.** The failure of the Association or any Owner to enforce any covenant, restriction, or other provision of the Act, the Condominium Documents, or any Rules and Regulations adopted pursuant thereto shall not constitute a waiver of the right to do so.

XVII. GENERAL PROVISIONS PERTAINING TO MORTGAGES

17.01 **Lender's Notices.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any mortgage holder insurer, or guarantor will be entitled to timely written notice of:

- A. Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage.
- B. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- C. Any proposed Action that requires the consent of a specified percentage of mortgage holders.

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

XVIII. SIGNAGE

18. **Ground Mounted and Door Signs.** The Association shall provide a location sign which shall promote the development name and address only. The Association shall maintain uniform door signs with designated unit numbers. No other door signs shall be permitted unless approved in advance by the Association.

XIX. TERMINATION

19. The termination of the Condominium may be effected in accordance with the provisions of the Act and by agreement of Owners to which at least ninety percent (90%) of the votes in the Association are allocated. The agreement shall be evidenced by a written instrument executed in the manner required for a deed and recorded in the public records of Lee County, Alabama. After termination of the Condominium, Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares.

XX. COVENANT AGAINST PARTITION

20. There shall be no judicial or other partition of the Condominium Property or any part thereof, nor shall Developer or any Person acquiring any interest in the Property or any part thereof seek any such partition unless the Property has been removed from the provisions of the Act.

XXI. MISCELLANEOUS

21.01 **Intent.** It is the intent of the Developer to create a Condominium pursuant to the Act. In the event that the Condominium created by this Declaration shall fail in any respect to comply with the Act, then the common law as the same exists on the filing date of this Declaration shall control, and the Condominium hereby created shall be governed in accordance with the laws of the State of Alabama, the Articles, By-Laws and all other instruments and exhibits attached to or made a part of this Declaration.

21.02 **Covenants, Conditions and Restrictions.** All provisions of the Condominium Documents shall, to the extent applicable and unless otherwise expressly therein provided to the contrary, be perpetual and be construed to the covenants running with the land and with every part thereof and interest therein; and all of the provisions of the Condominium Documents shall be binding on and inure to the benefit of any Owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representative, successors, and assigns, but said provisions are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All Owners and Occupants shall be subject to and shall comply with the provisions of the Condominium Documents and any Rules and Regulations promulgated thereunder.

21.03 **Severability.** The invalidity in whole or in part of any covenant or restriction or any paragraph, subparagraph, sentence, clause, phrase, word or other provision of this Declaration, the Articles, the By-Laws, and the Rules and Regulations of the Association promulgated pursuant thereto, and any exhibits attached hereto, as the same may be amended from time to time, or the Act, or the invalidity in whole or in part of the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase, word or other provision shall not affect the remaining portion thereof.

21.04 **Notice.** The following provisions shall govern the construction of the Condominium Documents, except as may be specifically provided to the contrary herein: All notices required or desired under the Condominium Documents to be sent to the Association may be sent by first class mail to such address as the Condominium may designate from time to time by notice in writing to all Owners. Except as provided specifically to the contrary in the Act, all notices to any Owner shall be delivered in person or sent by first-class mail to the address of such Owner at the Condominium, or to such other address as he may have designated from time to time, in a writing to the Association. Proof of such mailing or personal delivery to an Owner by the Association may be provided by the affidavit of the Person or by a post office certificate of mailing. All notices to the Association or to an Owner shall be deemed to have been given when delivered to

the addressee in person or by a post office certificate of mailing. The Construction Lender shall receive all notices as set out above.

21.05 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by the Condominium Documents, such dispute or litigation shall be governed by the laws of the State of Alabama.

21.06 **Waiver.** No provisions contained in the Condominium Documents shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

21.07 **Ratification.** Each Owner, by reason of having acquired ownership of his Condominium Unit, whether by purchase, gift, operation of law, or otherwise, shall be deemed to have acknowledged and agreed that all the provisions of the Condominium Documents and any Rules and Regulations promulgated thereunder are fair and reasonable in all material aspects.

21.08 **Captions.** The captions used in the Condominium Documents are inserted solely as a matter of convenience and reference and shall not be relied on and/or used in construing the effect or meaning of any of the text of the Condominium Documents.

21.09 **Gender.** In this document, all singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter.

21.10 **Costs and Attorney's Fees.** In any proceeding arising because of an alleged default by an Owner, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be awarded by the Court.

There is Nothing Further on this Page.

CONDO 7A 419
Recorded In Above Book and Page
08/09/2004 12:33:54 PM
BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

Signature Page for Declaration of Condominium

IN WITNESS WHEREOF, RPM/MILLCREEK, I.J.C., an Alabama limited liability company, has caused this instrument to be executed on this the 4th day of August, 2004.

RPM/MILLCREEK, LLC, an Alabama limited liability company

By: Tigertown Investments, Inc., an Alabama corporation, as its Manager

By: Howard J. Porter, Jr. L.S.
Howard J. Porter, Jr., as its President

STATE OF ALABAMA)
LEE COUNTY)

I, the undersigned authority, a Notary Public in and for the State of Alabama at Large, do hereby certify that Howard J. Porter, as President of Tigertown Investments, Inc., as Manager of RPM/Millicreek, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such President of Tigertown Investments, Inc., as Manager of RPM/Millicreek, LLC and with full authority, executed the same voluntarily for and as the Act of said company on the day the same bears date.

GIVEN under my hand and seal this the 6th day of August, 2004.

Debbie D. Stoy
NOTARY PUBLIC

My Commission Expires: 11/15/06

CONDO 7A 420
Recorded In Above Book and Page
08/09/2004 12:33:54 PM
BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

Signature Page for Declaration of Condominium

IN WITNESS WHEREOF, First American Bank, has caused this instrument to be executed on this the 6th day of August, 2004.

MORTGAGEE ACKNOWLEDGMENT:

First American Bank

By: J. Michael Martin L.S.
J. Michael Martin, as its Vice-President

STATE OF ALABAMA)
Lee COUNTY)

I, the undersigned authority, Notary Public, in and for said County in said State, do hereby certify that J. Michael Martin, whose name as Vice-President of First American Bank is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the Act of said Bank on the day the same bears date.

GIVEN under my hand and seal this the 6th day of August, 2004.

Debbie D. Stutz
NOTARY PUBLIC

My Commission Expires: 11/15/06

THIS INSTRUMENT PREPARED BY:
Mark A. Franco, Esq.
Hill, Hill, Carter, Franco, Cole & Black, P.C.
425 South Perry Street
Montgomery, Alabama 36104

CONDO 7A 421
Recorded In Above Book and Page
08/09/2004 12:33:54 PM
BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

THE CONDOS AT MILL CREEK, A CONDOMINIUM

EXHIBIT "A"	Real Property
EXHIBIT "B"	Plat and Plans
EXHIBIT "C"	Articles of Incorporation and By-Laws
EXHIBIT "D"	Ownership of Common Elements
EXHIBIT "E"	Proposed First Year Budget
EXHIBIT "F"	Rules and Regulations
EXHIBIT "G"	General Description of Improvements

CONDO 7A 422
Recorded In Above Book and Page
08/09/2004 12:33:54 PM
BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

EXHIBIT "A"

Lot Number One (#1) of Mill Creek Park, according to and as shown by map or plat of said subdivision of record in Town Plat Book 22, at Page 169, in the Office of the Judge of Probate of Lee County, Alabama.

LESS AND EXCEPT the following described property: A part of the SW 1/4 of NE 1/4, Section 14, Township 18N, Range 25E, identified as Tract No. 10 on Project No. STPOAF-0015(505) in Lee County, Alabama and being more fully described as follows:

PARCEL NO. 1 OF 1:

A part of Lot 1, Millcreek Park Subdivision, as recorded in PB 22, PG 169, in the Office of the Judge of Probate in Lee County, Alabama described as follows: Commencing at the NE corner of Section 14; thence S 27°25'27" W and along a line a distance of 2924.38 feet to a point on the required R/W line (said line between a point that is offset 110' and perpendicular to a project centerline at station 68+99.76 and a point that is offset 85' and perpendicular to project centerline at station 60+50) and the grantor's northeast property line, which is the point of BEGINNING; thence S 23°19'27" W and along the required R/W line a distance of 80.04 feet to a point on the grantor's southwest property line; thence N 68°26'35" W and along the grantor's property line a distance of 51.68 feet to a point on the present R/W line; thence N 21°39'0" E and along the present R/W line a distance of 80.00 feet to a point on the grantor's northwest property line; thence S 68°26'35" E and along the grantor's property line a distance of 54.02 feet to a point and place of BEGINNING containing 0.10 acre, more or less.

CBND0 78 423
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08/09/2004 12:33:54 PM
BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

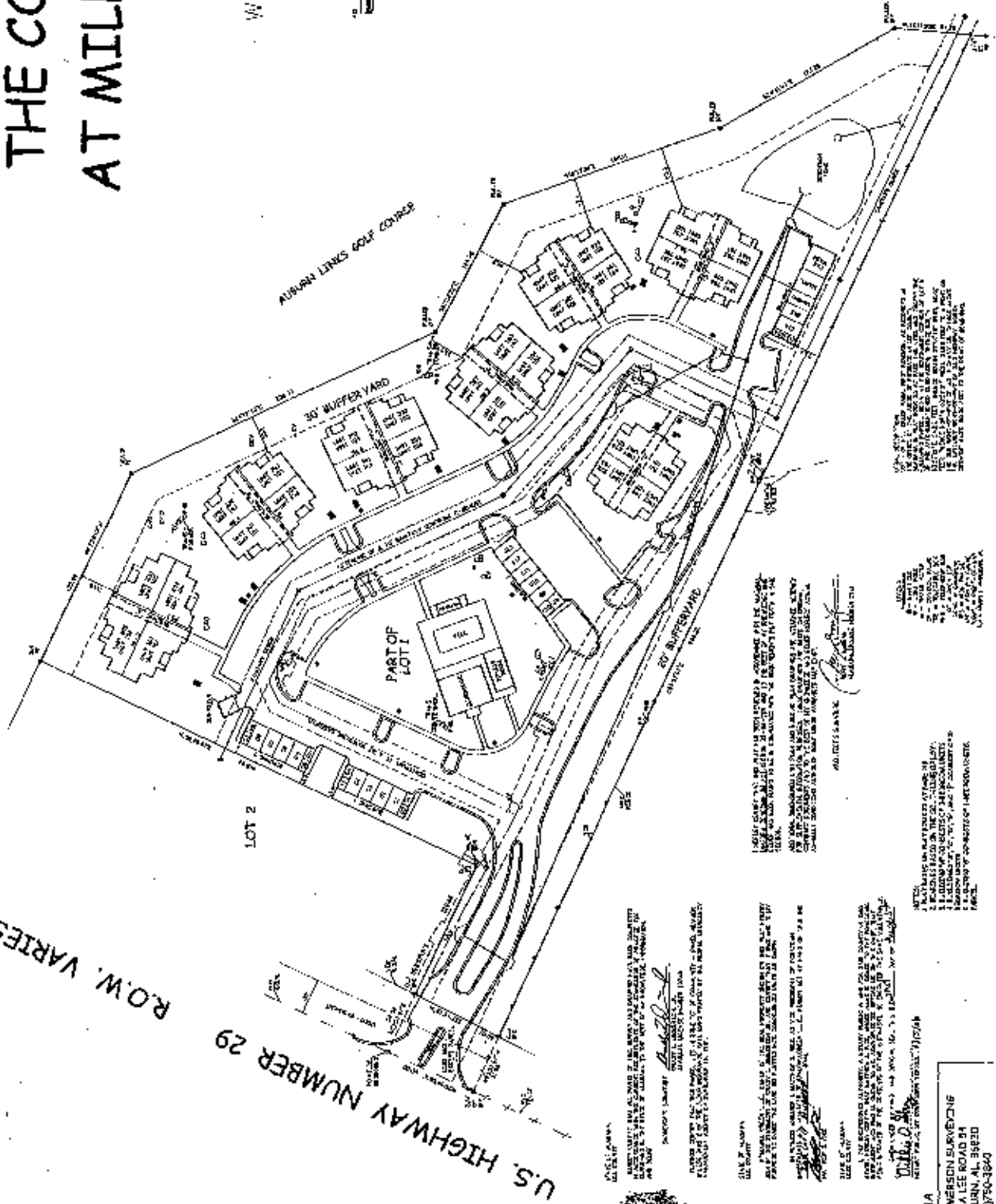
EXHIBIT "B"
[PLAT AND PLANS]

CONDO 7A 424
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08/09/2004 12:33:54 PM
BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

THE CONDOS AT MILL CREEK



NO.	DESCRIPTION	AMOUNT	DATE
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R.O.W. VARIES

U.S. HIGHWAY NUMBER 29

Recorded In CONDO BK 79 PG 425, 08/09/2004 12:53:54 PM
 BILL ENGLISH, PROBATE JUDGE, LEE COUNTY

THIS PLAN IS THE PROPERTY OF THE ARCHITECT AND IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.

THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT OR FOR THE CONSEQUENCES OF ANY ACTION TAKEN OR NOT TAKEN IN RELIANCE ON THIS PLAN.

THIS PLAN IS SUBJECT TO THE TERMS AND CONDITIONS OF THE ARCHITECT'S STANDARD CONDITIONS OF CONTRACT, WHICH ARE INCORPORATED BY REFERENCE INTO THIS PLAN.

DATE: 08/09/2004
 SHEET: 14 OF 14
 PROJECT: THE CONDOS AT MILL CREEK

**UNIT ELEVATIONS AS SHOWN ON PLANS OF THE CONDOS AT MILL CREEK
DATED AUGUST 2, 2004 CERTIFIED BY GRADY L. JIMMERSON, JR.,
SURVEYOR**

BUILDING	1ST FLOOR	2ND FLOOR	UNIT #
A	496.00		101
A	496.00		102
A	496.00		103
A	496.00		104
A		506.50	201
A		506.50	202
A		506.50	203
A		506.50	204
B	492.00		101
B	492.00		102
B	492.00		103
B	492.00		104
B		502.50	201
B		502.50	202
B		502.50	203
B		502.50	204
C	488.00		101
C	488.00		102
C	488.00		103
C	488.00		104
C		498.50	201
C		498.50	202
C		498.50	203
C		498.50	204
D	485.00		101
D	485.00		102
D	485.00		103
D	485.00		104
D		495.50	201
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D		495.50	203
D		495.50	204
E	484.00		101
E	484.00		102
E	484.00		103
E	484.00		104
E		494.50	201
E		494.50	202
E		494.50	203
E		494.50	204
F	482.00		101
F	482.00		102
F	482.00		103
F	482.00		104
F		492.50	201
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G	485.00		101
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08/09/2004 12:33:54 PM
BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

LEGAL DESCRIPTION - BUILDING A

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plot Book 23 at Page 143 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 26 min. 02 sec. East for a distance of 70.45 feet to a point; Thence South 28 deg. 33 min. 58 sec. West for a distance of 29.59 feet to the Point of Beginning; Thence from said Point of Beginning;

LINE TABLE - BUILDING A		
LINE	BEARING	LENGTH
L1	S 64°12'33" E	15.17
L2	S 25°47'27" W	2.92
L3	S 64°12'33" E	10.00
L4	S 25°47'27" W	3.42
L5	S 64°12'33" E	18.33
L6	S 25°47'27" W	6.90
L7	S 64°12'33" E	9.92
L8	S 25°47'27" W	9.02
L9	S 64°12'33" E	9.00
L10	S 25°47'27" W	29.34
L11	N 64°12'33" W	9.00
L12	S 25°47'27" W	9.92
L13	N 64°12'33" W	9.92
L14	S 25°47'27" W	6.90
L15	N 64°12'33" W	18.33
L16	S 25°47'27" W	3.42
L17	N 64°12'33" W	10.00
L18	S 25°47'27" W	2.92
L19	N 64°12'33" W	15.17
L20	N 25°47'27" E	2.92
L21	N 64°12'33" W	10.00
L22	N 25°47'27" E	3.42
L23	N 64°12'33" W	18.33
L24	N 25°47'27" E	6.90
L25	N 64°12'33" W	9.92
L26	N 25°47'27" E	9.92
L27	N 64°12'33" W	9.00
L28	N 25°47'27" E	29.34
L29	S 64°12'33" E	9.00
L30	N 25°47'27" E	9.92
L31	S 64°12'33" E	9.92
L32	N 25°47'27" E	6.90
L33	S 64°12'33" E	18.33
L34	N 25°47'27" E	3.42
L35	S 64°12'33" E	10.00
L36	N 25°47'27" E	2.92

to the Point of Beginning.

LEGAL DESCRIPTION - BUILDING B

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plot Book 23 at Page 145 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 28 min. 02 sec. East for a distance of 182.98 feet to an iron pin; Thence South 24 deg. 12 min. 42 sec. West for a distance of 73.28 feet to a point; Thence South 65 deg. 47 min. 18 sec. West for a distance of 36.27 feet to the Point of Beginning; Thence from said Point of Beginning;

LINE TABLE - BUILDING B		
LINE	BEARING	LENGTH
L37	S 37°58'52" E	15.17
L38	S 52°01'08" W	2.90
L39	S 37°58'52" E	10.00
L40	S 52°01'08" W	3.42
L41	S 37°58'52" E	18.33
L42	S 52°01'08" W	6.90
L43	S 37°58'52" E	5.25
L44	S 52°01'08" W	49.22
L45	N 37°58'52" W	5.25
L46	S 52°01'08" W	6.90
L47	N 37°58'52" W	18.33
L48	S 52°01'08" W	3.42
L49	N 37°58'52" W	10.00
L50	S 52°01'08" W	2.90
L51	N 37°58'52" W	15.17
L52	N 52°01'08" E	2.90
L53	N 37°58'52" W	10.00
L54	N 52°01'08" E	3.42
L55	N 37°58'52" W	18.33
L56	N 52°01'08" E	6.90
L57	N 37°58'52" W	5.25
L58	N 52°01'08" E	49.22
L59	S 37°58'52" E	5.25
L60	N 52°01'08" E	8.90
L61	S 37°58'52" E	18.33
L62	N 52°01'08" E	3.42
L63	S 37°58'52" E	10.00
L64	N 52°01'08" E	2.90

to the Point of Beginning.

