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 THE BROOKES, A CONDOMINIUM AT AUBURN

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DECLARATION OF CONDOMINIUM  
THE BROOKES,  
A CONDOMINIUM AT AUBURN

THIS DECLARATION is made this 5th day of December, 1985, by Juneman/Eddleman Development Co., an Alabama general partnership (the "Developer"), pursuant to the provisions of the Condominium Ownership Act of Alabama, Code of Alabama 1975, §§ 35-8-1, et seq. (the "Act"), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land:

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property located in Lee County, Alabama on which Developer has constructed six (6) buildings containing a total of eighty-one (81) units, and certain other improvements in accordance with the Map of The Brookes, a Condominium at Auburn, prepared by K. B. Weygand & Associates, Inc. on October 27, 1985 and recorded in ~~Map Book~~ 1, page 176, in the Office of the Judge of Probate of Lee County, Alabama, a copy of which is included in Exhibit C which is attached to this Declaration;

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

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

ARTICLE I

DEFINITIONS

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

(a) "Act" shall mean the Condominium Ownership Act of Alabama, Code of Alabama 1975 §§ 35-8-1, et seq., and as the same may be amended from time to time.

(b) "Association" shall mean The Brookes Owners Association, Inc., a nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, of which all Owners shall be members and which corporation shall administer the operation, management, maintenance, control and administration of the Condominium Property.

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

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

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

(i) The Land;

(ii) The foundations, bearing walls, perimeter walls, structural slabs, and columns;

(iii) The roofs, attics, halls, lobbies, mechanical equipment and storage areas, stairways and entrances and exits or communication ways;

(iv) The compartments or installations of central services such as central air conditioning, ventilation, and heating, power, light, electricity, gas, fire protection, cold and hot water, plumbing, reservoirs, water tanks and pumps, sewer lines, flues, trash compactors, incinerators, and the like, and all similar devices and installations existing for common use;

(v) The premises and facilities, if any, used for the maintenance or repair of the Property;

(vi) All common facilities such as the club house, swimming pools and grounds, tennis and basketball courts, yards and walkways;

(vii) Greens, gardens, balconies and patios, storage sheds, central mail boxes, security houses, service streets and outdoor parking areas;

(viii) All easements, rights or appurtenances affecting or relating to the use of the Condominium Property unless specifically included in any Unit; and

(ix) All other elements (other than Private Elements) desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Property.

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

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

(h) "Condominium Documents" shall mean the Declaration and all Exhibits thereto, the By-Laws, and the Articles of Incorporation of the Association, as the same shall be amended from time to time.

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

(j) "Developer" shall mean Juneman/Eddleman Development Co., an Alabama general partnership, its successors and any assignee, other than an Owner, who shall receive by assignment from the said Juneman/Eddleman Development Co., of all, or a portion of its rights hereunder as such Developer, by an instrument expressly assigning such rights as Developer to such assignee.

(k) "First Phase" shall mean the Condominium Property described in Section 2.01 of this Declaration.

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

(m) "Mortgage" shall mean a first lien Mortgage on one or more Units.

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

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

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

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

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

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

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

(ii) Perimetrical Boundaries: The perimetrical boundaries shall be the vertical planes of the exterior surfaces of the exterior windows, glass doors and entry doors, and the unfinished interior surfaces of the exterior walls,

excluding paint, wallpaper and light coverings, extended to their planer intersections with each other and with the upper and lower boundaries.

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

(r) "Property" or "Condominium Property" shall mean the Land and all improvements and structures erected, constructed or contained therein or thereon, including all buildings, and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, submitted to the provisions of the Act under this Declaration, as amended from time to time.

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

(t) "Second Phase" shall mean the additional property and improvements thereon which may be submitted to this Declaration as provided in Section 2.05 hereof.

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

#### ARTICLE II

##### PROPERTY SUBJECT TO THIS DECLARATION

2.01. Description of Improvements and Identification of Units. The Condominium Property shall consist of six (6) buildings, containing a total of eighty-one (81) Units and Common Elements. A plot plan of the Land and a graphic description of the improvements in which the Units are located identifying each Unit by a number so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions is set forth in the Plan attached hereto as Exhibit C.

2.02. Amendment of Condominium Plan. Developer reserves the right to change the interior design and arrangement of all Units and to alter the boundaries between Units so long as the Developer owns the Units so altered. Changes in the boundaries

between Private Elements, as hereinbefore provided, shall be reflected by an amendment to the Plan, and if necessary, an amendment to this Declaration. An amendment to the Plan or the Declaration reflecting an alteration of the boundaries of the Units owned by Developer need be signed and acknowledged only by the Developer and need not be approved by the Owners and Mortgagees, whether or not such approval may elsewhere be required herein; provided, however, that any change which shall result in a change in the undivided interest in Common Elements or a change in the share of Common Expenses with respect to Owners of Units other than Developer at the time of such change or which shall result in the boundaries of Units (other than the common walls separating the Units owned by the Developer) may not be made without an amendment of this Declaration approved by the Owners and Mortgagees in the manner elsewhere required herein, and provided further that any changes made under this Section 2.02 shall be subject to the provisions of Article VII below.

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

(a) Parking Easement. Each Owner shall have a non-exclusive easement for the use of the outdoor parking area designated on the Plan for parking of automobiles. The Association may grant to an Owner an exclusive easement or license for the use of one or more designated outdoor parking spaces, and the aforesaid nonexclusive parking easements shall be subject and subordinate to the exclusive parking rights granted by the Association. Any such exclusive or non-exclusive easement shall not entitle the Owner to (i) construct any garage, carport or other structure upon the parking space or spaces, or (ii) alter or remove any existing structure upon the parking space or spaces.

(b) Easements for Balconies and Patios. Each Unit Owner shall be entitled to an exclusive easement for the use of any balcony or patio directly accessible from his Unit, but such right shall not entitle an Owner to construct anything thereon or to change any structural part thereof.

(c) Utility Easements. Utility easements are reserved throughout the whole of the Property, including Units, as may be required for utility services (including, without limitation, water, gas, electricity, telephone and cable television) in order to adequately serve the Condominium Units; provided, however, such easements through a Unit shall be only in accordance with the plans and specifications for the building to be constructed, or as the building shall be constructed, unless changes thereto are approved in writing by the Owners of the affected Units.

(d) Air Conditioning Equipment. There are air conditioning compressors which are located in the Common Elements appurtenant to such Units. An easement is hereby reserved in favor of each such Unit for the purpose of placement, maintenance, repair and replacement of the said air conditioning compressors by Developer and the Owners of the appurtenant Unit; provided that no air conditioning compressor shall be placed in any part of the Common Elements other than the present location unless the written approval of the Association shall have first been obtained.

(e) Easements for Ingress and Egress. The Common Elements shall be, and the same are hereby declared to be subject to the following easements:



(1) There exists a perpetual non-exclusive easement of way over all roads, parking areas, walkways, halls and stairways in favor of all Owners for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners, subject to all restrictions in the Condominium Documents.

(ii) A perpetual non-exclusive easement of way running with the land over any and all roads of the Condominium shown in the Plan attached hereto as Exhibit C is hereby reserved for the benefit of the Owner(s) of the property described in Exhibit A-1. This easement will terminate upon the submission of said property to this Declaration as the Second Phase of this Condominium in accordance with the covenants and conditions set forth below.

(f) Easement for Use of Leased or Acquired Property. Each Unit Owner shall have a nonexclusive easement for use of any property hereafter acquired by the Association for the common benefit of the Owners by purchase, lease or otherwise for all normal and proper purposes for which the same are reasonably intended, subject to all restrictions in the Condominium Documents and the Rules and Regulations.

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

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

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

2.04. Ownership of Common Elements. Each Owner shall own an undivided interest in the Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Unit. The extent or amount of such ownership shall be expressed by a percentage relating to each Unit and shall remain constant, unless

changed in accordance with the provisions of Section 2.02 and/or Section 2.05 hereof or by the unanimous approval of all Owners and Mortgagees. The percentage ownership in the Common Elements relating to each Unit is as set forth on Exhibit D attached hereto.

2.05. Plan of Phase Development.

(a) The Developer currently owns the real property described on Exhibit A-1 to this Declaration which consists of approximately 9.0003 acres and is adjacent to the Land on which the First Phase will be located. The Developer may submit said property together with improvements thereon to this Declaration as the Second Phase of this Condominium in accordance with the covenants and conditions set forth below.

(b) The Second Phase of the Condominium Property shall be located on the real property described in Exhibit A-1 and shall consist of five (5) buildings containing a total of approximately 65,000 square feet which buildings may be divided into as many as one hundred twenty (120) units and Common Elements substantially in accordance with the graphic description of the Second Phase identifying each proposed Unit and its approximate location which is attached hereto as Exhibit C-1. All improvements in the Second Phase shall be of comparable style, floor plan, size (as to the size of the individual Private Elements) and quality and will be constructed as part of the overall Condominium Property.

(c) At such time, if ever, as Developer determines that the Second Phase shall be submitted to this Declaration, the Developer will file an amendment to the Declaration in the Probate Office of Lee County, Alabama in order to clearly indicate which property has been submitted to this Declaration which amendment need be signed only by the Developer if the following conditions are satisfied:

(i) The amendment submitting the Second Phase to the Declaration must be filed on or before seven (7) years from date of filing this Declaration; and

(ii) The improvements included in the Second Phase must be substantially completed and ready for occupancy prior to filing the amendment submitting the Second Phase to this Declaration.

(d) Upon filing the amendment submitting the Second Phase to the Declaration as provided in subparagraph (a) above,

(i) the percentage share of each Unit in the First Phase and the Second Phase in the Common Elements and its respective percentage share of assessments for Common Expenses will be automatically adjusted to correspond to the ratio of the floor area of each Unit to the floor area of all Units in the First Phase and the Second Phase. Such adjustment for units in the First Phase shall be as set forth in Exhibit D-1 to this Declaration; and

(ii) the Units in the First Phase and the Second Phase shall be subject to the jurisdiction, function, and duties of the Association and the Owner of each Unit in the First Phase and the Second Phase shall be a member of the Association entitled to cast one vote per Unit on all matters submitted to a vote of the Owners on the same basis as is provided for Owners in the First Phase.

(e) Nothing contained herein shall obligate the Developer to further develop the Condominium Property or having developed the same, to submit it to the Declaration. In the event that the Second Phase is not constructed and/or submitted to the Declaration, the Unit Owners in the First Phase shall not succeed nor be entitled to any ownership in the property not submitted to this Declaration and nothing herein shall be construed as limiting or in any way restricting any other use of such property by the Developer.

ARTICLE III

ORGANIZATION AND MANAGEMENT

3.01. Management of the Condominium Property. Operation and administration of the Condominium Property shall be performed by The Brookes Owners Association, Inc., an Alabama nonprofit corporation. The powers and duties of the Association shall include those set forth in the Act, the Alabama Nonprofit Corporations Act, Code of Alabama 1975 §§ 10-3A-1 et seq., this Declaration, the Articles of Incorporation, and the By-Laws. In addition, the Association shall have the power and authority specifically:

- (a) To purchase one or more Units of the Condominium Property and otherwise acquire, hold, lease, mortgage and convey the same;
- (b) To borrow funds to pay for such expenditures as may be authorized by the provisions of this Declaration;
- (c) To grant leases, easements or licenses for the use of the Common Elements in a manner not inconsistent with the rights of Owners;
- (d) To enter into agreements by which its powers and responsibilities or some of them may be exercised or performed by some other person or persons.

3.02. Members. The members of the Association shall consist of all record Owners of the Units. Change of membership in the Association shall be established by recording in the public records of Lee County, Alabama, the deed or other instrument establishing record title to a Unit of the Condominium Property, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a record Owner and a member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners, tenants and occupants of the Unit shall be subject to and shall comply with the provisions of the Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. The vote for a Unit shall be cast by the record Owner thereof or the duly authorized proxy of the record Owner in the manner provided in the By-Laws. Each Unit Owner is entitled to one vote for each Unit owned by him.

3.03. By-Laws. The By-Laws of the Association shall be in the form attached as Exhibit B to this Declaration, and may be amended from time to time as set forth therein.

ARTICLE IV

ASSESSMENTS

4.01. Liability, Lien and Enforcement. The Association is given the authority to administer the operation and the management of the Condominium Property, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To provide the funds necessary for such proper operation, the Association is hereby granted the right to make, levy, and collect assessments against the Owners of all Units to pay Common Expenses and such other expenses which the Association is authorized to incur under the terms and conditions of this Declaration. In furtherance of said grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation and management of the Condominium Property, the following provisions shall be effective and binding upon the Owners of all Unit:.

4.02. Assessments. All Assessments for the payment of Common Expenses shall be levied against the Owners of all Units, and unless specifically otherwise provided for in this Declaration, each Owner of a Unit and his Unit shall bear the same percentage share of such assessment as the percentage share for the undivided interest in the Common Elements appurtenant to said Unit. The assessments for Common Expenses shall be payable in advance in monthly installments commencing on the purchase of a Unit unless the Board of Directors shall direct payment of assessments in other installments at other times.

4.03. Annual Budget. Within thirty (30) days prior to the beginning of each calendar year, the Board of Directors of the Association shall establish an annual budget for such calendar year, and such budget shall project the Common Expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium Property, including reasonable allowances for contingencies and reserves therefor, in accordance with the Act and this Declaration. Said budget shall take into account any projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. Upon adoption of such annual budget by the Board of Directors of the Association, copies of said budget shall be delivered to each Unit Owner and the assessment for said year shall be established based upon such budget, although failure to deliver a copy of said budget to each Unit Owner shall not affect the liability of the Unit Owner for such assessment. Should the Board of Directors at any time determine in the sole discretion of said Board of Directors that the assessments levied are or may prove to be insufficient for any reason including emergencies and non-payment of any Owner's assessment, the Board of Directors shall have authority to levy such additional assessments as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents. The initial projected and estimated annual maintenance budget for the Condominium Property is attached to the Declaration as Exhibit E.

4.04. Omission of Assessment. The omission by the Association, before the expiration of any year, to fix the assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

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

4.06. Payment of Common Expenses by Unit Owners. All Unit Owners shall be obligated to pay the assessment for Common Expenses adopted by the Board of Directors pursuant to the terms of this Article IV. No Unit Owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale or other conveyance by him of such Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter up to the time of conveyance without prejudice to the purchaser's right to recover from the selling Unit Owner the amounts paid by the purchaser therefor. Whenever any Unit may be sold or mortgaged by the Owner thereof, which sale shall be

concluded only upon compliance with the other provisions of this Declaration, the Association upon written request of the Owner or Purchaser of such Unit shall furnish to the purchaser or proposed Mortgagee (within the time period prescribed by the Act) a statement verifying the status of the payment of any assessment which shall be due and payable to the Association by the Owner of such Unit. Any purchaser or proposed Mortgagee may rely upon such statement in concluding the proposed Mortgage may rely upon mortgage transaction and the Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged when any assessment is outstanding against the Owner of such Unit and such assessment due the Association is in default, whether or not a claim of lien has been recorded by the Association, the proceeds of purchase or mortgage proceeds shall first be applied by purchaser or Mortgagee to the payment of any delinquent assessment or installment due the Association before application of the payment to the Owner.

4.07. Default in Payment of Assessments for Common Expenses.

(a) The payment of any assessment or installment thereof due the Association shall be in default if such assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the maximum legal rate on judgments until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall be entitled to a lien against Units for delinquent assessments. Said lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Owner of each Unit, and such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association. Said lien shall also secure all costs and expenses, including reasonable attorneys fees incurred by the Association in enforcing the lien upon said Unit and its apurtenant undivided interest in the Common Elements. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Alabama. The lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest at the maximum legal rate on judgments on any such advance made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Unit expressly subject to the lien.