CONDO 7A 427
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 BILL ENGLISH
 PROBATE JUDGE
 LEE COUNTY

LEGAL DESCRIPTION - BUILDING C

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plat Book 23 at Page 145 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 26 min. 02 sec. East for a distance of 182.98 feet to an iron pin; Thence South 24 deg. 12 min. 42 sec. West for a distance of 195.68 feet to a point; Thence South 65 deg. 47 min. 18 sec. West for a distance of 29.85 feet to the Point of Beginning; Thence from said Point of Beginning;

LINE TABLE - BUILDING C		
LINE	BEARING	LENGTH
L65	S 24°23'30" E	15.17
L66	S 65°36'30" W	2.90
L67	S 24°23'30" E	10.00
L68	S 65°36'30" W	3.42
L69	S 24°23'30" E	18.33
L70	S 65°36'30" W	6.90
L71	S 24°23'30" E	5.25
L72	S 65°36'30" W	49.22
L73	N 24°23'30" W	5.25
L74	S 65°36'30" W	6.90
L75	N 24°23'30" W	18.33
L76	S 65°36'30" W	3.42
L77	N 24°23'30" W	10.00
L78	S 65°36'30" W	2.90
L79	N 24°23'30" W	15.17
L80	N 65°36'30" E	2.90
L81	N 24°23'30" W	10.00
L82	N 65°36'30" E	3.42
L83	N 24°23'30" W	18.33
L84	N 65°36'30" E	6.90
L85	N 24°23'30" W	5.25
L86	N 65°36'30" E	49.22
L87	S 24°23'30" E	5.25
L88	N 65°36'30" E	6.90
L89	S 24°23'30" E	18.33
L90	N 65°36'30" E	3.42
L91	S 24°23'30" E	10.00
L92	N 65°36'30" E	2.90

to the Point of Beginning.

LEGAL DESCRIPTION - BUILDING D

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plat Book 23 at Page 145 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 26 min. 02 sec. East for a distance of 182.98 feet to an iron pin; Thence South 24 deg. 12 min. 42 sec. West for a distance of 273.43 feet to an iron pin; Thence South 58 deg. 10 min. 24 sec. West for a distance of 19.07 feet to a point; Thence South 31 deg. 49 min. 36 sec. West for a distance of 40.13 feet to the Point of Beginning; Thence from said Point of Beginning;

LINE TABLE - BUILDING D		
LINE	BEARING	LENGTH
L93	S 41°16'25" W	2.90
L94	S 48°43'35" E	10.00
L95	S 41°16'25" W	3.42
L96	S 48°43'35" E	18.33
L97	S 41°16'25" W	6.90
L98	S 48°43'35" E	5.25
L99	S 41°16'25" W	49.22
L100	N 48°43'35" W	5.25
L101	S 41°16'25" W	6.90
L102	N 48°43'35" W	18.33
L103	S 41°16'25" W	3.42
L104	N 48°43'35" W	10.00
L105	S 41°16'25" W	2.90
L106	N 48°43'35" W	15.17
L107	N 41°16'25" E	2.90
L108	N 48°43'35" W	10.00
L109	N 41°16'25" E	3.42
L110	N 48°43'35" W	18.33
L111	N 41°16'25" E	6.90
L112	N 48°43'35" W	5.25
L113	N 41°16'25" E	49.22
L114	S 48°43'35" E	5.25
L115	N 41°16'25" E	6.90
L116	S 48°43'35" E	18.33
L117	N 41°16'25" E	3.42
L118	S 48°43'35" E	10.00
L119	N 41°16'25" E	2.90
L120	S 48°43'35" E	15.17

to the Point of Beginning.

LEGAL DESCRIPTION - BUILDING E

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plot Book 23 at Page 145 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 26 min. 02 sec. East for a distance of 182.98 feet to an iron pin; Thence South 24 deg. 12 min. 42 sec. West for a distance of 273.43 feet to an iron pin; Thence South 58 deg. 10 min. 24 sec. West for a distance of 93.60 feet to a point; Thence South 31 deg. 49 min. 36 sec. West for a distance of 43.66 feet to the Point of Beginning; Thence from said Point of Beginning;

LINE TABLE - BUILDING E

LINE	BEARING	LENGTH
L121	S 32°23'05" E	18.33
L122	N 57°36'55" E	3.42
L123	S 32°23'05" E	10.00
L124	N 57°36'55" E	2.90
L125	S 32°23'05" E	15.17
L126	S 57°36'55" W	2.90
L127	S 32°23'05" E	10.00
L128	S 57°36'55" W	3.42
L129	S 32°23'05" E	18.33
L130	S 57°36'55" W	6.90
L131	S 32°23'05" E	5.25
L132	S 57°36'55" W	49.22
L133	N 32°23'05" W	5.25
L134	S 57°36'55" W	6.90
L135	N 32°23'05" W	18.33
L136	S 57°36'55" W	3.42
L137	N 32°23'05" W	10.00
L138	S 57°36'55" W	2.90
L139	N 32°23'05" W	15.17
L140	N 57°36'55" E	2.90
L141	N 32°23'05" W	10.00
L142	N 57°36'55" E	3.42
L143	N 32°23'05" W	18.33
L144	N 57°36'55" E	6.90
L145	N 32°23'05" W	5.25
L146	N 57°36'55" E	49.22
L147	S 32°23'05" E	5.25
L148	N 57°36'55" E	6.90

to the Point of Beginning.

LEGAL DESCRIPTION - BUILDING F

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plot Book 23 at Page 145 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 26 min. 02 sec. East for a distance of 182.98 feet to an iron pin; Thence South 24 deg. 12 min. 42 sec. West for a distance of 273.43 feet to an iron pin; Thence South 58 deg. 10 min. 24 sec. West for a distance of 135.21 feet to an iron pin; Thence South 18 deg. 17 min. 28 sec. West for a distance of 198.11 feet to a point; Thence South 71 deg. 42 min. 32 sec. West for a distance of 53.07 feet to the Point of Beginning; Thence from said Point of Beginning;

LINE TABLE - BUILDING F

LINE	BEARING	LENGTH
L149	S 26°14'47" W	18.33
L150	S 63°45'13" E	3.42
L151	S 26°14'47" W	10.00
L152	S 63°45'13" E	2.90
L153	S 26°14'47" W	15.17
L154	N 63°45'13" W	2.90
L155	S 26°14'47" W	10.00
L156	N 63°45'13" W	3.42
L157	S 26°14'47" W	18.33
L158	N 63°45'13" W	6.90
L159	S 26°14'47" W	5.25
L160	N 63°45'13" W	49.22
L161	N 26°14'47" E	5.25
L162	N 63°45'13" W	6.90
L163	N 26°14'47" E	18.33
L164	N 63°45'13" W	3.42
L165	N 26°14'47" E	10.00
L166	N 63°45'13" W	2.90
L167	N 26°14'47" E	15.17
L168	S 63°45'13" E	2.90
L169	N 26°14'47" E	10.00
L170	S 63°45'13" E	3.42
L171	N 26°14'47" E	18.33
L172	S 63°45'13" E	6.90
L173	N 26°14'47" E	5.25
L174	S 63°45'13" E	49.22
L175	S 26°14'47" W	5.25
L176	S 63°45'13" E	6.90

to the Point of Beginning.

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PROBATE JUDGE
LEE COUNTY

LEGAL DESCRIPTION - BUILDING G

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plat Book 23 at Page 145 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 28 min. 02 sec. East for a distance of 16.74 feet to a point; Thence South 26 deg. 33 min. 58 sec. West for a distance of 185.58 feet to a point; Thence South 64 deg. 27 min. 50 sec. East for a distance of 21.69 feet to a point; Thence South 33 deg. 55 min. 58 sec. East for a distance of 250.48 feet to a point; Thence South 37 deg. 52 min. 30 sec. East for a distance of 21.88 feet to a point; Thence South 37 deg. 21 min. 58 sec. East for a distance of 85.88 feet to the Point of Beginning; Thence from said Point of Beginning;

LINE TABLE - BUILDING G		
LINE	BEARING	LENGTH
L177	S 55°45'48" E	59.82
L178	S 34°14'11" W	9.84
L179	S 55°45'49" E	3.00
L180	S 34°14'11" W	14.66
L181	S 55°45'49" E	2.92
L182	S 34°14'11" W	15.17
L183	N 55°45'49" W	2.92
L184	S 34°14'11" W	14.66
L185	N 55°45'49" W	5.00
L186	S 34°14'11" W	9.84
L187	N 55°45'49" W	58.82
L188	N 34°14'11" E	9.84
L189	N 55°45'49" W	3.00
L190	N 34°14'11" E	14.66
L191	N 55°45'49" W	2.92
L192	N 34°14'11" E	15.17
L193	S 55°45'49" E	2.92
L194	N 34°14'11" E	14.66
L195	S 55°45'49" E	3.00
L196	N 34°14'11" E	9.84

to the Point of Beginning.

LEGAL DESCRIPTION - BUILDING I

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plat Book 23 at Page 145 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 28 min. 02 sec. East for a distance of 16.74 feet to a point; Thence South 26 deg. 33 min. 58 sec. West for a distance of 185.58 feet to a point; Thence South 64 deg. 27 min. 50 sec. East for a distance of 21.69 feet to a point; Thence South 33 deg. 55 min. 58 sec. East for a distance of 250.48 feet to a point; Thence South 27 deg. 00 min. 36 sec. West for a distance of 29.57 feet to the Point of Beginning;

LINE TABLE - BUILDING I		
LINE	BEARING	LENGTH
L197	S 64°27'50" E	21.69
L198	S 25°32'10" W	62.50
L199	N 64°27'50" W	21.69
L200	N 25°32'10" E	62.50

to the Point of Beginning.

LEGAL DESCRIPTION - BUILDING 2

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plat Book 23 at Page 145 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 28 min. 02 sec. East for a distance of 16.74 feet to a point; Thence South 26 deg. 33 min. 58 sec. West for a distance of 185.58 feet to the Point of Beginning; Thence from said Point of Beginning;

LINE TABLE - BUILDING 2		
LINE	BEARING	LENGTH
L201	S 64°27'50" E	21.69
L202	S 25°32'10" W	62.48
L203	N 64°27'50" W	21.69
L204	N 25°32'10" E	62.48

to the Point of Beginning.

LEGAL DESCRIPTION - BUILDING 3

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plat Book 23 at Page 145 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 28 min. 02 sec. East for a distance of 16.74 feet to a point; Thence South 26 deg. 33 min. 58 sec. West for a distance of 185.58 feet to a point; Thence South 64 deg. 27 min. 50 sec. East for a distance of 21.69 feet to a point; Thence South 33 deg. 55 min. 58 sec. East for a distance of 250.48 feet to the Point of Beginning; Thence from said Point of Beginning;

LINE TABLE - BUILDING 3		
LINE	BEARING	LENGTH
L205	S 37°52'30" E	21.88
L206	S 52°07'30" W	85.00
L207	N 37°52'30" W	21.88
L208	N 52°07'30" E	85.00

to the Point of Beginning.

LEGAL DESCRIPTION - BUILDING 4

Commence at the Northeast corner of Lot 1 of the Mill Creek Park, First Revision as Recorded in Plat Book 23 at Page 145 in the Office of the Judge of Probate, Lee County, Alabama; Thence South 63 deg. 28 min. 02 sec. East for a distance of 16.74 feet to a point; Thence South 26 deg. 33 min. 58 sec. West for a distance of 185.58 feet to a point; Thence South 64 deg. 27 min. 50 sec. East for a distance of 21.69 feet to a point; Thence South 33 deg. 55 min. 58 sec. East for a distance of 250.48 feet to a point; Thence South 37 deg. 52 min. 30 sec. East for a distance of 21.88 feet to a point; Thence South 37 deg. 21 min. 58 sec. East for a distance of 85.88 feet to a point; Thence South 55 deg. 45 min. 48 sec. East for a distance of 59.82 feet to a point; Thence South 28 deg. 46 min. 36 sec. East for a distance of 40.11 feet to the Point of Beginning; Thence from said Point of Beginning;

LINE TABLE - BUILDING 4		
LINE	BEARING	LENGTH
L209	S 64°02'49" E	95.00
L210	S 25°57'11" W	21.88
L211	N 64°02'49" W	95.00
L212	N 25°57'11" E	21.88

to the Point of Beginning.

L157	S 26°14'47" W	18.33
L158	N 63°45'13" W	8.90
L159	S 26°14'47" W	5.25
L160	N 63°45'13" W	49.22
L161	N 26°14'47" E	5.25
L162	N 63°45'13" W	6.90
L163	N 26°14'47" E	18.33
L164	N 63°45'13" W	3.42
L165	N 26°14'47" E	10.00
L166	N 63°45'13" W	2.90
L167	N 26°14'47" E	15.17
L168	S 63°45'13" E	2.90
L169	N 26°14'47" E	10.00
L170	S 63°45'13" E	3.42
L171	N 26°14'47" E	18.33
L172	S 63°45'13" E	6.90
L173	N 26°14'47" E	5.25
L174	S 63°45'13" E	49.22
L175	S 26°14'47" W	5.25
L176	S 63°45'13" E	6.90

to the Point of Beginning.

the Judge of Probate, Lee County, Alabama;
Thence South 63 deg, 26 min. 02 sec. East for
a distance of 16.74 feet to a point; Thence
South 26 deg. 33 min. 58 sec. West for a
distance of 185.58 feet to the Point of
Beginning; Thence from said Point of Beginning:

LINE TABLE - BUILDING 2		
LINE	BEARING	LENGTH
L201	S 64°27'50" E	21.69
L202	S 26°05'59" W	62.48
L203	N 64°27'50" W	21.69
L204	N 26°05'59" E	62.48

to the Point of Beginning.

RECORD SURVEY

LEGEND

- FIP - FOUND IRON PIN
- ⊙ SIP - SET IRON PIN
- △ CP - CALCULATED POINT
- CM - CONCRETE MONUMENT
- ⊗ FP - FENCE POST
- ⊖ PP - POWER POLE
- ⊙ POINT OF COMMENCEMENT
- Esm't. - EASEMENT
- San. Swr. - SANITARY SEWER
- UUU - UTILITY
- BL - BUILDING LINE

NOTES:

1. NORTH IS BASED ON PLAT BEARINGS.
2. BEARINGS AND DISTANCES SHOWN ARE FIELD MEASUREMENTS.
3. ALL DIMENSIONS OF BUILDINGS ARE EXTERIOR DIMENSIONS ONLY. NO INTERIOR DIMENSIONS WERE TAKEN.

CONDO 7B 432
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BILL ENGLISH
PROBATE JUDGE
LEE COUNTY



GRAPHIC SCALE: 1'



ENVIRONMENTAL CONSULTING & ENGINEERING, INC.
101 MARKET PLACE
MONTGOMERY, ALABAMA 36117
PH (334) 271-2827 FAX (334) 271-5722