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

assessment shall specifically designate that the same secures an assessment levied pursuant to the provisions of Article IV of this Declaration.

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

4.08. Election of Remedies. Institution of a suit at law to collect payment of any delinquent assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection by foreclosure of any sums remaining owing to it. Nor shall proceeding by foreclosure to effect such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association. The Association shall be entitled to bid at any sale held in connection with the foreclosure of the assessment lien and may apply as a cash credit against its bid all sums secured by the lien enforced.

#### ARTICLE V

#### MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY

5.01. The Association's Obligation to Repair. The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the following, the cost of which shall be charged to all Unit Owners as a Common Expense:

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

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

(iii) Portions of the Units contributing to the support of the building, including outside walls and load bearing columns, excluding, however, interior wall and floor surfaces.

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

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

(a) Except for those portions of the Condominium Property which the Association is required to maintain and repair, each Owner shall, at such Owner's expense, maintain the Private Elements attributable to his Unit in good tenantable condition and repair, and shall be responsible for the repair, maintenance and replacement, if necessary, the following items in his Unit:

(i) The fixtures and equipment in his Unit, including the refrigerator, stove and all other appliances within the

Unit; drains, sinks, plumbing and plumbing fixtures and connections within the Unit; electrical panels, wiring, outlets and electric fixtures within the Unit; interior doors, windows, screening and glass; all exterior doors, except the painting of the exterior faces of the exterior doors which shall be the responsibility of the Association; all wall coverings including paint, wallpaper and light coverings; and all flooring including carpeting, vinyl and ceramic tile within a Unit.

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

(b) Each Unit Owner agrees as follows:

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

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

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

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

(v) Not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, or to any outside or exterior portion of the Unit, excluding any alteration or additions made pursuant to the procedure described in subparagraph (iv) above and including, but not limited to, altering in any way exterior doors, affixing shutters to windows or painting any part of the exterior part of his Unit, without the prior written consent of the Association; provided that if such consent is granted, the Unit Owner shall use only a contractor approved by the Association, who shall comply with all Rules and Regulations with respect to the work which may be adopted by the Association and the Unit Owner shall be liable for all damages to another Unit and to the Common Elements caused by any contractor employed by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and

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

(c) The Association shall be obligated to answer any request b/ a Unit Owner for any required approval of a proposed addition,

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

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

5.04. Utilities.

(a) Water shall be supplied to the Units and the Common Elements through one or more building meters and the Association shall pay, as a Common Expense, all charges for water consumed on the Condominium Property together with all sewer charges arising therefrom.

(b) Each Unit Owner shall be required to pay all charges for utilities, including electricity, cable television, and telephone service, used or consumed in his Unit. The electricity serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense.



ARTICLE VI

RESTRICTIONS ON USE OF UNITS AND COMMON ELEMENTS

6.01. Rules and Regulations of the Association. The Association is authorized to promulgate, amend and enforce Rules and Regulations concerning the operation and use of the Condominium; provided that such Rules and Regulations are not contrary to or inconsistent with the Act and the Condominium Documents. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners, tenants, and occupants of the Units and any person who uses any part of the Condominium property in any manner, are subject to, and shall comply with the provisions of the Condominium Documents and the Rules and Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any one person shall constitute his agreement to be subject to and bound by the provisions of the Condominium Documents and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof.

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

(a) Unless a different use is designated for a Unit in the Plan, each Unit is hereby restricted to residential use by the Owner thereof, his immediate family, guests, invitees, lessees or renters, whether the Unit be leased on a temporary or permanent basis, daily or for a longer period. The parking spaces shall be used exclusively for the parking of two-axle automotive vehicles.

(b) There shall be no obstruction of the Common Elements, nor shall anything be kept or stored in the Common Elements (except balconies and patios appurtenant to the Unit), nor shall anything be constructed on or planted in or removed from the Common Elements, nor shall the Common Elements in any other way be altered without the prior written consent of the Association.

(c) No immoral, improper, offensive or unlawful use shall be made of any Unit or of Common Elements, or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over the Condominium Property shall be observed.

(d) No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in any increase of fire insurance premiums or the cancellation of insurance on any part of the Condominium Property, or which would be in violation of any law. No waste shall be committed to the Common Elements.

(e) No sign of any kind shall be displayed to the public view on or from any part of the Condominium Property, without the prior consent of the Board of Directors of the Association, except signs temporarily used by the Developer in the selling or leasing of the Units.

(f) No noxious or offensive activities shall be carried on, nor shall any outside lighting or sound speakers or other sound producing devices be used, nor shall anything be done, in any part of the Condominium Property which in the judgment of the Board of Directors of the Association, may be or become an unreasonable annoyance or nuisance to the other Owners.

(g) No Owner shall cause or permit anything to be placed on the outside walls of his Unit, and no sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to or placed upon the exterior walls or roof of any building or any part thereof, without the prior written consent of the Board of Directors of the Association.

(h) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

6.03. Right of Access. Each Unit Owner grants a right of access to his Unit to the Association, and any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in his Unit and threatening other Units or Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within his Unit, if any, or to correct any condition which violates the provisions of any Mortgage covering another Unit, or to enforce any provision of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not. Each Unit Owner further grants a right of access to his Unit to the Developer or his agent, or other authorized representative who is not Developer's agent, for the purpose of making all repairs required by any warranty delivered to the Unit Owner at the closing of his Unit. To the extent that damages inflicted on the Common Elements or any Unit through which access is taken, the Unit Owner or the Association, if it caused the same, shall be liable for the prompt repair thereof.

6.04. Limitation of Liability. The Association shall not be liable for any failure of water or power supply, telephone, fire protection or other service to be obtained by the Association or paid for out of the Common Expense fund, for problems resulting from the operation or lack of operation of sewer lines servicing the Condominium Property, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements or from any wire, pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the Owner of any Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making or of repairs or improvements to the Common Elements, or to any Unit, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental or judicial authority or for the dispossession of the Unit Owner by reason of fire or other casualty, except to the extent covered by insurance.

6.05. Abatement of Violations. The violation of any Rule or Regulation adopted by the Board of Directors of the Association or breach of the provisions of the Condominium Documents, shall give the Developer, the Association or any Unit Owner the right, in addition to any other right or remedy elsewhere available to it, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting Unit Owner, including court costs, attorneys fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting Owner, and the Association shall have a lien for all of the

same upon the Unit of such defaulting Owner, upon all of his additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon all of his personal property in his Unit or located elsewhere on the Condominium Property. Nothing herein contained shall prevent an Owner from maintaining such an action or proceeding against the Association and the expense of any action to remedy a default of the Association shall be a Common Expense if a court of competent jurisdiction finds the Association to be in default as alleged in such action or proceeding.

6.06. Failure of the Association to Insist on Strict Performance; No Waiver. Failure of the Association to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment from the future performance of such term, covenant, condition or restriction but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed to be a waiver of such breach and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors of the Association.

6.07. Use by Developer. Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board of Directors of the Association nor their use of the Condominium Property or application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the First Phase and the Second Phase, if any, until Developer has completed all of Developer's contemplated improvements and closed the sales of all of such Units. Subject to the rights of the Mortgagees hereunder, the Developer may make such use of the unsold Units and of the Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, the showing of the Condominium Property and the Units therein, the display of signs thereon and therein. The Developer expressly reserves the right to lease any Unit which it may own in the Condominium Property on such terms as it may deem proper and desirable and may transfer Units subject to such lease.