LEGAL DESCRIPTIONS
FOR THE CONDOS AT
MILL CREEK

AUBURN, ALABAMA

SHEET 1 OF 1

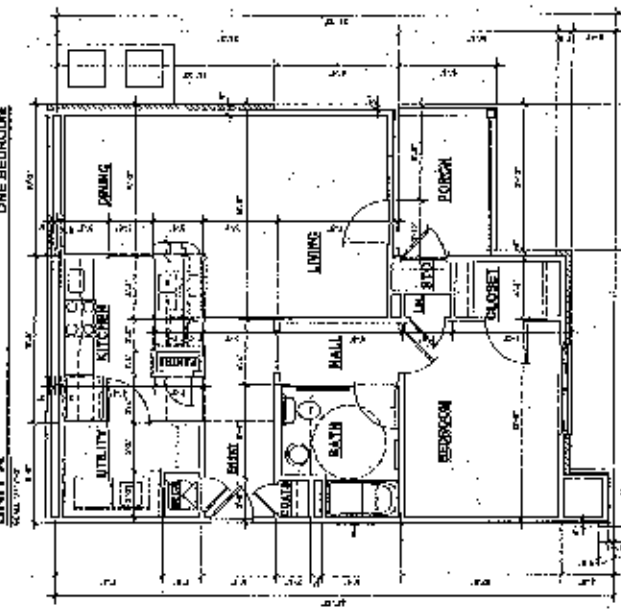
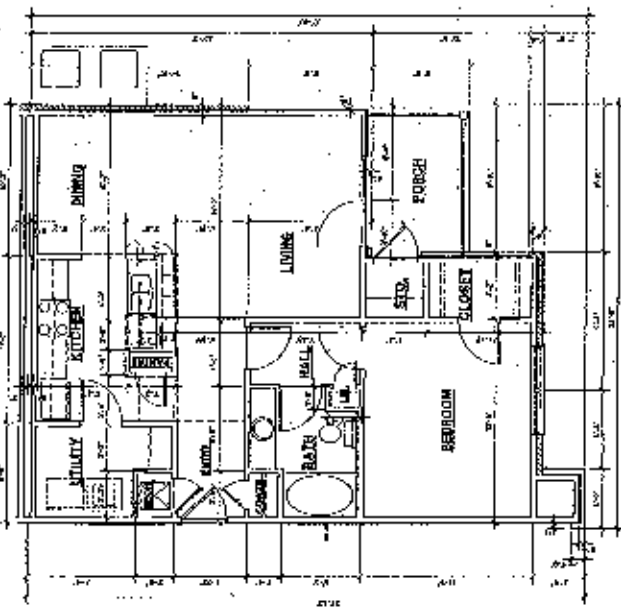
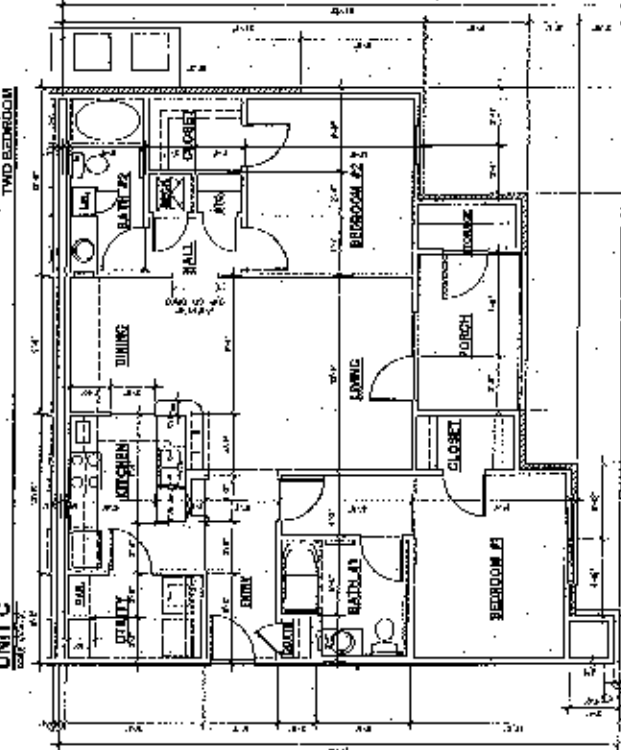
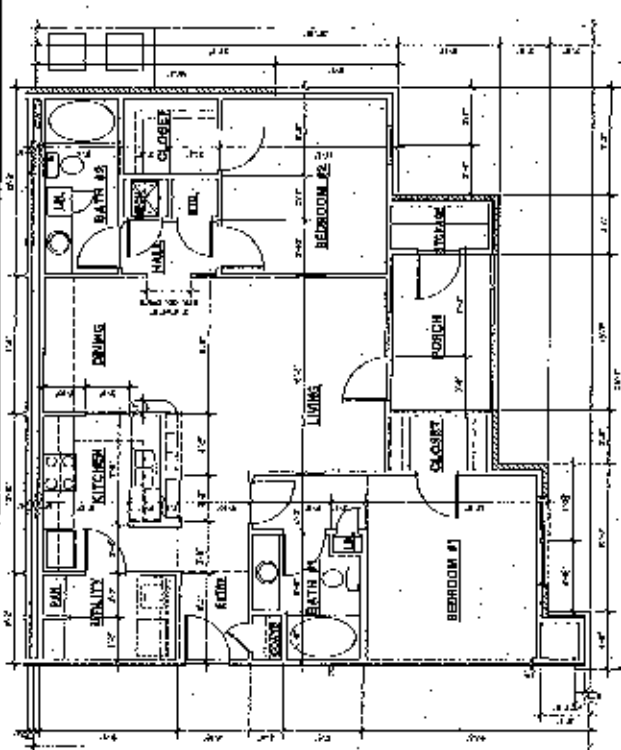
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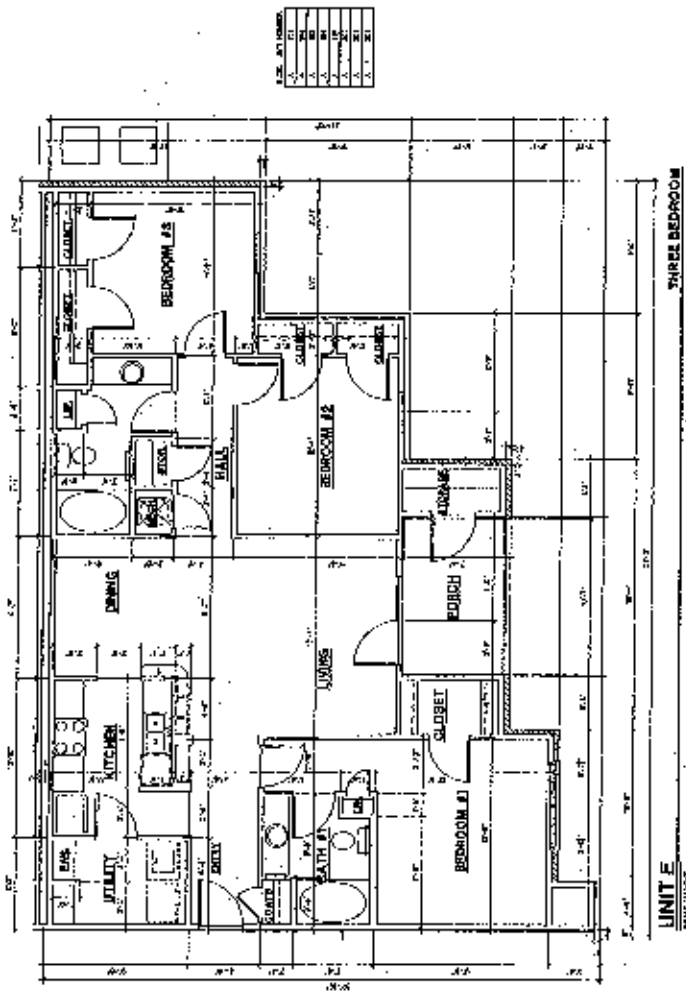
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ORIGINAL

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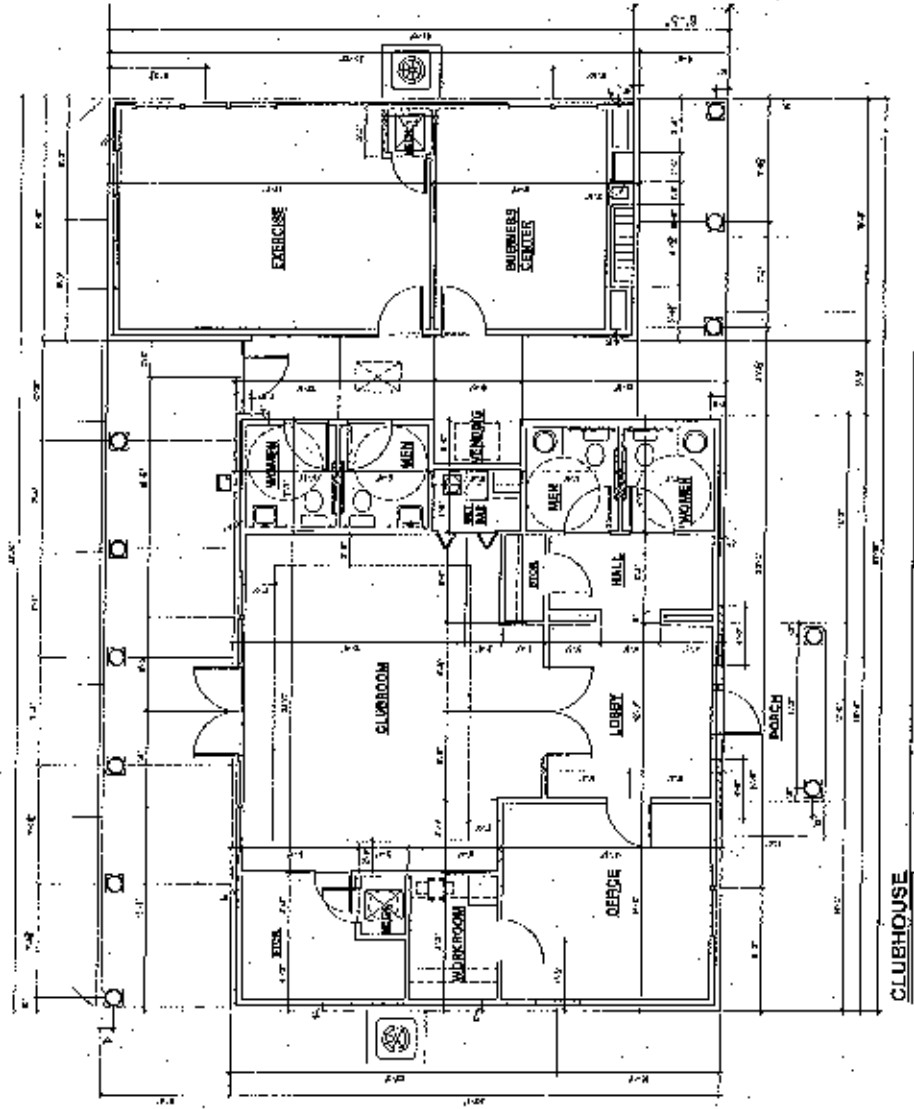
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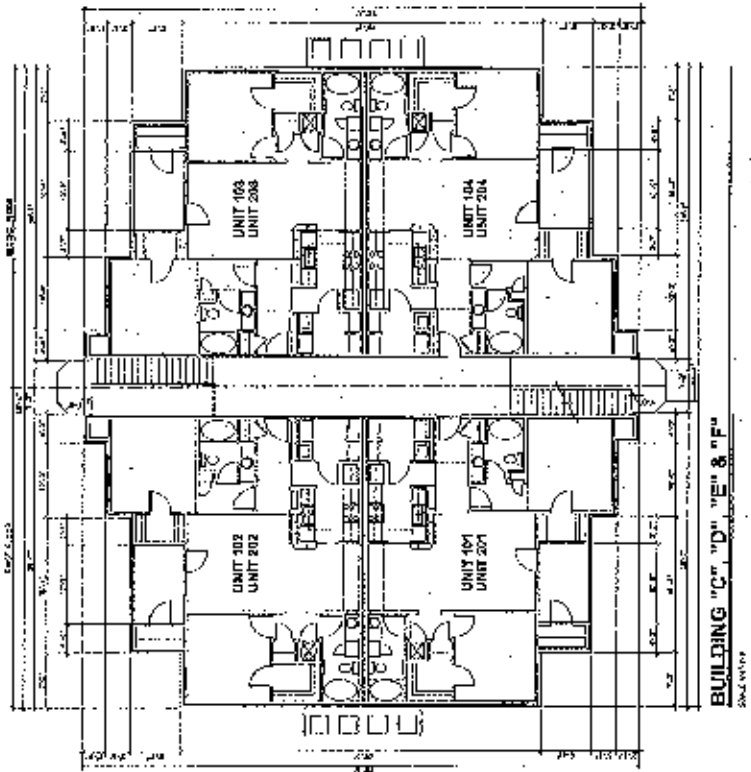
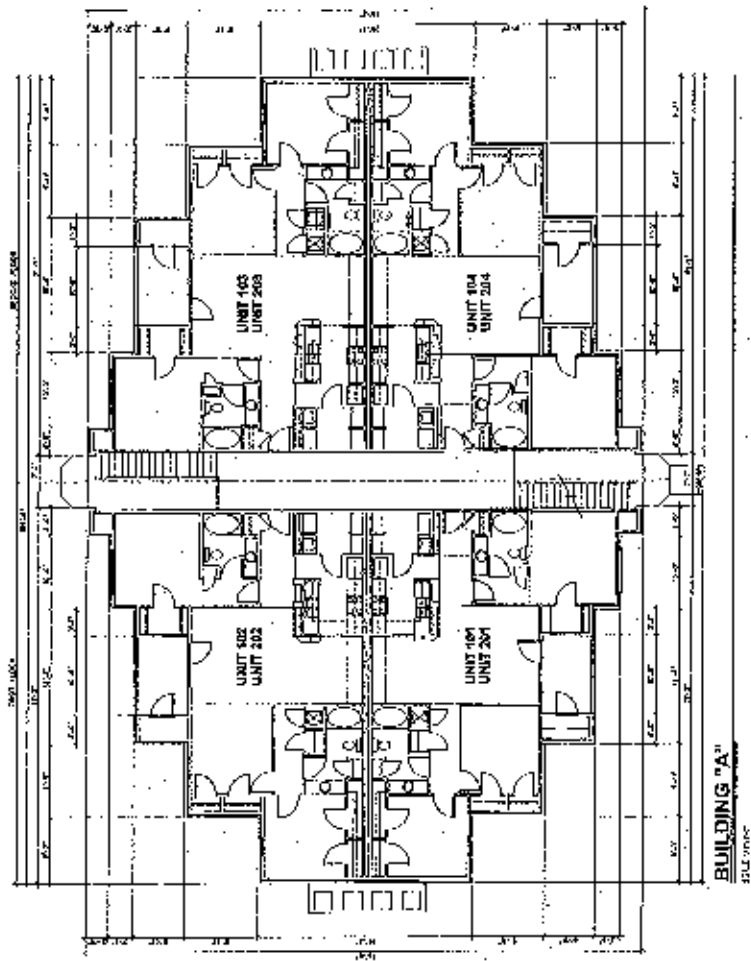
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 BILL ENGLISH
 PROBATE JUDGE
 LEE COUNTY



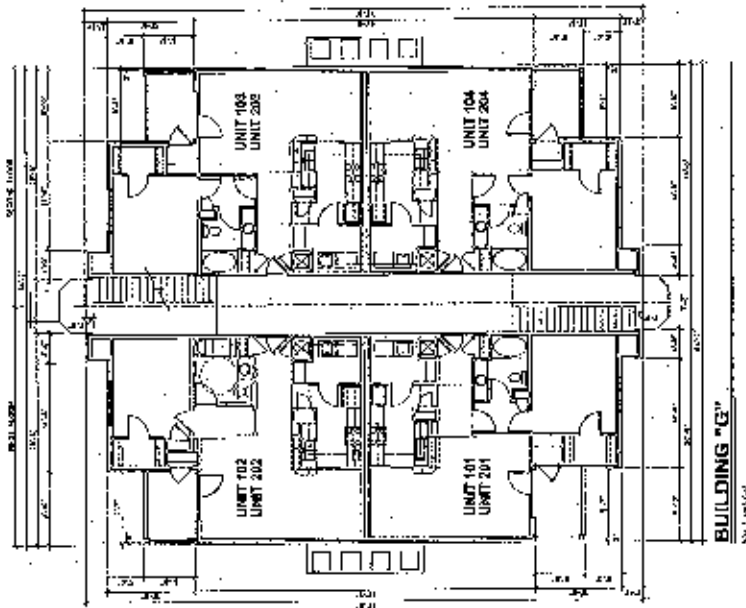
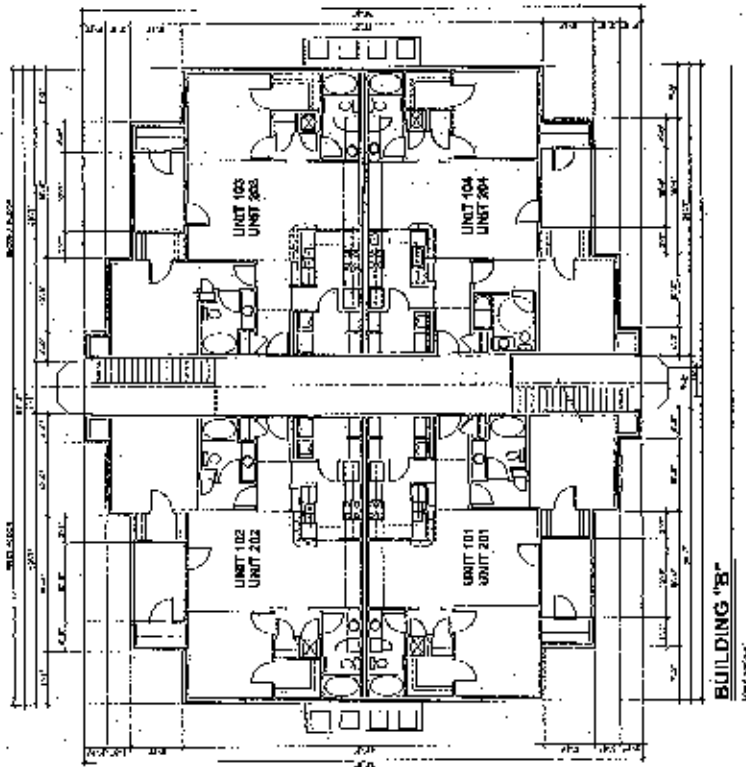
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 LEE COUNTY

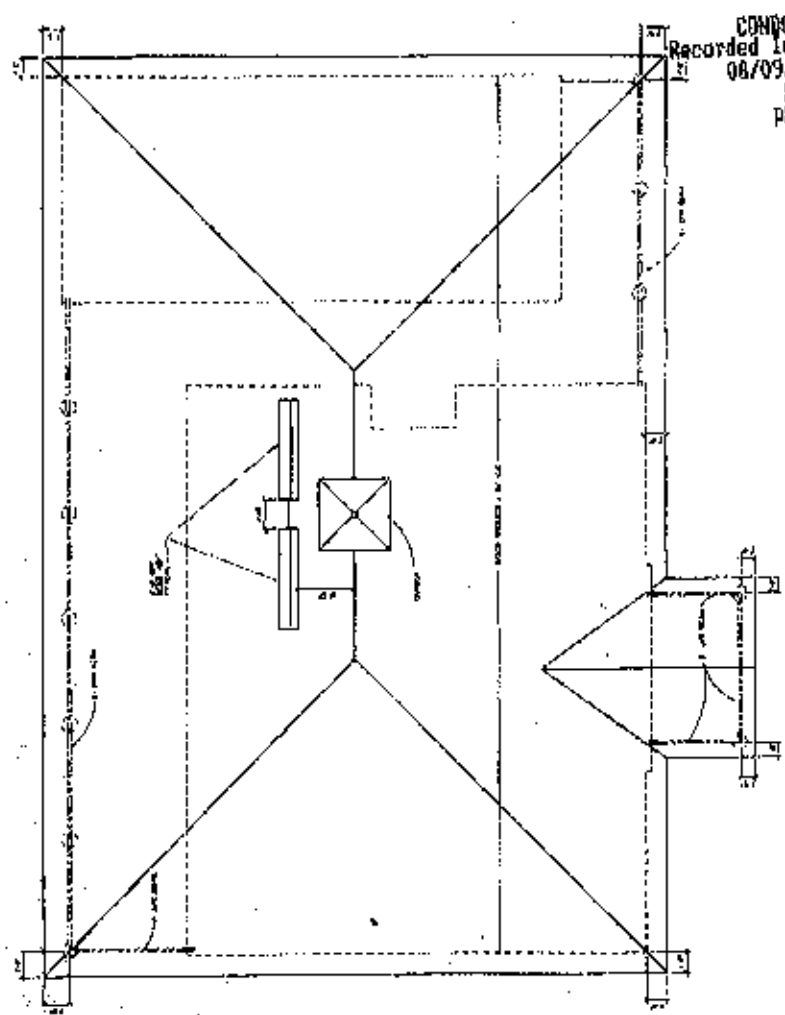
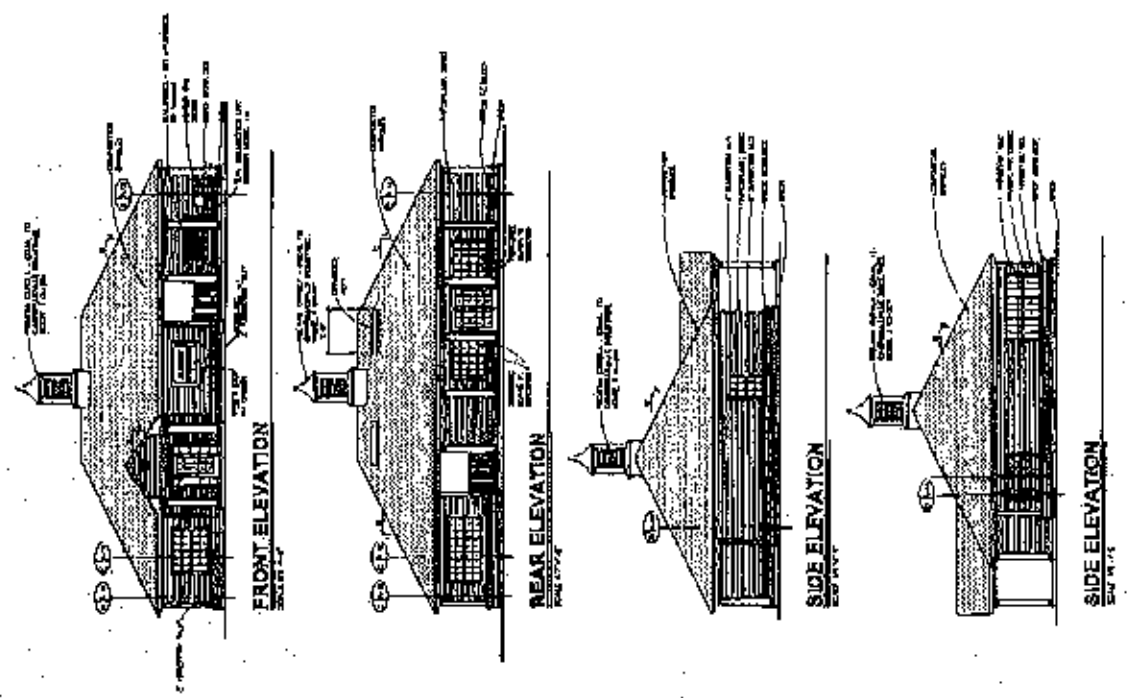


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 BILL ENGLISH
 PROBATE JUDGE
 LEE COUNTY



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 BILL ENGLISH, PROPRTE JUDGE, LEE COUNTY

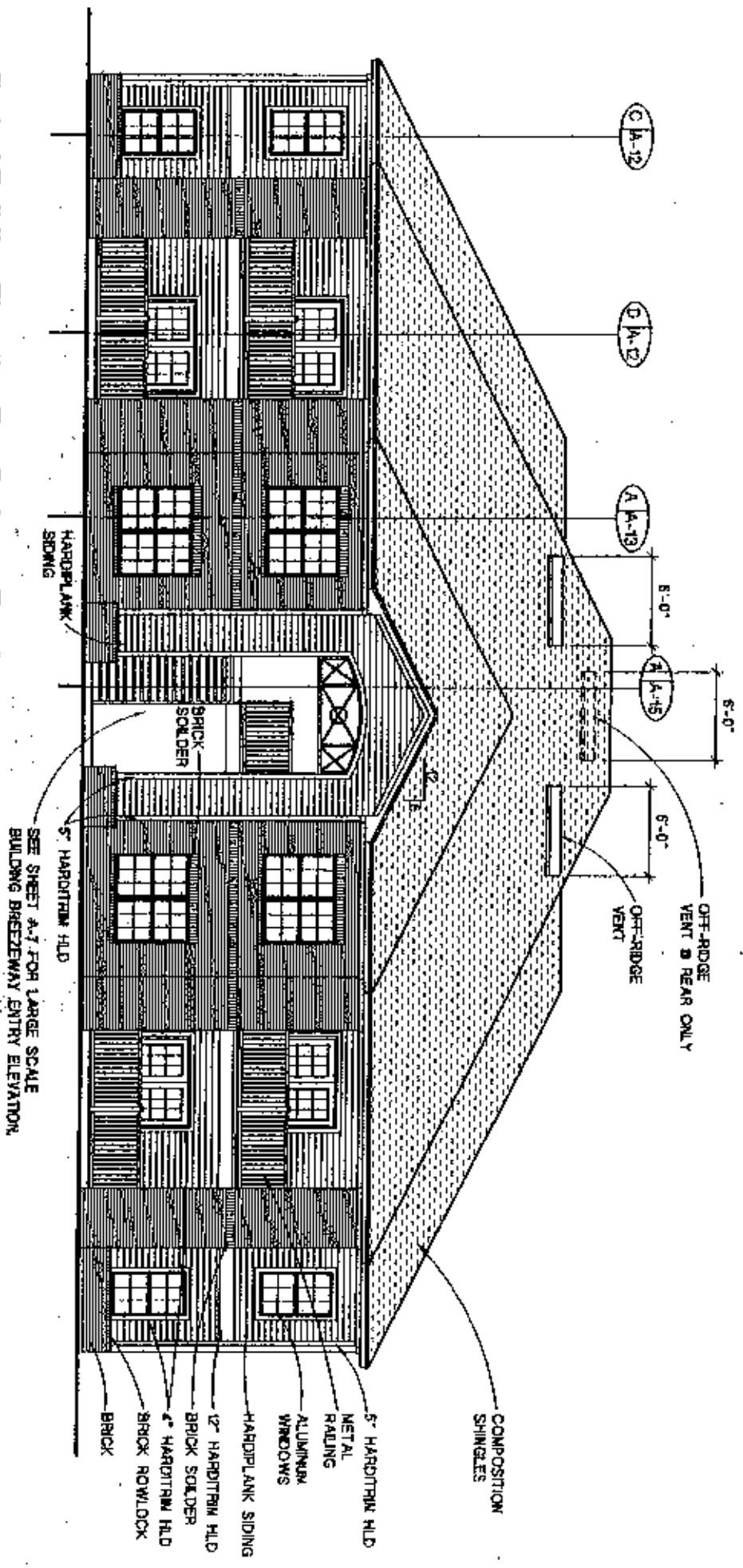




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 BILL ENGLISH
 PROBATE JUDGE
 LEE COUNTY

ROOF PLAN CLUBHOUSE

Typical Building Elevation Two Bedroom Two Bath



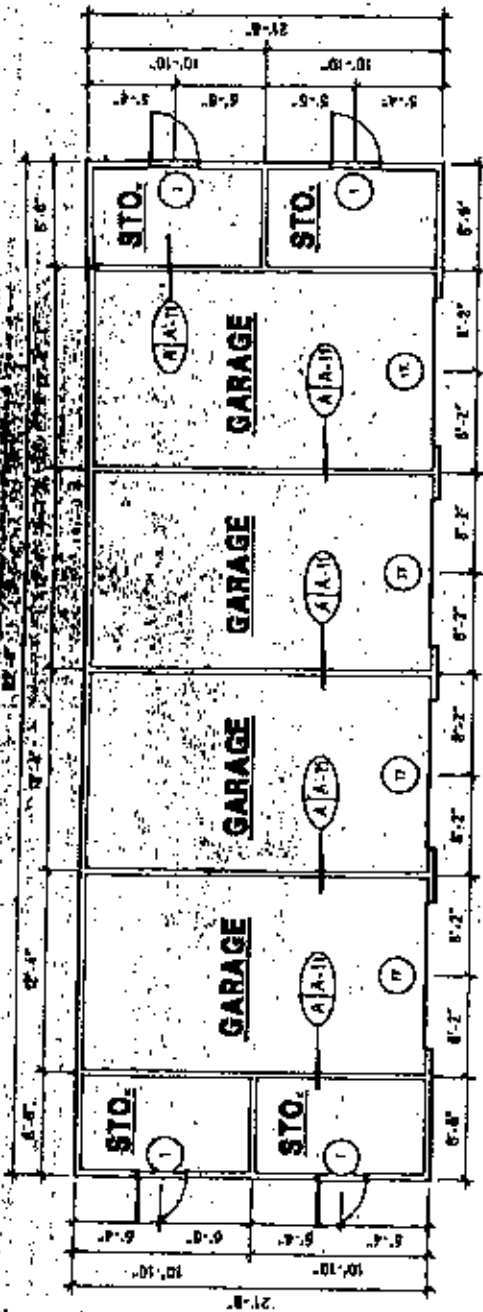
SEE SHEET A-1 FOR LARGE SCALE BUILDING BREZEWAY ENTRY ELEVATION.

- COMPOSITION SHINGLES
- 5" HARDITRIM HLD
- METAL RAILING
- ALUMINUM WINDOWS
- HARDPLANK SIDING
- 12" HARDITRIM HLD
- BRICK SOLDER
- 5" HARDITRIM HLD
- BRICK ROWLOCK
- BRICK

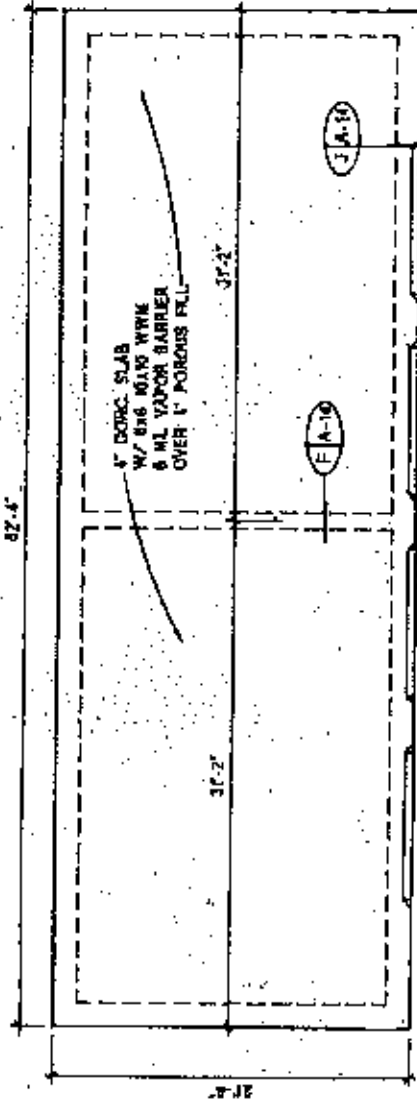
OFF-RIDGE VENT @ REAR ONLY

OFF-RIDGE VENT

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REGISTRAR JUDGE
LEE COUNTY

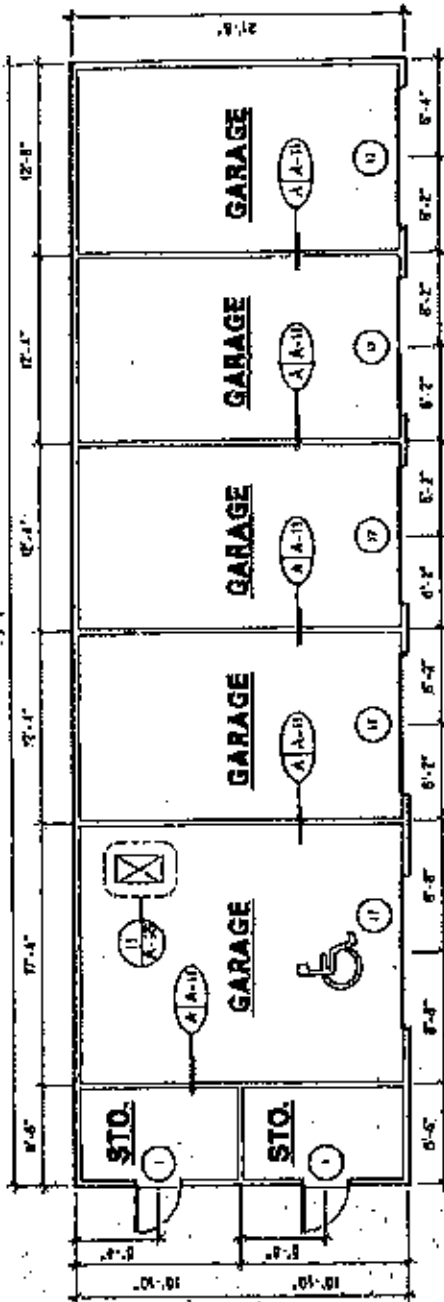


GARAGE/STORAGE BUILDING - TYPICAL LAYOUT BUILDINGS 1 & 2

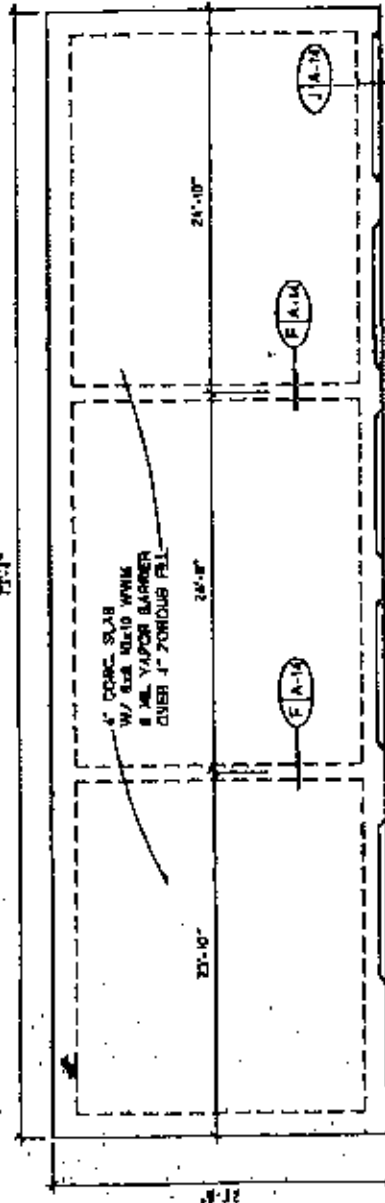


FOUNDATION PLAN GARAGE/STORAGE - BUILDINGS 1 & 2

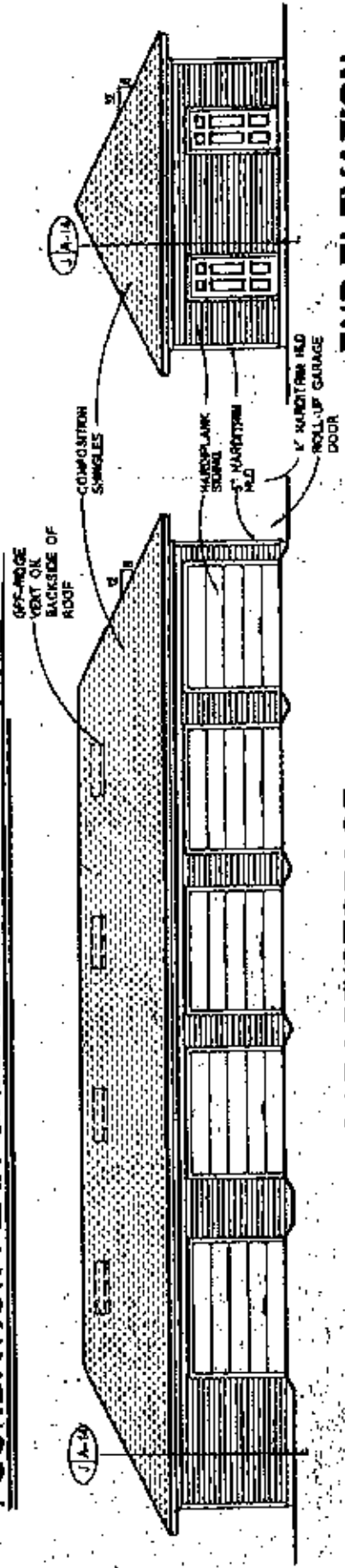
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LEE COUNTY



GARAGE/STORAGE BUILDING - TYPICAL LAYOUT BUILDING 3



FOUNDATION PLAN GARAGE/STORAGE - BUILDING 3

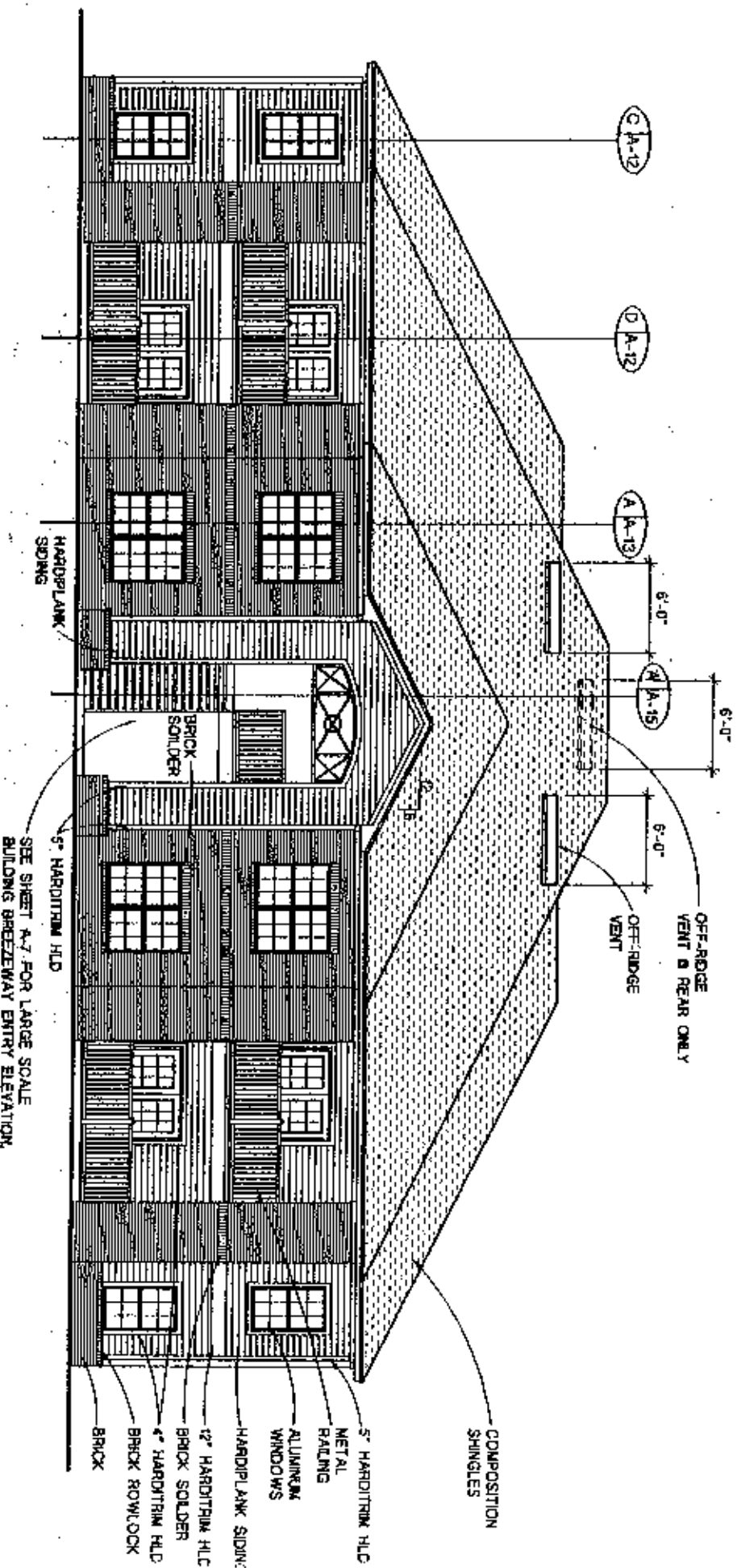


FRONT ELEVATION GARAGE/STORAGE BUILDINGS 1 & 2

END ELEVATION TYPICAL END ELEVATION OF GARAGE BLD.