#### ARTICLE VII

#### RIGHTS OF MORTGAGEES

7.01. Notification of Mortgagees Required. Any Mortgagee shall have the right to be given written notification by the Association of (a) any sixty (60) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents of the Unit covered by the Mortgage; (b) any loss to or taking of the Common Elements if such loss or taking exceeds \$10,000; (c) damage to a Unit covered by its Mortgage if the amount of such damage exceeds \$1,000; (d) any condemnation of all or a portion of the Condominium Property; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Mortgagees.

7.02. Right of Inspection. Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property and to receive annual reports, other financial data, and, upon request, an annual audited statement, within ninety (90) days following the end of any fiscal year of the Association.

7.03. Required Reserve Funds. Assessments levied by the Board of Directors of the Association shall include an adequate Reserve fund for maintenance, repair and replacement of those Common Elements that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments. A working capital fund shall be established and each Unit Owner shall pay a one-time assessment equal to three months assessment at the time of closing of the purchase by him of his Unit.

7.04. Priority of Mortgagees.

(a) Any Lien which is or may be created hereunder upon any Unit, including, but not limited to, the lien created for assessments under Section 4.07 hereof, and the right to foreclose the same, is and shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by, any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such mortgage there, may be a lien created pursuant to Section 4.07 hereof on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein.

(b) No provision of this Declaration, the Articles, the By-Laws or the Rules and Regulations shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the Mortgagees of the Units pursuant to their mortgages in the case of distribution to Unit Owners of the Mortgage proceeds or condemnation awards for losses or a taking of Units or the Common Elements or any portion thereof.

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

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

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

ARTICLE VIII

CASUALTY LOSS AND INSURANCE

8.01. Responsibility of Owners; Separate Insurance Coverage.

(a) The Owner of each Unit may, at his expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects, and other property belonging to such Owner,

and may, at his expense, obtain insurance coverage against personal liability for injury to the person or property of another while within such Owner's Unit or upon the Common Elements. Risk of loss of or damage to any furniture, furnishings and personal property belonging to or carried on the person of the Owner, or which may be stored in any Unit, or in or upon Common Elements, shall be borne by the Owner of each Unit. All furniture, furnishings and personal property constituting a portion of the Common Elements shall be held for the joint use and benefit of all Owners of Units and effect be covered by such insurance as shall be maintained in force and effect by the Association as hereinafter provided. Each Owner shall be required to notify the Association of all improvements made by the Owner to his Unit, the value of which is in excess of \$1,000. All insurance obtained by the Owner of each Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or Developer, and their respective servants, agents, employees and guests.

(b) Any Owner who obtains an individual insurance policy covering any portion of the Condominium Property other than personal property belonging to such Owner shall be required to file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance. In the event casualty insurance maintained by an Owner causes a decrease in the amount of the insurance coverage maintained by the Association for the benefit of all Owners on a casualty loss to the Condominium Property by reason of proration or otherwise, the Owner so maintaining such insurance shall be deemed to have assigned to the Association the proceeds collected on such policy for loss or damage to the Condominium Property and such proceeds shall be paid directly to the Association by the insurer. Any such insurance proceeds shall be applied and distributed by the Association in accordance with this Article VIII.

8.02. Insurance to be Maintained by the Association.

(a) Hazard Insurance. The Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for multi-other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use, insuring the Condominium Property against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements, and if the Condominium Property is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Board shall, to the extent obtainable, insure the insurable property included in the Condominium Property against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than 100% of the then current replacement cost of the improvements, including fixtures, equipment and other personal property, inside the Units in the Condominium Property (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association or the Insurance Trustee (hereinafter defined), as trustee for the use and benefit of the individual Owners (without naming them) in the proportionate shares equal to their respective percentage ownership of the Common Elements. Prior to the renewal of any such policy or policies of insurance, the Association shall obtain an appraisal from a qualified appraiser for the purpose of determining the full replacement cost of the Common Elements

and the Units for the amount of insurance to be effected pursuant hereto. The cost of any and all such appraisals shall be Common Expenses. All such policies of insurance shall comply with the provisions of Section 8.03 hereof and shall (i) contain standard mortgagee clause endorsements in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interest may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner.

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

(c) Workmen's Compensation Insurance. The Association shall obtain and maintain at all times a policy or policies of workmen's compensation insurance to meet the requirements of the laws of the State of Alabama.

(d) Fidelity Bonds. The Association shall obtain and maintain fidelity bonds for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the obligee. The amount of the fidelity bond should cover the maximum funds that will be in the custody of the Association, but not less than the sum of three months' assessments on all Units plus the reserve funds of the Association.

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

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

(a) All policies shall (i) comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association as they shall apply to condominium loans; and (ii) be written with a company licensed to do business in the State of Alabama and holding a financial rating of Class V or better and a general policyholders rating of "A" or better by Best's Insurance Reports or other then comparable rating. To the extent that the provisions of this Declaration with respect to the maintenance of insurance shall conflict with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, then the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association shall control and such requirements shall be complied with by the Association.

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

(c) In no event shall the insurance coverage obtained and maintained by the Association hereunder be b ought

into contribution with the insurance purchased by the Individual Owners or their Mortgagees.

(d) The Association shall be required to make every effort to secure insurance policies that will provide for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Association, the Board of Directors, the Developer or the Owners.

(ii) An agreement by the insurer that the insurance coverage cannot be terminated or materially changed without ten (10) days prior written notice to the Association and the Mortgagee of each Unit;

(iii) The insurance coverage will be primary, even if a Unit Owner has other insurance that covers the same loss.

8.04. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense; except that the amount of increase over the usual premium occasioned by the use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Elements by an Owner shall be assessed against that Owner.

8.05. Insurance Trustee. The Association may engage the services of a bank or trust company authorized to do trust business in the State of Alabama and having a capital and surplus of not less than \$50,000,000 to act on its behalf as an insurance trustee ("Insurance Trustee") and to receive and disburse the insurance proceeds in accordance with the provisions of this Declaration. In the event the lowest of two bids from reputable contractors for making all repairs required by any such loss shall exceed \$20,000, the Association upon written demand of the Mortgagee of any Unit shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The Association, as a Common Expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Whenever the Insurance Trustee may be required to make distribution of insurance proceeds to Owners of Units and their Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee the name of the Owner of each Unit, the name of the Mortgagee who may hold a Mortgage encumbering each Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any Unit, and his respective Mortgagee, as their respective interests may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Condominium Property. The rights of the Mortgagee of any Unit under any standard mortgage clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property; provided, however, that if the Association or the Insurance Trustee fails to perform all the conditions precedent required by the policy or policies of insurance, and fails to collect the amount of the

loss within the time required by law, and the Mortgagee or Mortgagees are required to avail themselves of their rights under the standard mortgage clause to collect the proceeds of the policy or policies of insurance, any amount so collected through the efforts of said Mortgagee or Mortgagees shall be applied as directed by said Mortgagee or Mortgagees. No provision hereof shall entitle an Owner or any other party to any priority over a Mortgagee with respect to the distribution of any insurance proceeds with respect to such Unit.