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 BILL ENGLISH, PROBATE JUDGE, LEE COUNTY

Typical Building Elevation Two Bedroom Two Bath



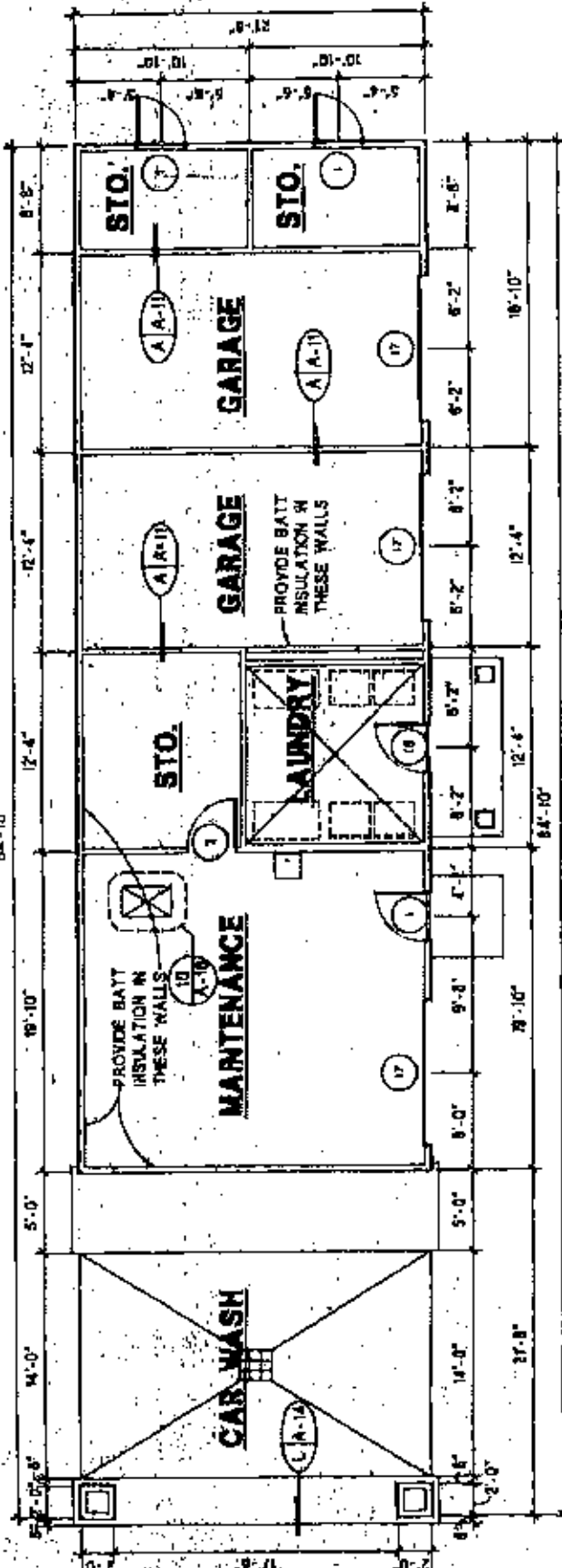
SEE SHEET A-7 FOR LARGE SCALE BUILDING BREZEWAY ENTRY ELEVATION.

- COMPOSITION SHINGLES
- 5" HARDITRIM H/LC
- METAL RAILING
- ALUMINUM WINDOWS
- HARDIPLANK SIDING
- 12" HARDITRIM H/LC
- BRICK SOLDIER
- 4" HARDITRIM H/LD
- BRICK ROWLOCK
- BRICK

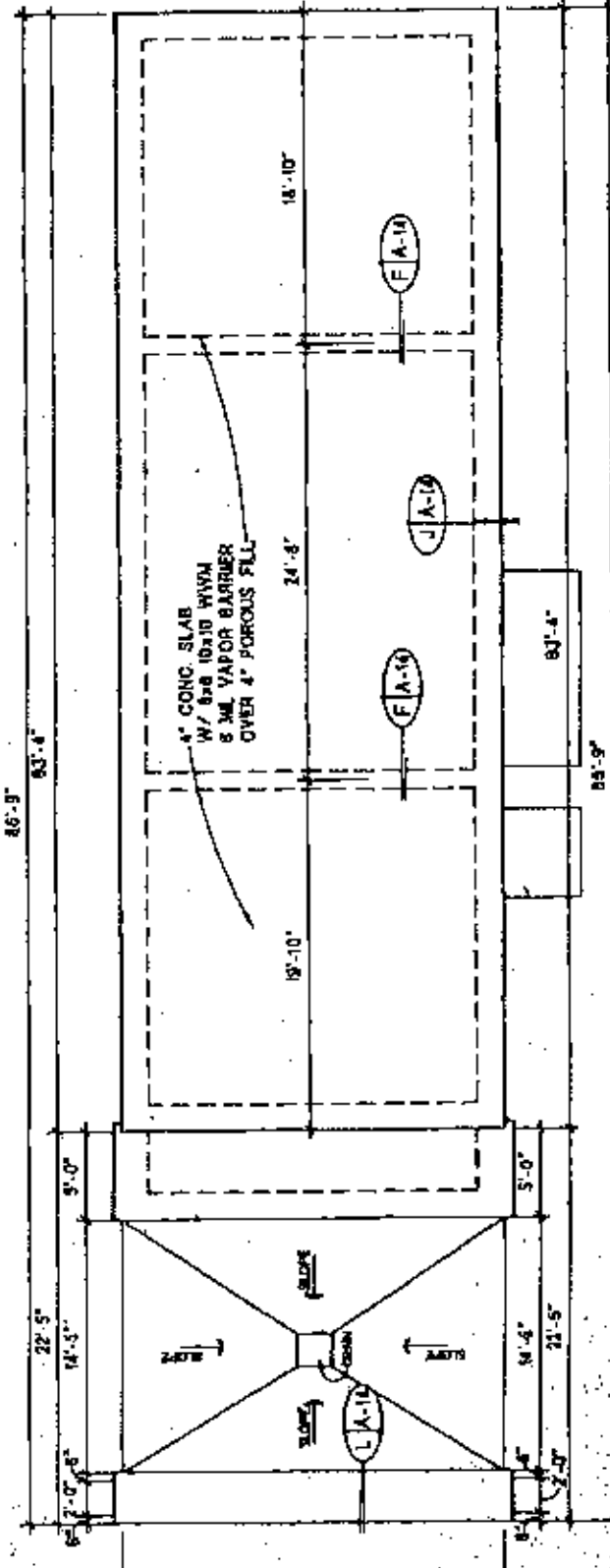
OFF-RIDGE VENT @ REAR ONLY

OFF-RIDGE VENT

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LEE COUNTY

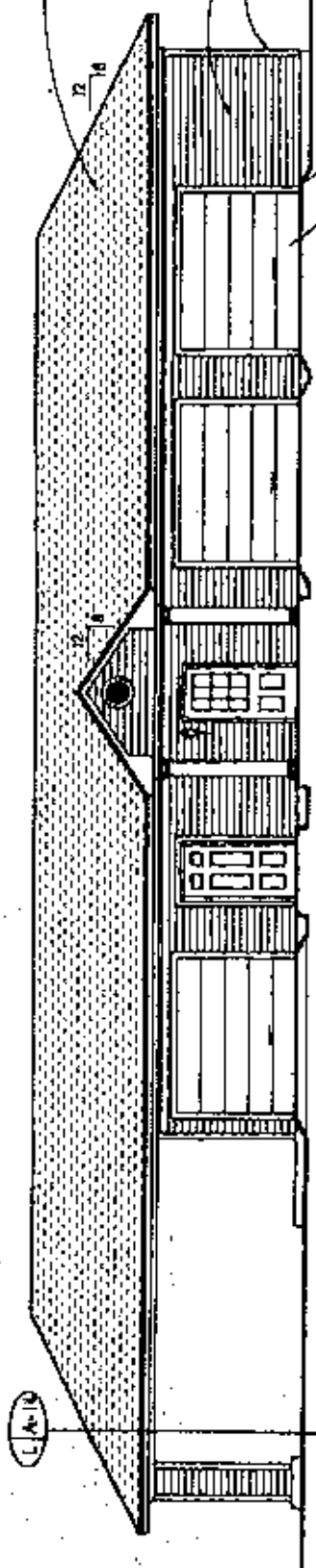


GARAGE/MAINTENANCE/LAUNDRY BUILDING - TYPICAL LAYOUT BUILDING 4

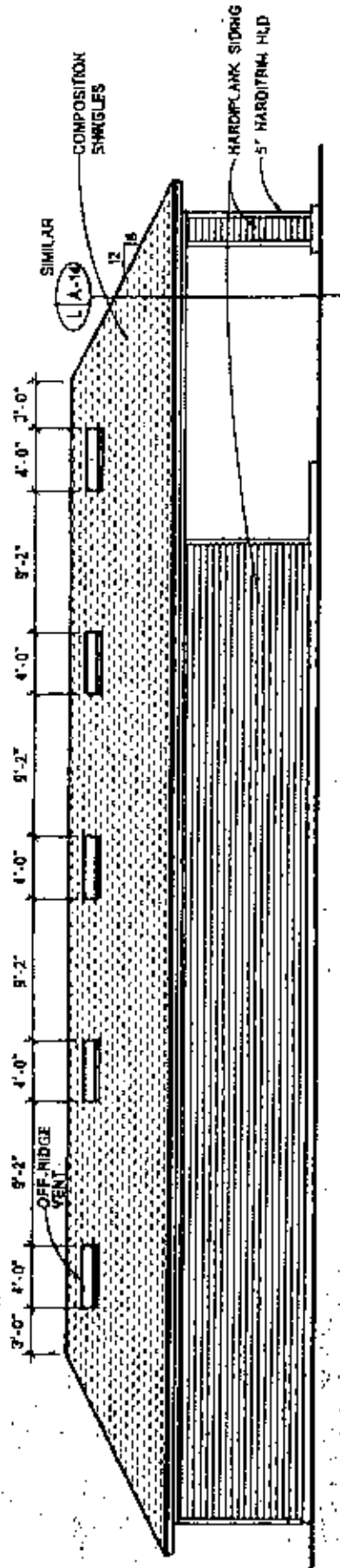


**FOUNDATION PLAN
GARAGE/MAINTENANCE/LAUNDRY BUILDING - BUILDING 4**

COMPOSITION SHINGLES
HARDPANK SIDING
4" HARDTRIM H/D
ROLL-UP GARAGE DOOR
444
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LEE COUNTY



**FRONT ELEVATION
GARAGE/MAINTENANCE/LAUNDRY BUILDING 4**



**REAR ELEVATION
GARAGE/MAINTENANCE/LAUNDRY BUILDING 4**

City of Auburn
Public Safety Department
CERTIFICATE OF OCCUPANCY

Issued By Codes Enforcement Division

This Certificate issued pursuant to the requirements of Section 403.1 and Section 106.1 of the Standard Building Code certifying that at the time of issuance this structure was in compliance with the various ordinances of the Jurisdiction regulating building construction or use. For the following:

Issued To: CLEVELAND BROTHERS

Classification NEW Type Construction VI Group R

Occupant ALL UNITS EXCEPT "F" Permit No. 2001-2369

Building Address 3297 S COLLEGE ST S/D MILLSTONE APARTMENTS Lot No. _____

Issued By: [Signature] Date: AUGUST 6th, 2002

Total Seating Capacity _____

POST IN A CONSPICUOUS PLACE



CONDO 7A 445
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BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

City of Auburn
Public Safety Department

CERTIFICATE OF OCCUPANCY

Issued By Codes Enforcement Division


This Certificate issued pursuant to the requirements of Section 403.1 and Section 105.1 of the Standard Building Code certifying that at the time of issuance this structure was in compliance with the various ordinances of the Jurisdiction regulating building construction or use. For the following:

Issued To: CLEVELAND BROTHERS

Classification NEW Type Construction VI Group R

Occupant _____ Permit No. 2001-2369

Building Address 3297 S COLLEGE ST S/D MILLSTONE APARTMENTS Lot No. BLD F

Issued By:  Date: APRIL 21st, 2003

Total Seating Capacity _____

POST IN A CONSPICUOUS PLACE



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PROBATE JUDGE
LEE COUNTY

EXHIBIT "C"

[ARTICLES OF INCORPORATION AND BY-LAWS]

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BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

STATE OF ALABAMA
LEE COUNTY

ARTICLES OF INCORPORATION
OF
THE CONDOS AT MILL CREEK HOMEOWNERS' ASSOCIATION, INC.,
A NON-PROFIT CORPORATION

By these Articles, the undersigned natural persons over the age of Nineteen (19) hereby associate themselves for the purpose of forming a not-for-profit corporation under the Alabama Nonprofit Corporation Act, § 10-3-1 et seq., Code of Alabama (1975), and verify as follows:

ARTICLE I
NAME AND DEFINITIONS

The name of the corporation shall be **THE CONDOS AT MILL CREEK HOMEOWNERS' ASSOCIATION, INC.** The corporation is herein referred to as the "Association," and the terms used herein shall have the meaning for each stated in the Alabama Nonprofit Corporation Act, § 10-3-1 et seq., Code of Alabama (1975), the Alabama Uniform Condominium Act of 1991, § 35-8A-101 et seq., Code of Alabama (1975) (hereinafter collectively referred to as the "Acts") and the Declaration of Condominium of **THE CONDOS AT MILL CREEK, a Condominium**, to be recorded in the Public Records of Lee County, Alabama (the "Declaration of Condominium"), unless the context otherwise requires.

ARTICLE II
PURPOSE

The Association is organized for the purposes of transacting any and all lawful business which an Alabama non-profit corporation may exercise under the Acts, including but not limited to the following:

- (1) To maintain, operate and manage the condominiums known as **THE CONDOS AT**

MILL CREEK, a Condominium, located at 3297 South College Street, Auburn, Alabama 36832 (the "Condominium"), and to do all things incident, necessary, convenient, expedient, ancillary, or in aid of the accomplishment of the foregoing.

(2) To own, operate, lease, manage, sell, trade, or otherwise deal with such property, real or personal, as may be necessary or convenient in the administration of the Condominium.

ARTICLE III POWERS

3.01 **Implied Powers**. The Association shall have all the common law and statutory powers of a not for profit corporation allowed under the Acts which are not in conflict with the purposes of the Association as set forth in this Article, the Declaration of Condominium and the Acts.

3.02. **Specific Powers**. In furtherance of the purposes of the Association, the Association shall have all of the powers set forth in the Acts, and all of the powers reasonably necessary to operate the Condominium pursuant to the Declaration of Condominium, including but not limited to the following irrevocable rights, powers and authority:

(1) To enforce the covenants and restrictions contained in the Declaration, and to make, establish, and enforce reasonable Rules and Regulations governing the administration, management, and the use of the Condominium Property;

(2) To establish a budget for the operations of the Condominium; to designate those expenses which shall constitute the Common Expenses of the Condominium; to make, levy, and collect assessments against Owners of the Condominium to provide the funds to pay for Common Expense of the Condominium as provided for in the Condominium documents and in the

Act; and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association;

(3) To maintain, repair, replace, and operate those portions of the Condominium property that the Association has the duty or right to maintain, repair, replace and operate under the Condominium documents.

(4) To have access to each Unit within the Condominium (herein being referred to as a "Unit") and all areas from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements or Limited Common Elements therein or accessible therefrom, or, to have immediate access at any time as may be necessary for making emergency repairs necessary to prevent damage to any other Unit(s);

(5) To contract for the management of the Condominium property and to delegate to such agent(s) all or some of the powers, duties, and responsibilities of the Association;

(6) To employ personnel to perform the services required for proper operation of the Condominium;

(7) To purchase and maintain all forms of insurance on the Condominium property for the protection of the Association and its members;

(8) To reconstruct the Condominium property after casualty or other loss;

(9) To approve or disapprove the transfer, mortgage, and ownership of Units to the extent such power is granted to it under the Condominium documents;

(10) To retain legal counsel at the expense of the Association and to enforce by legal action the provisions of the Condominium Documents and the Rules and Regulations of the Association;

(11) To acquire, by purchase or otherwise, Units in the Condominium and to hold, lease, mortgage and convey the same;

(12) To lease or license the use of Common Elements and Limited Common Elements in a manner not inconsistent with the rights of Unit Owners;

(13) To pay taxes and assessments which are liens against any part of the Condominium other than individual Units (unless the individual Units are owned by the Association) and the appurtenances thereto, and to assess the same against the Units.

(14) To pay the cost of all water, sewer, trash, garbage, and other utility services rendered to the Condominium and not billed to the individual Units.

(15) To adopt and establish By-Laws for the operation of the Condominium Association.

**ARTICLE IV
ASSOCIATION FUNDS AND PROPERTY**

The Association shall pay no dividend, and shall distribute no part of its income to its Members, Directors, or Officers. Nevertheless, the Association may pay compensation in a reasonable amount to its Members, Directors, and Officers for services rendered and the Association may enter into agreements, contracts, and other arrangements with Members, Directors, Officers or Owners for the operation and maintenance of the Condominium, and it may confer benefits on its Members in conformity with the Declaration of Condominium and the purposes of the Association.

On termination, the Association may make distributions to its Members as permitted by law and under the Acts, and no such payment, benefit, or distribution shall be deemed to be a dividend or distribution of income. All funds and property acquired by the Association and all proceeds therefrom shall be held and used for the benefit of the Members of the Association in accordance with the provisions of the Declaration, these Articles, the By-Laws and the Acts .

**ARTICLE V
MEMBERS**

5.01. **Qualification.** The Members of the Association shall consist of all of the Unit Owners of record in the Condominium.

5.02. **Certification of Membership.** This Corporation shall issue no shares of stock of any kind or nature whatsoever.

5.03. **Change in Membership.** Change in membership in the Association shall be established by the recording in the public records of Lee County, Alabama, of a deed or other instrument establishing a record title to a Condominium Unit, and delivery to the Association of a certified copy of such instrument. The new Owner designated by such instrument shall thereupon become a Member of the Association, and the membership of the prior owner shall thereby be terminated.

5.04. **Transfer of Membership.** The membership of a Member in the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenant to such Member's Unit in connection with the financing of the purchase of the Unit or the refinancing of such mortgage indebtedness.

5.05. **Meetings.** The By-Laws, subject to any proviso therein, shall provide for an annual meeting of Members and may provide for regular and special meetings other than the annual meeting.

**ARTICLE VI
DIRECTORS**

The names and addresses of the initial three members of the initial Board of Directors, who shall hold office until the election or appointment of their successors, are as follows:

Howard J. Porter, Jr.	472 North Dean Road Suite 200 Auburn, Alabama 36830
Philip J. Minor	472 North Dean Road Suite 200 Auburn, Alabama 36830
Matthew S. Rice	472 North Dean Road, Suite 200 Auburn, Alabama 36830

**ARTICLE VII
OFFICERS**

The affairs of the Association shall be administered by the officers designated in accordance with the By-Laws. The names and addresses of the officers who shall serve until the election or appointment of their successors in accordance with the By-Laws are as follows:

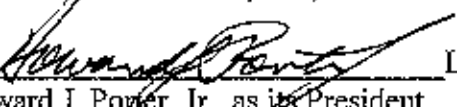
Howard J. Porter, Jr.	President	472 North Dean Road Suite 200 Auburn, Alabama 36830
Philip J. Minor	Treasurer	472 North Dean Road Suite 200 Auburn, Alabama 36830
Matthew S. Rice	Secretary	472 North Dean Road, Suite 200 Auburn, Alabama 36830

**ARTICLE VIII
PRINCIPAL OFFICE AND AGENT**

The principal office of the Association shall be at 472 North Dean Road, Suite 200, Auburn, Alabama 36830, or such other place as may be designated by the Board of Directors or as the business of the corporation may require. All books and records of the Association shall be kept at its principal office unless designated otherwise by the Directors of the Association. The registered agent shall be Howard J. Porter, Jr.

IN WITNESS WHEREOF, the Incorporator, **Tigertown Investments, Inc.**, as the Manager of RPM/Millcreek, LLC, has caused this instrument to be executed by its duly authorized Manager this the 4th day of August, 2004.

RPM/Millcreek, LLC, an Alabama limited liability company
Tigertown Investments, Inc., as its Manager

By:  L.S.
Howard J. Porter, Jr., as its President

Notarization on Following Page

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BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

**BY-LAWS
OF
THE CONDOS AT MILL CREEK HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I
PURPOSE AND APPLICATION**

1.01 **Purpose and Application.** The following are the By-Laws of **THE CONDOS AT MILL CREEK HOMEOWNERS' ASSOCIATION, INC.**, hereinafter referred to as the "Association," a not for profit corporation, organized pursuant to the Alabama Nonprofit Corporation Act, § 10-3A-1 et. seq., Code of Alabama (1975), the Alabama Uniform Condominium Act of 1991 § 35-8A-101 et. seq., Code of Alabama (1975), and formed for the purpose of managing and operating a certain condominium project located in Lee County, Alabama, known as **THE CONDOS AT MILL CREEK, A CONDOMINIUM**, hereinafter referred to as the "Condominium."

The provisions of the By-Laws are applicable to the entirety of the Condominium Property and shall be applicable to additional condominium property which may be added to the Project.

All present and future Owners, tenants and their employees, and any other persons or entities that might use the facilities of the Condominium now or in the future in any manner, are subject to the regulations and provisions set forth in these By-Laws and to the Rules and Regulations established and promulgated by the Association of Owners pursuant to the By-Laws and the Condominium Documents.

The mere acquisition or rental of any of the Unit of the Condominium or the mere act of occupancy of any said Unit will signify that these By-Laws and the provisions of the Declaration and any Rules and Regulations, as they each may be amended from time to time, are accepted, ratified and will be complied with.

**ARTICLE II
PRINCIPAL OFFICE AND AGENT**

2.01 **Principal Office.** The principal office of the Association shall initially be at 472 North Dean Road, Suite 200, Auburn, Alabama 36830 or such other place as may be designated by the Board of Directors or as the business of the corporation may require. All books and records of the Association shall be kept at its principal office. The registered agent for the Association shall be Philip J. Minor.

**ARTICLE III
DEFINITIONS**

3.01 **Declaration Defined.** "Declaration" shall mean that certain Declaration of

**STATE OF ALABAMA
COUNTY OF LEE**

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Howard J. Porter, Jr., whose name as President of Tigertown Investments, Inc., as Manager of RPM/Millcreek, LLC, is signed to the foregoing, and who is known to me, acknowledged before me on this day, that being informed of the contents of this document, he, as such President of Tigertown Investments, Inc., as Manager of RPM/Millcreek, LLC, executed the same voluntarily on the day the same bears date on behalf of the company.

GIVEN under my hand and official seal this the 4th day of August, 2004.

Debbie A. Strong
NOTARY PUBLIC

(SEAL)

My Commission Expires: 11/16/04

This Instrument Prepared by:

Mark A. Franco, Esq.
Hill, Hill, Carter, Franco, Cole & Black P.C.
425 South Perry Street
Montgomery, Alabama 36104

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BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

Condominium of **THE CONDOS AT MILL CREEK, A CONDOMINIUM**, filed in the Office of the Judge of Probate of Lee County, Alabama, as the same may be amended from time to time in accordance with the terms thereof.

3.02 **Other terms Defined.** Other terms used herein shall have the meaning given to them in the Declaration and are hereby incorporated by reference and made a part hereof.

ARTICLE IV MEMBERSHIP

4.01 **Qualification.** The sole qualification for membership shall be ownership of a Unit in the Condominium. No membership may be separated from the Unit to which it is appurtenant except in connection with the financing or mortgaging of such Unit.

4.02 **No Additional Qualifications.** No initiation fees, costs or dues shall be assessed against any person as a condition of the exercise of the rights of membership except such Assessments, levies, and charges as are specifically authorized by the Declaration.

4.03 **Succession.** The membership of each Owner shall automatically terminate upon the conveyance, transfer, or other disposition of an Owner's interest in the Unit. The Owner's membership shall automatically be transferred to the new Owner succeeding to such ownership interest. On the conveyance, transfer, or other disposition of a portion of a Unit Owner's interest, the transferring Owner and the transferee shall each be members of the Association in accordance with the ownership interest of each following such conveyance or transfer; provided, however, no Unit may be entitled to more votes than one (1).

4.04 **Certificates of Membership.** The Association shall issue no shares of stock of any kind or nature whatsoever.

ARTICLE V MEETINGS OF MEMBERS

5.01 **Annual Meeting.** The annual meeting of the members shall be held on the date, at the place, and at the time, as determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and not later than thirteen months after the last preceding annual meeting. It is planned that unless otherwise scheduled, that the annual meeting shall be the first week of August of each year. The purpose of the annual meeting shall be to elect the Directors, and to transact any other business authorized to be transacted by the Members or stated in the notice of the meeting sent to the Members in advance thereof.

5.02 **Special Meeting.** Special meetings of the Members may be called at any time by the President, a majority of the Board of Directors, or on receipt by the Board of a written request of

Members representing at least thirty percent (30%) of the total votes of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

5.03 **Notice of Meeting.** Notice of all meetings of Members shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or By-Laws, any budget changes, and any proposal to remove an officer or a member of the Board. Notices shall be prepared and delivered by or at the direction of the Secretary, and may be delivered either personally or by mail to a Member at the address given to the Board by said Member, or to the Member's Unit if no such address has been given to the Board. Notice of the annual meeting and special meetings shall be mailed or delivered to each Member not less than ten (10) days prior to the meeting.

No notices of annual or special meetings shall be mailed or delivered more than fifty (50) days prior to such meeting. A copy of the notice of any meeting of Members shall also be posted in a conspicuous place on the Condominium Property at least seven (7) days prior to the meeting. Proof of such notice shall be given by the affidavit of the person giving the notice.

5.04 **Waiver of Notice.** Any Member or mortgagee may waive the right to receive notice of the annual meeting by sending a written waiver to the Board of Directors. Notice of specific meetings may be waived before or after the meeting, orally or in writing. Attendance by a Member at an annual or special meeting, either in person or by proxy, shall constitute waiver of notice of such meeting.

5.05 **Quorum.** A quorum of Members for any meeting shall be deemed present throughout such meeting if Members, represented in person or by proxy, holding more than thirty-three percent (33%) of the votes entitled to be cast at such meeting are present at the beginning of such meeting, except as otherwise provided by law, by the Articles of Incorporation, by the Declaration of Condominium, or by the By-Laws.

5.06 **Adjournment for Lack of Quorum.** In the absence of a quorum at any meeting of members, a majority of those Members entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting, from time to time, without notice other than announcement of the meeting, until the requisite number of members, present in person or by proxy, shall be present. At such adjourned meeting at which the requisite number of votes shall then be present, any business may be transacted which might have been transacted at the meeting as originally noticed.

5.07 **Action Without Meeting.** Any action which may be taken at a meeting of the Members may also be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by the number of members required to take such action at a meeting, and is filed with the Secretary of the Association.

5.08 **Order of Business.** The order of business at annual meetings of Member and, as far

as practical, at all other meetings of Members, shall be:

- Call to Order
- Calling of the roll and certifying of proxies
- Proof of notice of meeting or waiver of notice
- Reading and disposal of any unapproved minutes
- Reports of Officers
- Reports of Committees
- Election of Directors
- Unfinished Business
- New Business
- Adjournment

5.09 **Minutes of Meeting.** The minutes of all meetings of Members shall be kept in a book available for inspection by Owners or their authorized representatives.

5.10 **Proviso.** Provided, however, the Developer shall retain control of the Association in accordance with the terms and conditions of the Declaration.

ARTICLE VI MEMBER'S VOTING RIGHTS

6.01 **Number of Votes.** The number of votes to which each Owner is entitled is provided in the Declaration. The votes of a Owner shall not be divisible and each Unit shall only be entitled to one (1) vote.

6.02 **Vote Required to Transact Business.** When a quorum is present, the holders of a majority of the voting rights present, in person or by proxy, shall decide any question brought before the meeting, unless the question is one on which, by express provision of the Act or the Condominium Documents, a different number or manner of voting is required, in which case the express provision shall govern and control the decision in question.

6.03 **Designation of Voting Member.** If a Unit is owned by more than one person, the person entitled to cast the vote or votes for the Unit may be designated by a certificate signed by all of the record Owners and filed with the Secretary of the Association. If owned by a corporation, partnership, trust, or other legal entity, the person entitled to cast the vote or votes may be designated by a certificate of appointment signed by a duly authorized representative of the entity and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership is involved. A certificate may be revoked by any Owner of an interest in the Unit.

6.04 **Failure to Designate a Voting Member.** If a Unit is owned by more than one person

and they do not designate a voting member, the following provisions shall apply:

- (1) If more than one such Owner is present at any meeting, and they are unable to concur in a decision on any subject requiring a vote, they shall lose their right to vote on that subject at that meeting, however, said vote or votes shall be included in the determination as to the presence of, or lack thereof, of a quorum.
- (2) If only one such Owner is present at a meeting, that person shall be entitled to cast the vote or votes pertaining to the Unit.
- (3) If more than one such Owner is present at the meeting, and they concur, any one such Owner may cast the vote or votes for the Unit; provided, however, each Unit shall only be entitled to one (1) vote.

6.05 **Voting by Proxy.** Votes may be cast in person or by proxy, as provided for in the Act. All proxies must be in writing, dated, signed by the Member generating the proxy, and filed with the Secretary of the Association before the appointed time of any meeting to which it applies. A Member may revoke a proxy at any time by delivering a written notice of revocation to the Association, provided; however, if such proxy is revoked after commencement of the meeting, such proxy shall be considered in the determination of a quorum for the meeting in lieu of the vote by the Unit Owner.

6.06 **Conditional Proxy.** The granting of a mortgage on a Unit by its Owner(s) shall be construed as conferring upon the mortgagee a conditional proxy to cast the vote or votes attributable to such Unit at any regular or special meeting of the Association. The condition of such proxy shall be notice by such mortgagee to the Association, in writing, of its intent to exercise the conditional proxy rights granted to it, as mortgagee, by the terms of this subparagraph. In the absence of such written notice, the Association shall be entitled to recognize the Unit Owner(s) votes attributable to their Unit. However, once such written notice is received by the Association, the mortgagee's right to cast the vote or votes attributable to that Unit shall be recognized by the Association until the mortgage is paid in full and satisfied of record, whichever first occurs and mortgagee's vote shall be in lieu of such Unit Owner's vote.

ARTICLE VII BOARD OF DIRECTORS

7.01 **Number.** The affairs of this Association shall be managed by a Board of Directors, consisting of the number as may be selected by the members, however the Board shall consist of no less than three (3) persons nor more than seven (7) persons.

7.02 **Qualification.** Except for Directors appointed by the Developer, each Director shall

be an Owner. If an Owner is a trust, then the beneficiary of the trust may be a Director; and if an Owner is a corporation or partnership, then an officer, partner, or employee of such Owner may be a Director. If a Director shall cease to meet such qualifications during his term, he shall cease to be a Director and his place on the Board shall be deemed vacant.

7.03 **Appointment by Developer.** The initial Board of Directors, as well as successor Directors, shall be appointed by the Developer/Declarant, and may be removed by the Developer/Declarant at any time. The Developer/Declarant shall have the right to appoint and remove Directors in accordance with the terms of the Declaration. The Directors appointed by the Developer need not be Owners.

7.04 **Nomination for Election.** Nomination for election to the Board of Directors shall be made from the floor at the annual meeting of Members or at any other meeting of Members called for the purpose of electing Directors. Nominations shall also be made by a nominating committee appointed by the Board prior to the annual meeting of the Members or prior to any other meeting of members called for the purpose of electing Directors.

7.05 **Initial Election of Directors.** At such time as the Owners are entitled to elect one or more Directors, in accordance with the terms of the Act and the Declaration, the Association shall call a meeting of the Members to elect the Director(s). The Association shall give not less than ten (10) days nor more than fifty (50) days notice of the meeting to each Member. The election shall be conducted in the manner specified in Paragraph 7.06.

7.06 **Election of Directors.** Directors shall be elected at the annual meeting of Members. The election shall be by secret ballot (unless dispensed with by unanimous consent), and each Member shall be entitled to vote for each vacancy. There shall be no cumulative voting. Those candidates receiving the greatest number of votes cast either in person or by proxy shall be elected.

7.07 **Term.** Each Director elected by the Members shall hold office until the next annual meeting of the Members, and until his successor shall be elected and qualified, or until he resigns or is removed in any manner provided elsewhere herein. Each Director appointed by the Developer shall hold office until he resigns, is removed by the Developer, or his term expires as provided for herein and in the Declaration.

7.08 **Vacancies.** Any vacancy in the position of a Director elected by the Members of the Association shall be filled by a majority vote of the remaining Directors, and any Director so elected shall hold office for a term equal to the unexpired term of the Director whom he succeeds. Any vacancy in the position of a Director appointed by the Developer shall be filled by the Developer, except as provided in the Act.

7.09 **Removal.** Any Director (except for such Director as may be appointed by the Developer) may be removed with or without cause by the concurrence of two-thirds (2/3) of the

votes of the Association in accordance with the provisions of the Act. The vacancy in the Board of Directors so created shall be filled by the Members at the same meeting.

7.10 **Compensation.** A Director shall not receive any compensation for any service he may render to the Association as a Director; provided, however, that any Director may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of this duties.

7.11 **Proviso.** Provided, however, the Developer shall retain control of the Association in accordance with the terms and conditions of the Declaration.

ARTICLE VIII MEETINGS OF DIRECTORS

8.01 **Regular Meetings.** Regular meetings of the Board of Directors shall be held annually at such place, and at such time and date as the Board shall designate. Notice of the regular meetings shall be given to each Director, personally or by mail, telephone, or telegraph, and shall be transmitted at least fourteen (14) days prior to the meeting.

8.02 **Special Meeting.** Special meetings of the Directors may be called by the President at any time, and must be called by the President or Secretary at the written request of a majority of the Directors. A notice of the meeting stating the time, place and purpose of the meeting shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the meeting.

8.03 **Open Meetings.** All duly called meetings of the Board of Directors shall be open to all members of the Association, and notice of such meetings shall be posted conspicuously on the Condominium Property at least forty-eight (48) hours prior to the meeting, except in the event of an emergency.

8.04 **Waiver of Notice.** Any Director may waive notice of a meeting either before or after the meeting, or may consent to the holding of a meeting without notice. Attendance by any Director at a meeting shall constitute waiver of notice of that meeting, except when attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business on the grounds that the meeting was not lawfully called.

8.05 **Quorum.** A quorum shall consist of the Directors entitled to cast a majority of the votes of the entire Board of Directors. The acts of the Directors approved by a majority of the votes present at a meeting at which a quorum is present at the commencement of the meeting shall constitute the acts of the Board of Directors. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such a Director for the purpose of determining a quorum.

8.06 **Action Without Meeting.** Any action permitted or required to be taken at a meeting of the Directors may be taken without a meeting if written consent setting forth the action so taken shall be signed by all the Directors, and filed with the minutes of the proceedings of the Board.

8.07 **Presiding Officer.** The presiding officer of the Directors' meeting shall be the President. In the absence of the President, the Directors present shall designate one of their number to preside.