8.06. Loss to Common Elements Only. In the event of the loss of or damage to only Common Elements, real or personal, by reason of fire or other casualties, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or the Insurance Trustee, as the case may be, to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such Common Elements, then such excess insurance proceeds shall be paid by the Insurance Trustee to the Owners of all Units, the distribution to be separately made to the Owner of each Unit and his respective Mortgagee, as their interests may appear, in such proportion that the share of such excess insurance proceeds paid to the Owner of each Unit and his Mortgagee shall bear the same ratio to the total excess insurance proceeds as the undivided interest in the Common Elements appurtenant to each Unit bears to the total undivided interest in the Common Elements appurtenant to all Units. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Association shall pay, or shall deposit with the Insurance Trustee, as the case may be, a sum, which together with the insurance proceeds received or to be received, if any, will enable said Insurance Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage, as the case may be. The monies to be so paid, or deposited by the Association with the Insurance Trustee, may be paid by the Association out of its reserve for replacement fund and if the amount in such reserve for replacement fund is not sufficient, or if the Board of Directors determines not to use such fund for said purpose, then the Association shall levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

8.07. Loss to Both Common Elements and Private Elements. In the event of loss of or damage to Common Elements and any Private Element of any Unit by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or Insurance Trustee, as the case may be, to cover such loss or damage, shall be first applied to the repair, replacement or reconstruction of the Common Elements and then any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of the Private Elements of any Unit which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the Common Elements and the Private Elements of Units sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed by the Insurance Trustee to the Owners of all Units, and to their Mortgagees, as their respective interests may appear. Such distributions are to be made in the manner and in the proportions as are provided for the distribution of insurance proceeds under Section 8.06 above. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee, as the case may be, are not sufficient



to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Board of Directors of the Association shall, based on reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the Common Elements and the Private Elements of Units sustaining any loss or damage. If the proceeds of said fire and casualty insurance, if any, are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to the Common Elements, but are not sufficient to repair, replace or reconstruct any loss of or damage to the Private Elements of Units sustaining damage, then the Association shall levy and collect an assessment from the Owner of the Private Element sustaining any loss or damage, and the assessment so collected from said Owner shall be deposited with the Insurance Trustee, if any, so that the sum on deposit with said Insurance Trustee shall be sufficient to completely pay for the repair, replacement or reconstruction of all Common Elements and Private Elements of Units. In said latter event, the assessment to be levied and collected from the Owner of each Private Element sustaining loss or damage shall be apportioned between such Owners in such manner that the assessment levied against each Owner of a Private Element and his Unit shall bear the same proportion to the total assessment levied against all of said Owners of Units sustaining loss or damage as the cost of repair, replacement or reconstruction of each Owner's Private Element bears to the cost applicable to all of said Private Elements sustaining loss or damage. If the fire and casualty insurance proceeds, if any, payable to the Association or the Insurance Trustee in the event of the loss of or damage to Common Elements and the Private Elements of Units are not an amount which will pay for the complete repair, replacement or reconstruction of the Common Elements, it being recognized that such insurance proceeds are to be first applied to the payment for repair, replacement or reconstruction of said Common Elements before being applied to the repair, replacement or reconstruction of any Private Element of a Unit sustaining loss or damage, then the cost to repair, replace, or reconstruct said Common Elements in excess of available fire and casualty insurance proceeds shall be levied and collected as an assessment from the Owners of all Units in the same manner as would be levied and collected had the loss or damage sustained been solely to the Common Elements and the fire and casualty insurance proceeds been not sufficient to cover the cost of repair, replacement or reconstruction. The cost of repair, replacement or reconstruction of the Private Element of each Unit sustaining loss or damage shall then be levied and collected by assessment of the Owners of the Private Elements sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of Private Elements sustaining loss or damage.

8.08. Estimates of Repair; Plans and Specifications; Payment of Assessments. In the event of loss or damage to Condominium Property, the Association shall, within sixty (60) days after any such occurrence, obtain reliable and detailed estimates of the cost of restoring damaged property to a condition as good as that which prevailed before such loss or damage. The estimate of repair shall be based upon the plans and specifications of the original building, portions of which are attached as Exhibit C to this Declaration as the same may from time to time be amended, or such other plans and specifications as may be approved by the Board of Directors of the Association, by all of the Owners of the damaged Units, and by not less than seventy-five percent (75%) of the Owners of all Units including the Owners of damaged Units. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Condominium Property. Such estimates are to contain and include the cost of any professional fees and pre-

miums for such bonds as the Board of Directors of the Association may deem to be in the best interest of the membership of said Association. Whenever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of repair, replacement or reconstruction thereof, the additional money required to completely pay for such repair, the placement or reconstruction of said loss or damage whether to be paid by all of the Owners of Units or only by the Owners of Units sustaining loss or damage, or both, as herein provided, shall be paid to the Association and deposited with the Insurance Trustee, if any, not later than thirty (30) days from the date on which the Association or the Insurance Trustee, as the case may be, shall receive the monies payable from the policies of fire and casualty insurance.

#### ARTICLE IX CONDEMNATION

9.01. Condemnation Considered a Casualty Loss. The taking of a portion of a Unit or the Common Elements by eminent domain shall be deemed to be a casualty loss, and except as otherwise provided in Section 9.02 below, the awards for such taking shall be deemed to be proceeds from insurance on account of the casualty and shall be applied and distributed by the Association in accordance with the provisions of Article VIII. Even though the awards may be payable to the Owners, the Owners shall deposit the awards with the Association or Insurance Trustee, as the case may be; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special 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 herein-after made payable to such Owner. If any Unit or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of such Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition as provided in Section 7.01, and no provision hereof shall entitle the Owner of such Unit or other party to priority over such Mortgagee with respect to the distribution of any award or settlement to the Owner of the Unit.

9.02. Partial Condemnation. In the event that the Condominium Property is not to be terminated and one or more Units are taken in part, the taking shall have the following effects:

(a) If the taking reduces the size of a Unit and the remaining portion of that Unit can be made tenable, the award for the taking for 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 Property:

(i) The Unit shall be made tenable and if the cost of such work exceeds the amount of the award, the additional funds shall be assessed against the Owner of the Unit.

(ii) The balance of the award, if any, shall be distributed to the Owner of the Unit and the Mortgagee of the Unit, as their respective interests may appear.

(iii) If there is a balance of the award distributed to the Owner and the Mortgagee, the share of the Common Elements appurtenant to the Unit shall be equitably reduced. This shall be done by reducing such share by the proportion which the balance of the award so distributed bears to the market value of the Unit immediately prior to the taking, and then recomputing the shares of all Owners in

the Common Elements as percentages of the total of their shares as reduced by the taking.

(b) If the taking destroys or so reduces the size of a Unit so that it may not be made tenable, 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 Property:

(i) The market value of such Unit immediately prior to the taking, shall be paid to the Owner of the Unit and to each Mortgagee of the Unit, as their respective interest may appear.

(ii) The remaining portion of such Unit, if any, shall become a 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 of the Association; provided, however, that if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner required for further improvement of the Common Elements under Section 5.03 above.

(iii) The shares in the Common Elements appurtenant to the Units which continue as a part of the Condominium Property shall be equitably adjusted to distribute the ownership to the Common Elements among the reduced number of Owners. This shall be done by recomputing the shares of such continuing Owners in the Common Elements as percentages of the total of the shares of such Owners as they exist prior to the adjustment.

(iv) If the amount of the award for taking is not sufficient to pay the market value of the condemned Unit to the Owner and to restore the remaining portion of the Unit in condition for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by assessments against all of the Owners who will continue as Owners of the Units after the changes in the Condominium property affected by the taking. Such assessment shall be made in proportion to the share of such Owners in the Common Elements after the changes affected by the taking.

(c) If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner and the Mortgagee and the Association within thirty (30) days after notice by any such party that agreement cannot be reached, such value shall be determined by three independent qualified appraisers with one appraiser to be selected by the Association, one appraiser to be selected by the Owner and Mortgagee, and the third appraiser to be selected by the two appraisers so appointed, and the fair market value of the Unit shall be deemed to be the average of the two appraisals of the fair market value of the Unit made by said appraisers having the least difference in amount. The cost of such appraisal shall be assessed against all Owners in the shares of the Owners in the Common Elements as they existed prior to the changes affected by the taking.

(d) Changes in the Units, in the Common Elements, in the ownership of the Common Elements and in the shares of liability for Common Expenses which are affected by eminent domain, shall be evidenced by an amendment of this Declaration which need be approved only by a majority of the Board of Directors of the Association.

9.03. Association Appointed As Attorney-In-Fact for Unit Owners. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement

arising from the condemnation or taking by eminent domain of the Condominium Property or any portion thereof.