8.08 **Minutes of Meetings.** The minutes of all meetings of the Board of Directors shall be kept in a minute book available for inspection by Unit Owners, or their authorized representatives, or by Directors at any reasonable time.

8.09 **Order of Business.** The order of business at a Directors' meetings shall be:

Call of Roll
Proof of due notice of meeting
Reading and disposal of unapproved minutes
Reports of Officers and Committees
Election of Officers
Unfinished Business
New Business
Adjournment

ARTICLE IX POWERS AND DUTIES OF THE DIRECTORS

9.01 **Specific Powers.** The Board of Directors shall have the power to exercise all powers, duties, and authority vested in the Association by the Act, the Declaration, or these By-Laws, except for such powers and duties reserved thereby to the Members or the Developer. The powers and duties of the Board shall include, but shall not be limited to, the following:

- (1) To elect and remove officers of the Association as hereinafter provided.
- (2) To administer the affairs of the Association and the Condominium Property.
- (3) To maintain bank accounts on behalf of the Association and to designate signatories required thereof.
- (4) To sell, lease, mortgage, or otherwise deal with Units acquired by the Association.
- (5) To pay the cost of all taxes and utilities assessed against the Condominium

that are not assessed and billed to the Owners of individual Units.

(6) To borrow money on behalf of the Association when required in connection with the operation, care, upkeep, and maintenance of the Common and Limited Common Elements, provided, however, that the consent of at least two-thirds (2/3) of the votes of the Members present at a meeting called for such purposes, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these By-Laws, shall be required for the borrowing of such money.

(7) To estimate the amount of the annual budget and to make, levy, enforce, and collect Assessments against Owners to defray the costs, expenses, and losses for the Condominium, and to provide adequate remedies for failure to pay such Assessments.

(8) To use the proceeds of Assessments in the exercise of its powers and duties.

(9) To maintain, repair, replace, and operate the Condominium Property, including the reasonable right of entry upon any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the project and the right to grant permits, licenses, and easements over the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the project.

(10) To purchase insurance on the Property, and to purchase insurance for the protection of the Association and its Members, and the members of the Board of Directors, Officers of the Association and Developer when acting on behalf of or in connection with the Association.

(11) To reconstruct improvements after casualty and to further improve the Property.

(12) To make and amend reasonable Rules and Regulations respecting the use of the Property and the operation of the Condominium.

(13) To enforce by legal means the provisions of the Act, the Declaration, the Articles of Incorporation, these By-Laws, and the Rules and Regulations for the use of the Property.

(14) To contract for the management and operation of the Property and to delegate to such managing agent 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 membership of the Association; notwithstanding the foregoing the Property may be managed and operated by the Developer or a company affiliated with Developer.

(15) To contract for the management or operation of portions of the Common Elements of the Condominium susceptible to separate management or operation, and to lease such portions.

(16) To retain attorneys and accountants.

(17) To employ personnel to perform the services required for proper operation of the Condominium.

(18) Except as prohibited in the Declaration or the Act, to purchase a Unit of the Condominium for the purposes authorized in the Declaration.

(19) To maintain a class action and to settle a cause of action on behalf of Owners with reference to the Common Elements, the roof and structural components of a building or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a building as distinguished from such elements serving only one Unit; and to bring an action and to settle the same on behalf of two or more of the Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Elements or more than one condominium Unit or Parking Space; all as the Board deems advisable.

(20) To procure such fidelity bonds, as the Board deems advisable, covering officers and employees of the Association handling and responsible for the Association's funds and personal property, and to procure Directors' and Officers' liability insurance, if the Board deems it advisable, and the premiums of such bonds and insurance shall be paid by the Association as common expenses.

9.02 **Committees.** The Board of Directors may, by resolution, appoint such committees as deemed appropriate in carrying out its purpose, and such committees shall have the powers of the Board of Directors for the management of the affairs and business of the Association to the extent provided in the resolution designating such a committee. Any such committee shall keep regular minutes of its proceedings and shall report the same to the Board of Directors.

9.03 **Managing Agent.** The Board of Directors shall be authorized to employ the services of a manager or managing agent, who may either be a Director, Officer, or Employee of the Association or the Developer, or an independent person or firm qualified to manage the Property and affairs of the Condominium under the supervision of the Board. The compensation paid to any such manager or managing agent shall be in the amount established from time to time by the Board.

ARTICLE X OFFICERS

10.01 **Elections.** The executive officers of the Association shall be a President, a Vice-President, a Secretary and/or a Treasurer. The officers shall be elected annually by the Board of Directors. Any two or more offices may be held by the same person, except the President shall not also be the Secretary.

10.02 **Term.** Each officer shall hold office for a term of one year or until his successor shall have been appointed or elected and qualified, provided that any officer may succeed himself.

10.03 **Special Appointments.** The Board may appoint such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

10.04 **Resignation and Removal.** Any Officer may be removed from office either with or without cause by the vote of a majority of the Directors present at any meeting. Any Officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of receipt or at any time later specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

10.05 **Vacancies.** A vacancy in any office shall be filled by a majority vote of the Directors at any meeting. An Officer elected to fill a vacancy shall hold office for a term equal to the unexpired term of the Officer he succeeds.

10.06 **Compensation.** An Officer shall not receive any compensation for any service he may render to the Association as an Officer; provided, however, that any Officer may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties.

10.07 **Duties of the President.** The President, who shall be a Director, is the Chief Executive Officer of the Association, and shall have all of the powers and duties that are usually vested in the office of President of a condominium association, including but not limited to the following powers:

- (1) To preside over all meetings of the Members and of the Board.
- (2) To sign as President all deeds, contracts, and other instruments that have been duly approved by the Board.
- (3) To call meetings of the Board whenever he deems necessary in accordance with the rules.

(4) To have the general supervision, direction and control of the affairs of the Association.

(5) To, along with the Secretary, prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

10.08 **Duties of the Vice President.** The Vice-President, who shall be a Director, shall have all the powers and duties that are usually vested in the office of the Vice-President of a condominium Association, including but not limited to the following powers:

(1) To perform the duties and exercise the powers of the President, in the absence or disability of the President.

(2) To assist the President in the exercise of his powers and the performance of his duties.

10.09 **Duties of the Secretary.** The Secretary, who shall be a Director, shall have all of the powers and duties that are usually vested in the secretary of a condominium Association, including but not limited to the following powers:

(1) To keep a record of all meetings and proceedings of the Board and of the Members.

(2) To keep the seal of the Association, if any, and affix it on all papers requiring said seal.

(3) To prepare and serve such notices of meetings to the Board and the Members required either by law or by these By-Laws.

(4) To keep current records showing the Members of the Association together with their addresses.

(5) To sign as Secretary all deeds, contracts, and other instruments which have been duly approved by the Board, if said instrument requires a second Association signature.

(6) To, along with the President, prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

(7) To institute on behalf of the Association suits for assessments, dues, etc. and to take actions in collection of such amounts.

10.10 **Duties of the Treasurer.** The Treasurer shall be the financial officer of the

Association, and shall have all powers and duties that are usually vested in the treasurer of a condominium Association, including but not limited to the following powers:

- (1) To receive and deposit in such bank or banks as the Board may from time to time direct, all of the funds of the Association.
- (2) To be responsible for and supervise the maintenance of books and records to account for such funds and other Association assets.
- (3) To disburse and withdraw said funds as the Board may from time to time direct, and in accordance with prescribed procedures.
- (4) To prepare and distribute the financial statements of the Association.
- (5) To prepare a record of all receipts and expenditures.
- (6) To prepare an account for each Unit, setting forth any shares of Common Expenses or other charges due, the due dates thereof, the present balance due and any interest in Common Surplus.
- (7) To institute on behalf of the Association suits for assessments, dues, etc. and to take actions in collection of such amounts.

ARTICLE XI FISCAL MANAGEMENT

11.01 **Fiscal Year.** The fiscal year of the Association shall be such as shall from time to time be established by the Association.

11.02 **Annual Budget.** The Board of Directors shall adopt a budget for each fiscal year in accordance with the Act. The annual budget of the Association shall be detailed and shall show the amounts budgeted by accounts and expense classifications. Expenses shall be estimated for each category and item of the Common Expenses. The budget shall also include reserve accounts for capital expenditures, deferred maintenance, reserves, and contingencies. The amount reserved shall be computed by means of a formula that is based on the estimated life and estimated replacement cost of each reserve item. The budget shall also set forth each Unit Owner's proposed Assessment for Common Expenses. Copies of the budget and proposed Assessments shall be transmitted to each Member in accordance with the Act.

11.03 **Adoption of the Annual Budget.** The Board of Directors shall prepare or cause to be prepared a proposed annual budget for each fiscal year of the Association. Within thirty (30) days after the adoption of any proposed budget for the Condominium, the Board shall provide a copy of

the budget to all Unit Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) days nor more than thirty (30) days after delivery or mailing of the proposed budget to the Unit Owners. Unless at that meeting a majority of all the 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 periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The Board shall furnish copies of the final annual budget to each Unit Owner within thirty (30) days after the adoption.

11.04 **Assessments.** Assessments (which are sometimes referred to as Condominium Fees or Dues) for Common Expenses shall be made in accordance with the Declaration, the Act and these By-Laws. Assessments shall be collected by the Association on a monthly basis as follows: on or before the first day of each month of the fiscal year for which the Assessments are made, each Unit Owner shall pay one-twelfth (1/12th) of his share of the Common Expenses for such year as shown by the annual budget. The Assessments of the Common Expenses shall be as set forth in the Declaration, but the yearly Assessment for Common Expenses for each Owner shall be in proportion to his relative ownership interests in the Common Elements. The Board of Directors may cause to be sent to each Owner, on or before the first day of each month, a statement of the monthly Assessment. However, the failure to send or receive such a statement shall not relieve the Owner of his obligation to make timely payment of the monthly Assessment. If the Board shall not approve an annual budget or shall fail to determine new monthly Assessments for any year, or shall be delayed in doing so, each Owner shall not be relieved of his obligation to pay his Assessment by abandonment of his Unit or by lack of use of the Common or Limited Common Elements. The collection for Assessments shall begin at such time as the first Unit is conveyed by the Developer. Notwithstanding anything to the contrary in the foregoing, for so long as the Developer shall have the right to appoint, remove or designate any officer or any member of the Board of Directors, Developer shall have the option to either (1) fund any budget deficit of the Association, or (2) pay the proportionate share of Common Expenses or Limited Common Expenses as assessed to each Unit owned by Developer.

11.05 **Reserves for Replacements.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and those Limited Common Elements which the Association may be obligated to maintain. The fund shall be maintained out of regular Assessments.

11.06 **Depository.** The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Directors.

11.07 **Lien for Expenses.** If any Owner shall fail or refuse to make any payment of the Common Expenses or other Assessment or fine imposed against him when due, the amount due, together with costs, reasonable attorney's fees, and interest thereon at the maximum percentage rate

as may then be permitted under the laws of the State of Alabama, from and after the date said Common Expenses or other Assessments or fines become due and payable in accordance with applicable law, shall constitute a lien on the interest of the Owner in the Property.

11.08 **Priority of Lien.** Any lien of the Homeowners' Association shall be subject to the rules of priority as stated in the Declaration and other applicable state laws.

11.09 **Default.**

(1) In the event an Owner does not pay any sums, charges or Assessments required to be paid to the Association within thirty (30) days from the due date, the Association may foreclose the lien encumbering the Unit created by non-payment of the required monies in the same fashion as mortgage liens on real estate are foreclosed; provided that thirty (30) days prior notice of the intention to foreclose shall be mailed, postage prepaid, to the Owner and to all persons having a mortgage lien or other interest of record. The Association shall be entitled to the appointment of a Receiver, if it so requests. The Association shall have the right to bid on the Unit at a foreclosure sale and to acquire, hold, mortgage and convey the same. In lieu of foreclosing its lien, the Association may bring suit to recover a money judgment, brought by or on behalf of the Association against an Owner, and the losing defendant shall pay the cost thereof, together with a reasonable attorney's fee.

(2) If the Association becomes the Owner by reason of foreclosure, it shall offer said Unit for sale and at such time as a sale is consummated it shall deduct from such proceeds all sums of money due it for monthly Assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the re-sale of the Unit, which shall include but not be limited to advertising expenses, real estate brokerage fees, abstract or title insurance costs, and any expenses of repair. All moneys remaining after deducting the foregoing items of expenses shall be returned to the former Owner in question.

11.11 **Supplemental Assessments.** If during the course of any fiscal year, it shall appear to the Board that the monthly Assessments, as determined in the annual budget, are insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency. Copies of the supplemental budget shall be delivered to each Owner, and thereupon a supplemental Assessment shall be made to each Owner for his proportionate share of the supplemental budget.

11.12 **Annual Statement.** Within sixty (60) days after the end of each fiscal year, the Board shall cause to be furnished to each Owner, a statement for the year so ended showing the receipts and expenditures of the Association, and such other information as the Board may deem desirable. Said unaudited financial statement shall be available within 120 days of the Homeowners' Association fiscal year end. If the Condominium consists of fewer than fifty (50)

Owners and if there is no audited statement available, the Condominium Association must allow any mortgage holder to have an audited statement prepared at such mortgage holder's own expense.

11.13 **Accounting Records.** The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirements of the Act. The Board shall cause to be kept, in accordance with generally accepted accounting principles, a record of all receipts and expenditures; and a separate account for each Owner showing the Assessments or other charges due, the due dates thereof, the present balance due, and any interest in Common Surplus. Such records shall be open to inspection by Owners and their authorized agents at reasonable times.

11.14 **Information.** The Association shall be required to make available to Owners, lenders, and to holder, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, or other Rules and Regulations concerning the Project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Any copying costs shall be borne by the party requesting inspection. In addition to the above, any holder of a first mortgage is entitled, upon written request, to a financial statement for the immediately preceding fiscal year.

11.15 **Fidelity Bonds.** Fidelity Bonds shall be required by the Board from all officers and employees of the Association and from any manager handling or responsible for Association funds and from any employee, agent or subcontractor of a manager handling or responsible for Association funds. The amount of such bonds shall be determined by the Directors, but shall be at least the amount of one hundred and fifty percent (150%) of the total annual Assessments against Members for recurring expenses. The premiums on such bonds shall be paid by the Association.

11.16 **Lender's Notices.** Upon written request to the Homeowners' Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any mortgage holder, insurer or guarantor will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage.
- (b) Any 30-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the mortgage.
- (c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Homeowners' Association.
- (d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

**ARTICLE XII
OWNER OBLIGATIONS AND COVENANTS**

12.01 **Assessment.** Every Owner of any Unit in the Condominium shall contribute pro rata toward the expense of administration, maintenance, alteration, repair and improvement of the Condominium, as provided in the Articles, the Declaration or these By-Laws. Each Assessment against a Unit shall also be the personal obligation of the Owner at the time the Assessment fell due. Such personal obligation shall not pass to successors in title unless assumed by such successors, or required by applicable law.

12.02 **Maintenance and Repair.** Every Owner of any Unit in the Condominium shall promptly perform all maintenance and repair work, as provided in the Articles, the Declaration or these By-Laws. An Owner shall reimburse the Association for any expenditures incurred in repairing or replacing any Common Areas or facilities damaged through the Owner's fault.

12.03 **Use.** The Condominium Property shall be utilized in accordance with the provisions of the Declaration, these By-Laws, and the Rules and Regulations of the Association.

**ARTICLE XIII
RULES AND REGULATIONS**

13.01 **Rules and Regulations.** The Board of Directors may from time to time adopt, modify, amend, or add to Rules and Regulations concerning the use of the Condominium Property; provided, however, sixty-seven percent (67%) of the Members may overrule the Board with respect to any such Rules and Regulations or modifications thereof or any amendments or additions thereof. Copies of such Rules and Regulations, or any amendments, additions or modifications, shall be delivered to each Owner not less than fourteen (14) days prior to the effective date thereof. No rule or regulation that is in conflict with the Condominium Documents shall be adopted.

**ARTICLE XIV
AMENDMENTS TO THE BY-LAWS**

14.01 **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

14.02 **Adoption.** Except in the cases where this document may be amended by Developer/Declarant under the terms hereof or the Act, the By-Laws may be altered, amended, or repealed or new By-Laws may be adopted by the affirmative vote or agreement of Owners to which at least sixty six and two thirds percent (66 2/3%) of the votes in the Association are allocated. In addition, amendments of a material nature (as defined below) must be agreed to by eligible mortgage holders (as defined below) who represent at least 51% of the votes of Unit estates that are subject to mortgages held by eligible holders. Eligible mortgage holders are those holders of a first mortgage

on a Unit estate who have submitted a written request that the Owner's Association notify them on any proposed action requiring the consent of a specific percentage of eligible mortgage holders. Amendments of a material nature include a change to any of the provisions governing the following:

- voting rights
- increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- reductions in reserves for maintenance, repair, and replacement of Common Elements or Limited Common Elements;
- responsibility for maintenance and repairs;
- reallocation of interests in the general or Limited Common Elements, or rights to their use;
- redefinition of any Unit boundaries;
- convertibility of Units into Common Elements or vice versa;
- hazard or fidelity insurance requirements;
- imposition of any restrictions on the leasing of Units
- imposition of any restrictions on an Owner's right to sell or transfer his or her Units;
- a decision by the Homeowners' Association to establish self-management if professional management had been required previously by the project documents or by an eligible mortgage holder;
- restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or
- any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Implied consent and approval may be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

14.03 **Prohibited Amendments.** No amendment may be adopted that would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges, or priorities granted to the Developer without the consent of the Developer. No amendment that is in conflict with the Articles, the Declaration or the Act shall be adopted.

14.04 **Recording.** Any amendment shall become effective when recorded in the Office of the Judge of Probate of Lee County, Alabama, in accordance with the Act.

ARTICLE XV MISCELLANEOUS

15.01 **Construction.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of gender shall be deemed to include all genders.

15.02 **Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision hereof.

15.03 **Parliamentary Rules.** Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Act, the Declaration, or these By-Laws.

15.04 **Conflicts.** In the event of any conflict between the provisions of these By-Laws and the Declaration, the Declaration shall govern, except to the extent the Declaration is inconsistent with the Act.

15.05 **Compliance.** These By-Laws are set forth to comply with the requirements of the Alabama Nonprofit Corporation Act and the Alabama Uniform Condominium Act of 1991 (collectively, the "Act") and shall be considered an appendage to the Declaration filed prior hereto in accordance with said Acts. In case any of these By-Laws conflict with the provisions of said statutes, it is hereby agreed and accepted that the provisions of the Acts will apply.

I certify that the above first set of By-Laws of **THE CONDOS AT MILL CREEK HOMEOWNERS' ASSOCIATION, INC.**, were adopted by the Board of Directors at its regular meeting held on the 4th day of August, 2004, in accordance with the provisions of applicable law.


President

CONDO 7A 474
Recorded In Above Book and Page
08/09/2004 12:33:54 PM
BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

EXHIBIT "D"

THE CONDOS AT MILL CREEK

BUILDING #	UNIT #	SQUARE FOOTAGE	PERCENTAGE OWNERSHIP COMMON ELEMENT
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BILL ENGLISH
PROBATE JUDGE
LEE COUNTY

Exhibit "D"
The Condos at Mill Creek

Percentage Ownership of Common Elements

*Pertains to Budgeted Reserves and Operating Costs Exclusive of
 Estimated Reserves and Operating Costs Associated with Garage/Storage
 Units in Buildings One Through Four.*

<u>Unit #</u>	<u>Square Footage</u>	<u>Unit Type</u>	<u>Percentage Ownership of Common Element</u>
A101	1,307	3BR/2BA	2.098%
A102	1,307	3BR/2BA	2.098%
A103	1,307	3BR/2BA	2.098%
A104	1,307	3BR/2BA	2.098%
A201	1,307	3BR/2BA	2.098%
A202	1,307	3BR/2BA	2.098%
A203	1,307	3BR/2BA	2.098%
A204	1,307	3BR/2BA	2.098%
B101	1,128	2BR/2BA	1.811%
B102	1,128	2BR/2BA	1.811%
B103	1,128	2BR/2BA	1.811%
B104	1,128	2BR/2BA	1.811%
B201	1,128	2BR/2BA	1.811%
B202	1,128	2BR/2BA	1.811%
B203	1,128	2BR/2BA	1.811%
B204	1,128	2BR/2BA	1.811%
C101	1,128	2BR/2BA	1.811%
C102	1,128	2BR/2BA	1.811%
C103	1,128	2BR/2BA	1.811%
C104	1,128	2BR/2BA	1.811%
C201	1,128	2BR/2BA	1.811%
C202	1,128	2BR/2BA	1.811%
C203	1,128	2BR/2BA	1.811%
C204	1,128	2BR/2BA	1.811%
D101	1,128	2BR/2BA	1.811%
D102	1,128	2BR/2BA	1.811%
D103	1,128	2BR/2BA	1.811%
D104	1,128	2BR/2BA	1.811%
D201	1,128	2BR/2BA	1.811%
D202	1,128	2BR/2BA	1.811%
D203	1,128	2BR/2BA	1.811%
D204	1,128	2BR/2BA	1.811%
E101	1,128	2BR/2BA	1.811%
E102	1,128	2BR/2BA	1.811%
E103	1,128	2BR/2BA	1.811%
E104	1,128	2BR/2BA	1.811%
E201	1,128	2BR/2BA	1.811%
E202	1,128	2BR/2BA	1.811%
E203	1,128	2BR/2BA	1.811%

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E204	1,128	2BR/2BA	1.811%
F101	1,128	2BR/2BA	1.811%
F102	1,128	2BR/2BA	1.811%
F103	1,128	2BR/2BA	1.811%
F104	1,128	2BR/2BA	1.811%
F201	1,128	2BR/2BA	1.811%
F202	1,128	2BR/2BA	1.811%
F203	1,128	2BR/2BA	1.811%
F204	1,128	2BR/2BA	1.811%
G101	840	1BR/1BA	1.348%
G102	840	1BR/1BA	1.348%
G103	840	1BR/1BA	1.348%
G104	840	1BR/1BA	1.348%
G105	840	1BR/1BA	1.348%
G106	840	1BR/1BA	1.348%
G107	840	1BR/1BA	1.348%
G108	840	1BR/1BA	1.348%
Total	62,296	Total	100.0%

* Unit Sizes Based Upon Net Living Area Plus Storage Closet on Balcony/Patio

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Exhibit "D1"
The Condos at Mill Creek

% Ownership of Common Elements Pertaining to Garage/Storage Operating Expenses/Reserves

Pertains to Budgeted Reserves and Operating Costs Applicable to Garage/Storage Units in Buildings One Through Four Only

<u>Bldg.</u>	<u>Unit #</u>	<u>Square Footage</u>	<u>Unit Type</u>	<u>Percentage Ownership of Common Element Associated w/Gar./Stg.**</u>
1	G1*	337	Garage & Stg. Unit	6.667%
1	G2*	337	Garage & Stg. Unit	6.667%
1	G3*	337	Garage & Stg. Unit	6.667%
1	G4*	337	Garage & Stg. Unit	6.667%
2	G5*	337	Garage & Stg. Unit	6.667%
2	G6*	337	Garage & Stg. Unit	6.667%
2	G7*	337	Garage & Stg. Unit	6.667%
2	G8*	337	Garage & Stg. Unit	6.667%
3	G9*	446	Garage & Stg. Unit	6.667%
3	G10*	337	Garage & Stg. Unit	6.667%
3	G11	267	Garage	6.667%
3	G12	267	Garage	6.667%
3	G13	271	Garage	6.667%
4	G14*	337	Garage & Stg. Unit	6.667%
4	G15*	337	Garage & Stg. Unit	6.667%
	Total	4,958	Total	100.0%

* Includes a Storage Unit Attached to the Building.

** Allocation based on Unit basis and not on square footage of the unit

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EXHIBIT "E"
PROPOSED FIRST YEAR BUDGET

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**Proposed First Year Budget
The Condos at Mill Creek
Auburn, AL
As of 08/04/04**

Unit Type	Number	Size	Total SF	% of Total
1 BR	8	840	6,720	1.348%
2 BR	40	1,128	45,120	1.811%
3 BR	8	1,302	10,456	2.088%
	66	1,112	62,296	

Unit Mix	Type	Number	Size	Total SF	% of Total	Annual	Monthly	\$/Unit
Utilities	Electric - Common Areas					\$5,816	\$486	\$104.21
	Water & Sewer - Landscaps & Pool					\$2,500	\$208	\$44.64
	Waste Removal					\$3,000	\$250	\$53.57
Operations	Landscaps & Grounds					\$16,000	\$1,333.33	\$285.71
	Building Maintenance					\$8,947	\$745.58	\$157.50
	Pool Maintenance & Chemicals					\$3,600	\$300.00	\$63.64
	Pest Control					\$1,320	\$110.00	\$23.57
Insurance	Fire & Extended Coverage					\$13,894	\$1,157.85	\$248.11
	Directors & Officers					\$897	\$74.75	\$16.02
Administration	Professional Management					\$10,080	\$840.00	\$180.00
	Accounting & Legal					\$2,000	\$166.67	\$35.71
	Office Supplies & Postage					\$400	\$33.33	\$7.14
	Miscellaneous					\$1,000	\$83.33	\$17.86
Reserves								
	Asphalt Paving	\$110,000	15 year			\$7,333	\$611.11	\$130.95
	Roof shingles	\$50,000	25 year			\$2,000	\$166.67	\$35.71
	Painting	\$25,000	6 year			\$5,833	\$486.11	\$104.17
	FF&E (Pool Furniture/Pool Equipment/Exercise Equipment, etc.)	\$16,000	6 year			\$2,667	\$222.25	\$46.54
	Total Annual Budget (Year 1)					\$84,541	\$7,045.04	\$1,679.85

Association Dues Estimate

By Unit Type	Number	Size	Total SF	% of Total	Unit \$/Mo	Monthly Dues
1 BR	8	840	6,720	1.348%	\$95.00	\$760.00
2 BR	40	1,128	45,120	1.811%	\$127.57	\$5,102.80
3 BR	8	1,302	10,456	2.088%	\$147.81	\$1,182.48
	66	1,112	62,296			\$7,045.28

Notes:
Allocation is on a Gross Square Footage area inclusive of Living Area plus Storage Closets on Balconies/Patios

Reserves & Operating Expense Budget for Garage and Storage Buildings

Unit Mix	Type	Number	Avg. Size	Total SF	% of Total	Annual	Monthly
Garages (12 w/Stg. Unit Attached)		15	331	4,958	6.667%		
Reserves							
	Roll Up and Exterior Door Replacements					\$9,450	\$787.50
	Roof shingles					\$8,000	\$666.67
	Painting					\$5,000	\$416.67
	Building Maintenance					\$562.90	\$46.91
	Insurance					\$1,105.61	\$92.13
	Common Electrical (Est. for Power)					\$464.44	\$38.70
	Total Annual Budget (Year 1)					\$3,748.88	\$312.42

Association Reserves and Operating Expense Budget Estimate (Garage/Storage Buildings)

By Unit Type	Number	Size	Total SF	% of Total	Unit \$/Month	Monthly Reserves
Garage	15	331	4,958	6.667%	\$20.83	\$312.42

* Twelve of the Garage Units include a Self Storage Unit. Three of the garages do not have self storage units. Budget allocation based on the total number of garages. Allocation for garage/storage area is on a unit basis and not a square footage basis.

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EXHIBIT "F"

[RULES AND REGULATIONS CONCERNING USE]

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**RULES AND REGULATIONS CONCERNING USE
OF
THE CONDOS AT MILL CREEK, A CONDOMINIUM**

THE CONDOS AT MILL CREEK, A CONDOMINIUM, ("Association"), acting through its Board of Directors ("Board"), has adopted the following Rules and Regulations ("Rules and Regulations"). These Rules and Regulations may be amended from time to time by resolution of the Board.

As used in these Rules and Regulations, the following terms shall have the meanings as defined in the Declaration of Condominium, (Declaration").

"Association" and shall also include the Managing Agent when the Managing Agent is acting on behalf of the Association.

"Building" or "Buildings"

"Board" shall mean the Board of Directors of the Association.

"By-Laws"

"Condominium" or "Condominium Property"

"Common Element"

"Developer"

"Limited Common Element"

"Parking Area"

"Parking Space"

"Unit"

"Unit Owner" or "Owner"

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1. The Association reserves the right to alter, amend, modify, repeal or revoke these Rules and Regulations and any consent or approval given hereunder at any time by resolution of the Association or the Board.

2. All Owners of any Unit are to inform non-owners (tenants, servants, employees, agents, visitors and guests, invitees or licensees of that Owner) of these Rules and Regulations.

3. Owners are reminded that alteration and repair of the Limited Common Elements and Common Elements as defined in the Declaration, are the responsibility of the Association, except for those matters which are stated in the Declaration to be the responsibility of a Unit Owner. No work of any kind is to be done upon or affecting those portions of any exterior Building walls or interior boundary walls, structural ceilings and floors, which are the responsibility of the Association without first obtaining the approval required by the Declaration. The Association, its agents and employees, shall at all times have access to the Limited Common Elements as defined in the Declaration, subject only to appropriate notification to Owner except in the case of an emergency. Unit Owners shall have access to the Limited Common Elements which directly adjoin the Unit Owner's Unit. Such access shall not limit availability or access to the Association, its agents and employees. No owner may install any plumbing, wiring, air conditioning equipment or any exteriorly visible improvement without the prior written approval of the Board.

4. The sidewalks, entrances of or appurtenant to any Building shall not be obstructed or used for any other purpose than ingress to and egress from any Building.

5. No article (including, but not limited to, garbage cans, bottles or mats) shall be placed in any of the Common Elements, except those areas specifically designated by the Association. Nothing shall be hung from any exterior doors, walls, windows or roof, or placed upon the window sills of any Building.

6. Each Unit Owner shall keep his Unit in a good state of preservation and cleanliness, and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors or windows thereof, any dirt or other substance.

7. No window guards, signage or other window decorations shall be used in or about any Unit except such as shall have been approved in writing by the Board. Uniformity of window coverages is desired as to color, subsequently white or off-white visible from the exterior, and no foil nor reflective materials shall be used in or on any windows.

8. Nothing shall be done in any Unit or on the Common Elements that may impair the structural integrity of any Building or that may change any Building structurally nor shall anything be altered or constructed on or removed from the common elements, except upon the prior written consent of the Board.

9. No radio or television aerial or satellite dish shall be attached to or hung from the exterior of the Building (other than the porch or patio of any Unit) or in the Common Areas, without approval in writing by the Board, which shall be in the Board's sole discretion, and no sign, notice, advertisement or illumination shall be inscribed or exposed on or at any window or other part of the Building except such as are permitted pursuant to the Declaration or the By-Laws and shall have been approved in writing by the Board; nor shall anything be projected from any window of a Unit without similar approval.

10. No ventilator or air conditioning device shall be installed from a window or through a wall in any Unit without the prior written approval of the Board.

11. All radio, television or other electrical equipment of any kind or nature installed or used in each Unit shall fully comply with all rules, regulations, requirements or recommendations of the local fire department and the public authorities having jurisdiction, and the Unit Owner alone

shall be liable for any damage or injury caused by any radio, television or other electrical equipment in such Unit Owner's Unit.

12. No signs may be displayed except as approved by the Association. This restriction shall not apply to the Developer until after all Units are sold.

13. No Unit Owner shall make or permit any disturbing noises or activity in the Building, or do or permit anything to be done therein, which will interfere with the rights, comforts or conveniences of other Unit Owners. No Unit Owner shall play upon or cause to be played upon any musical instrument, or operate or permit to be operated a phonograph, radio, television set, loud speaker, or other sound amplification device in such Unit Owner's Unit, if the same shall disturb or annoy other occupants of any Building. Owners shall not cause or permit any unusual or objectionable noises or odors to be produced upon or to emanate from their Units, from the Parking Area, Common Elements or Limited Common Elements.

14. The agents of the Board and any contractor or workman authorized by the Board may enter any Unit at any reasonable hour of the day for the purpose of inspecting such Unit for the presence of any vermin, insects or other pests and for the purpose of taking such measures as may be necessary to control or exterminate in a reasonable manner so as not to unreasonably interfere with the use of such Unit for its permitted purposes.

15. The Board or its agent will not retain a pass-key to Units. If the Unit Owner is not personally present to open and permit an entry to his Unit at any time when an entry therein is necessary or permissible under these Rules and Regulations or under the By-Laws, then the Board or its agents (but, except in an emergency, only when specifically authorized by an officer of the Condominium or the Board) may forcibly enter such Unit without liability for damages or trespass by reason thereof (if during such entry reasonable care is given to such Unit Owner's property).

16. No vehicle belonging to a Unit Owner or to a guest, tenant or employee of a Unit Owner shall be parked in such manner as to impede or prevent ready access to any entrance to or exit from any Building by another vehicle nor shall any such vehicle be parked in such a manner as to block or prevent the use and access to any other Parking Space.

17. Unless otherwise authorized by the Association, the Parking Areas may not be used for any purpose other than parking automobiles. No buses, commercial trucks, trailers, boats, recreational or commercial vehicles shall be parked in the Parking Areas or in driveways. All vehicles must have current license plates and be in good operating condition. No vehicles shall be parked on the Condominium Property with conspicuous "For Sale" signs attached.

18. All Owners shall observe and abide by all parking and traffic regulations as posted by the Association or by municipal authorities. Vehicles parked in violation of any such regulations may be towed away at the vehicle owner's sole risk and expense.

19. The Board may from time to time curtail or relocate any portion of the Common Elements, if any, devoted to storage or service purposes.

20. Complaints regarding the service of the Condominium shall be made in writing to the Board.

21. Any consent or approval given under these Rules and Regulations may be added to, amended or repealed at any time by resolution of the Board.

22. Except as permitted under the Declaration and By-Laws, Unit Owners, guests, servants, employees, agents, visitors or licensees shall not at any time or for any reason whatsoever enter upon or attempt to enter upon the roof of any Building.

23. No Unit Owner or any of his agents, servants, employees, licensees or visitors shall at any time bring into or keep in his Unit any flammable, combustible or explosive fluid, material,

chemical or substance, except as shall be necessary and appropriate for the permitted uses of such Unit.

24. Employees and agents of the Association are not authorized to accept packages, keys, money (except for condominium assessments) or articles of any description from or for the benefit of any Owner. If packages, keys (whether for a Unit or an automobile), money or articles of any description are left with the employees or agents of the Association, the Owner assumes the sole risk therefor and the Owner, not the Association, shall be liable for injury, loss or damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith. The Association does not assume any responsibility for loss or damage in such cases. Deliveries requiring entrance to a Unit Owner's Unit will not be accepted without the prior written permission of the Unit Owner accompanied by a written waiver of all liability in connection with such deliveries.

25. If any key or keys are entrusted by a Owner or by his agent, servant, employee, licensee or visitor to any employee of the Association, whether for such Unit Owner's Unit or an automobile, trunk or other item of personal property, the acceptance of the key shall be at the sole risk of such Owner, and the Board shall not be liable for injury, loss or damage of any nature whatsoever, directly or indirectly resulting therefrom or connected therewith.

26. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of any Building or contents thereof without the prior written consent of the Board. No Owner or occupant shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on any Building or which would be in violation of any law. No waste shall be committed in the Common Elements.

27. No group tour or exhibition of any Unit or its contents shall be conducted, nor shall any auction sale be held in any Unit without the consent of the Board.

28. No Owner shall install any plantings on any walkway or entrance except with the permission of the Board.

29. All occupants of Units and Unit Owners must comply with any and all requirements of the Alabama Uniform Condominium Act of 1991, Articles of Incorporation of the Association, By-Laws of the Association, the Declaration, and these Rules and Regulations.

30. No pets are permitted upon the Condominium Property except as provided for in the Declaration. This shall not restrict the use of animals for the seeing impaired or small pets owned by Unit Owners.

31. All rental occupants shall abide by all Rules and Regulations established by the Association or Board and as provided for in the Declaration.

In this document, all singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter.

I certify that the above set out Rules and Regulations were adopted by the **THE CONDOS AT MILL CREEK, A CONDOMINIUM.**, acting through its Board of Directors, at its regular meeting held on the _____ day of August, 2004.

Secretary

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EXHIBIT "G"

GENERAL DESCRIPTION OF IMPROVEMENTS

Please refer to Section 5.05 on Page 7 of the Declaration of Condominium of The Condos at Mill Creek for a general description of the improvements.

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