ARTICLE X

TERMINATION

10.01. Destruction of the Condominium Property.

(a) Notwithstanding anything to the contrary contained in this Declaration, if the Board of Directors shall determine that either of the following conditions exist:

- (i) Two-thirds (2/3) or more of the Units in the Condominium Property shall have been destroyed or substantially damaged by fire or other casualty (including condemnation); or
- (ii) The Condominium Property has been in existence in excess of forty (40) years and substantially all of the Units in the structure have substantially deteriorated and have been rendered substantially obsolete;

then the Board of Directors may call a meeting of the members of the Association to consider and vote upon whether to restore, repair and/or rebuild the Condominium Property, and if not, whether to terminate the Declaration and remove the Condominium Property from the provisions of the Act. If the termination of the Declaration and the removal of the Condominium Property from the provisions of the Act is approved by the affirmative vote of at least sixty-seven percent (67%) of the Owners of all Units and by one vote for each Mortgage owned (67%) after notice given as provided in Section 7.01 hereof, the Declaration and plan of condominium ownership established herein shall be subject to termination as provided in the Act and the Association shall be authorized to file on behalf of, and in the name of, the Unit Owners, and shall file, a petition for such termination and removal with the Circuit Court of Lee County, Alabama. If less than sixty-seven percent (67%) of the Owners of all Units and/or less than sixty-seven percent (67%) of the Mortgages vote in favor of terminating the Condominium Property as herein required, the Condominium Property shall be restored, repaired and/or rebuilt in accordance with the provisions of Sections 8.06, 8.07, and 8.08 above.

(b) In the event that the Circuit Court of Lee County shall grant the petition for termination of this Declaration and the plan of condominium ownership as provided in subparagraph (a) above, all of the Owners of Units, shall be and become tenants in common as to ownership of the Land and any then remaining improvements thereon. The undivided interest in the Land and remaining improvements held by the Owner of each Unit shall be the same as the undivided interest in the Common Elements which were formerly appurtenant to such Unit, and the lien of any Mortgage or other encumbrance upon each Unit shall attach to the percentage of undivided interest of the Owner of a Unit in the Land and then retaining improvements as above provided. Upon termination of this Declaration and the plan of condominium ownership established herein, the Owners of all Units still inhabitable shall within sixty (60) days from the date of grant of the petition, deliver possession of their respective Units to the Association. Upon such delivery of possession, the Owners of inhabitable Units and their respective Mortgagees, as their interests may appear, shall become entitled to participate proportionately together with all Owners of uninhabitable Units in the distribution of proceeds in the possession of the Association or the Insurance Trustee. Upon such termination of this Declaration or the Insurance Trustee, upon ownership established herein, the Association or the Insurance Trustee, as the case may be, shall distribute any insurance in-

demnity which may be due under any policy of casualty insurance to the Owners of the Units and their Mortgagees as their respective interests may appear, such distribution to be made to the Owner of each Unit in accordance with his then undivided interest in the Land and remaining improvements as herein provided. The assets of the Association upon termination of the plan of condominium ownership created by this Declaration shall then be distributed to the Owner of each Unit and his Mortgagee, as their respective interests may appear, in the same manner as is above provided for the distribution of any final insurance indemnity.

10.02. Termination by Unanimous Consent. Except in the event of this Declaration and plan of condominium ownership established herein being terminated as provided above, this Declaration and said plan of condominium ownership may only be otherwise terminated by the unanimous consent of all Owners of all Units and all parties holding Mortgages, liens or other encumbrances, against any of said Units, in which event the termination of the Condominium Property shall be by such plans as may be then unanimously adopted by said Owners and parties holding any Mortgages, liens, or other encumbrances. Such election to terminate this Declaration and the plan of condominium ownership established herein shall be executed in writing by all of the aforesaid parties in recordable form, and such instrument shall be recorded in the Probate Office of Lee County, Alabama.

10.03. The Association Appointed as Attorney-In-Fact for Unit Owners. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the termination of this Declaration and plan of condominium ownership established herein.

## ARTICLE XI

### AMENDMENT

11.01. Amendments by Developer. Without limiting the rights of the Developer to alter the plans described in Section 2.02 above, and notwithstanding any other provision herein contained, the following provisions shall be deemed to be in full force and effect, none of which shall be construed as to relieve the Developer from any obligations as a Unit Owner to pay assessments as to Units owned by it in accordance with the Condominium Documents.

(a) The Developer reserves the right to amend the By-Laws of the Association until such time as 75% of the Units have been conveyed to purchasers of Units as provided in Section 12.01 below.

(b) The Developer reserves the right to amend this Declaration so long as there is no Unit Owner other than the Developer.

(c) The Developer reserves the right at any time to amend this Declaration without the consent of other Owners if required (i) by the provisions of Section 2.05 hereof; or (ii) by any Mortgagee as a condition of making a loan secured by an interest in a Unit in order to meet the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; provided that any such changes or amendments requested by a Mortgagee shall not materially affect the rights of the Unit Owners or the value of the Condominium Unit or the undivided interest in the Common Elements attributable to each Unit Owner.

11.02. Amendments by Unit Owners. At such time as there is a Unit Owner other than the Developer, then, in addition to the amendments permitted under Section 11.01 above, the Declaration may be amended in the following manner:

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

(b) Notwithstanding the foregoing, no amendment to the Declaration under this Article XI shall:

(i) change a Unit, including the ownership in Common Elements, responsibility for Common Expenses and voting rights, without the prior written approval of the Unit Owner or Unit Owners so affected and prior written approval of the holders of record of any mortgage or other liens on the Unit or Units so affected; or

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

11.03. Effectiveness of Amendments. A copy of each amendment so adopted shall be certified by the President or a Vice President and Secretary or Assistant Secretary of the Association as having been duly adopted, and shall be effective when recorded in the Probate Court of Lee County, Alabama.

#### ARTICLE XII

#### CONTROL OF THE ASSOCIATION

12.01. Election of Board of Directors. Developer, its successors or assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill the vacancies, until no later than the earlier of either (a) four months after 75% of the total number of Units of the First Phase and Second Phase have been conveyed to purchasers of Units, or (b) five years have elapsed from the conveyance of the first Unit to a purchaser thereof; provided that the Developer may, at its option, terminate its control of the Association at an earlier date. In the event the Developer fails to submit the Second Phase to this Condominium Property prior to the expiration of three years after the conveyance of the first Unit, the Unit Owners shall be entitled to elect the Board of Directors of the Association as provided in the By-Laws. The Developer shall be entitled to elect at least one member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least 5% of the Units within the Condominium.

12.02. Notice of Meeting. Within sixty (60) days after the date of termination of control of the Association by the Developer, the Association shall call and give not less than ten (10) days nor more than thirty (30) days notice of a meeting of the Unit Owners for the purpose of electing the members of the Board of Directors of the Association. Such meeting may be called and the notice given in accordance with the By-Laws.

12.03. Status of Unsold Units.

(a) Developer shall be deemed to be the Owner of each Unit which has not been conveyed to a person other than the Developer. Unless otherwise provided in the Condominium Documents, the Developer shall be entitled to all rights and privileges available to, and shall be subject to any and all obligations and duties imposed upon, the Owner of any such Unit under the Condominium Documents.

(b) Any person having a first mortgage lien against any Unit which has not been conveyed to a person other than Developer, whether under a blanket mortgage affecting the Condominium Property generally or under a mortgage on one or more specific Units, shall be deemed to be a Mortgagee with respect to any such Unit, and shall be entitled to all rights and privileges available to a Mortgagee of any such Unit under the Condominium Documents.

(c) Notwithstanding the provisions of Section 4.02 above, no assessments shall be imposed by the Association against the Developer as the Owner of unsold Units until such time as the Unit Owners other than the Developer are entitled to elect the Board of Directors of the Association as provided in Section 12.01 above. During such period, Developer shall be responsible for the Common Expenses of the Condominium Property, except that the Developer shall be entitled to use and apply to the payment of such Common Expenses any and all assessments made against the Unit Owners other than Developer and collected by the Association for Common Expenses. The Developer shall be solely responsible for the maintenance, repair and operation of the Private Elements of the unsold Units.

12.04. Professional Management. Any agreement incurred by the Association prior to the passage of control of the Association from the Developer pursuant to Section 12.01 above (including contracts for professional management of the Condominium Property, whether it be the Developer, its successors and assigns, or any other person or entity) shall provide the following:

(a) The Association shall have the right of termination which is exercisable without penalty any time upon not more than ninety (90) days' written notice to the other party thereto; and

(b) The Association shall have a right of termination for cause, which is exercisable without penalty at any time upon not more than thirty (30) days' written notice to the other party thereto.

ARTICLE XIII

MISCELLANEOUS

13.01. Rights and Powers of Successors and Assignees. The rights and powers reserved to or exercisable by the Developer under the Condominium Documents or the Act may be exercised by any successor or assignee of the Developer (i) who acquires title from the Developer by foreclosure or other judicial sale or deed in lieu of foreclosure or (ii) to whom the Developer specifically assigns such rights and powers.

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

13.03. Gender/Number. Whenever the context so permits, the use of the plural shall include the singular, the singular shall

include the plural, and any gender shall be deemed to include all genders.

13.04. Exhibits. Exhibits A, A-1, B, C, C-1, D, D-1 and E attached to this Declaration are an integral part of this Declaration.

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

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

JUNEMAN/EDDLEMAN DEVELOPMENT CO.,  
an Alabama general partnership

By: George B. Juneman  
George B. Juneman, Partner

By: Billy D. Eddleman  
Billy D. Eddleman, Partner

By: Douglas D. Eddleman  
Douglas D. Eddleman, Partner

STATE OF ALABAMA  
JUNEMAN COUNTY

I, George B. Juneman, a Notary Public in and for said County in said State hereby certify that George B. Juneman, whose name as partner of Juneman/Eddleman Development Co., an Alabama general partnership, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, he in his capacity as such partner, executed the same voluntarily on the date the same bears date.

31<sup>st</sup> Given under my hand and official seal of office this  
day of October 1985.

George B. Juneman  
Notary Public

My Commission Expires: 8-31-87

STATE OF ALABAMA  
JUNEMAN COUNTY

I, George B. Juneman, a Notary Public in and for said County in said State, hereby certify that Billy D. Eddleman, whose name as partner of Juneman/Eddleman Development Co., an Alabama general partnership, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, he in his capacity as such partner, executed the same voluntarily on the date the same bears date.

Given under my hand and official seal of office this  
day of October, 1985.



*Paul S. W. W. W.*  
Notary Public

My Commission Expires: 8-31-87

STATE OF ALABAMA  
*Jefferson* COUNTY

I, *Paul S. W. W. W.*, a Notary Public in and for said County in said State, hereby certify that Douglas D. Eddleman whose name as partner of Juneman/Eddleman Development Co., an Alabama general partnership, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, he in his capacity as such partner, executed the same voluntarily on the date the same bears date.

Given under my hand and official seal of office this *22nd* day of *October*, 1985.

*Paul S. W. W. W.*  
Notary Public

My Commission Expires: 8-31-87

The undersigned, as Mortgagee under the Mortgage encumbering the real property identified in the foregoing Declaration of Condominium of The Brookes, a Condominium at Auburn, joins in the execution of the foregoing Declaration, for the sole purpose of establishing the validity of the Declaration of Condominium of The Brookes, a Condominium at Auburn, as required by Section 35-8-7 of the Code of Alabama 1975. The undersigned is not the Developer, and does not assume any obligations whatsoever under the terms, covenants and conditions of the foregoing Declaration of Condominium, and the execution hereof does not in any way subordinate or make the said Mortgage inferior to the said Declaration of Condominium.

CENTRAL BANK OF THE SOUTH

By: Richard P. Shuffield  
Its Corporate Vice President

STATE OF ALABAMA )  
Jefferson COUNTY )

I, Carol W. Walker, a Notary Public in and for said County in said State hereby certify that Richard P. Shuffield whose name as Richard P. Shuffield of Central Bank of the South, a corporation, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal of office this 14th day of November, 1985.

Carol W. Walker  
Notary Public

My Commission Expires: 8-31-87

This instrument was prepared by:

Jack P. Stephenson, Jr.  
1600 Bank for Savings Building  
Birmingham, Alabama 35203

EXHIBIT A

Beginning at a point described as the half-section corner midway on the north line of Section 2, Township 18 North, Range 25 East, and the south line of Section 35, Township 19 North, Range 25 East, in Lee County, Alabama, such point being marked by a 1 1/2 inch open-top iron (iron wagon hub filled with concrete, destroyed); thence run S0°-29'-00"W for a measured distance of 265.30 feet to a point; thence run S81°-31'-00"E for a distance of 185.00 feet to a point; thence run N43°-29'-00"E for a distance of 430.00 feet to a point; thence run S89°-31'-00"E for a distance of 42.38 feet to a point; thence run N0°-28'-30"E (N0°-29'-00"E, Deed) for a distance of 699.62 feet to a point on the southeast right-of-way line of Wire Road as shown on the right-of-way of Project No. RS-US-4114(101) as recorded in the Office of the Judge of Probate of Lee County, Alabama; thence run S50°-57'-30"W for a distance of 13.00 feet to a point that is 70.00 feet southeasterly of and at right angles to the centerline of said project at Station 106+00; thence run S48°-05'-45"W for a distance of 100.12 feet to a point that is 75.00 feet southeasterly of and at right angles to the centerline of said project at Station 105+00; thence run S50°-57'-30"W and parallel to the centerline of said project for a distance of 400.00 feet to a point; thence run S67°-26'-29"W for a distance of 91.69 feet to a point on a curve to the right having a radius bearing in of N37°-38'-03"W and a central angle of 0°-31'-48" and a radius of 5729.60 feet; thence run southwesterly along arc of said curve for a measured distance of 53.00 feet to a point; thence run S0°-29'-00"W for a measured distance of 324.31 feet (326.00 feet, Deed) to the point of beginning, containing 8.0167 acres more or less.

EXHIBIT A-1

Beginning at a point described as the half-section corner midway on the north line of Section 2, Township 18 North, Range 25 East, and the south line of Section 35, Township 19 North, Range 25 East, in Lee County, Alabama, such point being marked by a 1 1/2 inch open-top iron (iron wagon hub filled with concrete, destroyed); thence run S0°-29'-00"W for a measured distance of 920.40 feet (921.80 feet, Deed) to an iron pin; thence run S89°-37'-47"E (S89°-31'-00"E, Deed) for a measured distance of 518.98 feet (520.00 feet, Deed) to an iron pin; thence run N0°-28'-30"E (N0°-29'-00"E, Deed) for a measured distance of 1642.43 feet to a point on the southeast right-of-way line of Wire Road as shown on the right-of-way of Project No. RS-US-4114 (101) as recorded in the Office of the Judge of Probate of Lee County, Alabama; thence run S50°-57'-30"W for a distance of 13.00 feet to a point that is 70.00 feet southeasterly of and at right angles to the centerline of said project at Station 106+00; thence run S48°-05'-45"W for a distance of 100.12 feet to a point that is 75.00 feet southeasterly of and at right angles to the centerline of said project at Station 105+00; thence run S50°-57'-30"W and parallel to the centerline of said project for a distance of 400.00 feet to a point; thence run S67°-26'-29"W for a distance of 91.69 feet to a point on a curve to the right having a radius bearing in of N37°-38'-03"W and a central angle of 0°-31'-48" and a radius of 5729.60 feet; thence run southwesterly along arc of said curve for a measured distance of 53.00 feet to a point; thence run S0°-29'-00"W for a measured distance of 324.31 feet (326.00 feet, Deed) to the point of beginning, containing 17.0170 acres more or less.

Less and except the following:

Beginning at a point described as the half-section corner midway on the north line of Section 2, Township 18 North, Range 25 East, and the south line of Section 35, Township 19 North, Range 25 East, in Lee County, Alabama, such point being marked by a 1 1/2 inch open-top iron (iron wagon hub filled with concrete, destroyed); thence run S0°-29'-00"W for a measured distance of 265.30 feet to a point; thence run S81°-31'-00"E for a distance of 185.00 feet to a point; thence run N43°-29'-00"E for a distance of 430.00 feet to a point; thence run S89°-31'-00"E for a distance of 42.38 feet to a point; thence run N0°-28'-30"E (N0°-29'-00"E, Deed) for a distance of 699.62 feet to a point on the southeast right-of-way line of Wire Road as shown on the right-of-way of Project No. RS-US-4114(101) as recorded in the Office of the Judge of Probate of Lee County, Alabama; thence run S50°-57'-30"W for a distance of 13.00 feet to a point that is 70.00 feet southeasterly of and at right angles to the centerline of said project at Station 106+00; thence run S48°-05'-45"W for a distance of 100.12 feet to a point that is 75.00 feet southeasterly of and at right angles to the centerline of said project at Station 105+00; thence run S50°-57'-30"W and parallel to the centerline of said project for a distance of 400.00 feet to a point; thence run S67°-26'-29"W for a distance of 91.69 feet to a point on a curve to the right having a radius bearing in of N37°-38'-03"W and a central angle of 0°-31'-48" and a radius of 5729.60 feet; thence run southwesterly along arc of said curve for a measured distance of 53.00 feet to a point; thence run S0°-29'-00"W for a measured distance of 324.31 feet (326.00 feet, Deed) to the point of beginning, containing 8.0167 acres more or less.

Subject to an easement to be reserved for a concrete television pad and antenna, said easement being located as follows with easements of way reserved over the entire property for ingress and egress for maintenance, replacement, repair thereon, or for any other purpose.

From the northwest corner of said northeast quarter of said Section 2, run thence S0°-29'-00"W for a distance of 920.40 feet; thence turn an angle to the left and run S89°-37'-47"E for a distance of 518.98 feet; thence turn an angle to the left and run N0°-28'-30"E for a distance of 421.41 feet; thence turn an angle to the left of 90° and run N89°-31'-30"W for a distance of 10 feet to the point of beginning of the parcel herein described; thence continue along the same course as before for a distance of 40 feet; thence turn an angle to the right of 90° and run N0°28'-30"E for a distance of 70 feet; thence turn an angle to the right of 90° and run S89°-31'-30"E for a distance of 40 feet; thence turn an angle to the right of 90° and run S0°-28'30"W for a distance of 70 feet to the point of beginning.

BY-LAWS  
OF  
THE BROOKES OWNERS ASSOCIATION, INC.

ARTICLE I

THE ASSOCIATION

Section 1. Identity. These are the By-Laws of The Brookes Owners Association, Inc., a not for profit corporation (the "Association"), which was formed under the Alabama Nonprofit Corporation Act [Code of Alabama 1975 §10-3A-1 et seq.] by filing the Articles of Incorporation of the Association (the "Articles") with the Office of the Judge of Probate of Lee County, Alabama on *November 2, 1985*. The Association has been organized for the purpose of providing for the operation, management, maintenance, control and administration of The Brookes, a Condominium at Auburn, (the "Condominium"), pursuant to the provisions of the Condominium Ownership Act of Alabama [Code of Alabama 1975 §§35-8-1 et seq.] and the Declaration of Condominium of The Brookes, a Condominium at Auburn (the "Declaration") as filed with the Office of the Judge of Probate of Lee County, Alabama in accordance with the provisions of said Act.

Section 2. Principal Office. The principal office of the Association in the State of Alabama shall be located in the City of Auburn, County of Lee. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors may designate or as the business of the Association may require from time to time.

Section 3. Registered Office. The registered office of the Association, required by the Alabama Nonprofit Corporation Act to be maintained in the State of Alabama, may be, but need not be, identical with the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II

MEMBERSHIP

Section 1. Annual Meeting. The annual meeting of the Membership shall be held on the third Tuesday in the month of April in each year, beginning with the year 1986 at the hour of 10:00 A.M., or at such other time on such other day within such month as shall be fixed by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Alabama, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the Membership, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Membership as soon thereafter as conveniently may be.

Section 2. Special Meetings. Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the Board of Directors and shall be called by the President or the Secretary at the request of holders of not less than one-tenth of all the outstanding votes of the Membership.

Section 3. Place Of Meeting. The Board of Directors may designate any place, within or without the State of Alabama, as the place of meeting for any annual meeting or for any special meeting of the Membership. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the Association in the State of Alabama.

Section 4. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of an annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall, unless otherwise prescribed by statute, be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 5. Fixing of Record Date. The Board of Directors may fix in advance a date as the record date for the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or for any other proper purpose, such date in any case to be not more than fifty (50) days and, in case of a meeting of the Membership, not less than ten (10) days prior to the date on which the particular action, requiring such determination of members, is to be taken. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of the Membership, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination of members entitled to vote at any meeting of the Membership has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section 6. Voting Lists. The officer or agent having charge of the records of members of the Association shall make, at least ten (10) days before each meeting of the Membership, a complete list of the members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of each member, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any member making written request therefor at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting.

Section 7. Quorum. The presence at any meeting of the Membership of the members entitled to cast a majority of the votes in the Association, represented in person or by proxy, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 8. Majority Vote. The vote of members entitled to cast a majority of the votes represented at a meeting of the Membership at which a quorum is present shall be the act of the members of the Association, unless the vote of a greater number is required by law, the Declaration, the Articles, or these By-Laws.

Section 9. Proxies. At all meetings of the Membership, a member may vote in person or by proxy executed in writing by the member or by his duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after ninety

days from the date of its execution, unless otherwise provided in the proxy.

Section 10. Voting Rights. At any meeting of the Membership, the members who are owners of whole Units (as defined in the Declaration) shall be entitled to cast one vote for each Unit he owns. If a Unit is owned by one person, his right to vote shall be established by record title to his Unit. If a Unit is owned by more than one person, the person entitled to cast the 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, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by the President or Vice President and attested to by the Secretary or Assistant Secretary of the corporation and filed with the Secretary of the Association. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote of a Unit may be revoked at any time by any owner of a Unit. If such a certificate is not on file, the vote of such owner shall not be considered in determining the requirement for a quorum nor for any other purpose.

Section 11. Informal Action by Members. Any action required to be taken at a meeting of the Membership, or any other action which may be taken at a meeting of the Membership, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

### ARTICLE III

#### BOARD OF DIRECTORS

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

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

#### Section 3. Election of Directors.

(a) Election of directors shall be held at the annual meeting of the Membership. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. The owner of each whole Unit shall be entitled to cast a vote for each of as many nominees as there are vacancies to be filled at the time of the election. There shall be no cumulative voting.

(b) Notwithstanding the provisions of subparagraph (a) above, the Developer (as defined in the Declaration), its successors and assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill vacancies, until such time as either (a) four months have elapsed since 75% of the Units have been conveyed to purchasers of Units other than Developer, or (b) three years have elapsed from the conveyance of the first Unit to a person other than the Developer, or (c) the Developer elects, at its option, to terminate control of the Association, whichever first occurs. The Developer shall be entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary



course of business at least 5% of the Units. Within sixty (60) days after the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the Membership for the purpose of electing the members of the Board of Directors.

Section 4. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of the Membership, provided, however, any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all directors. The Board of Directors may provide, by resolution, the time and place, within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

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

Section 6. Notice. Notice of any special meeting shall be given at least three (3) days previously thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

If a quorum is present when the meeting is convened, the directors present may continue to do business, taking action by a vote of the majority of a quorum, until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum present, or the refusal of any director present to vote.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

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

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

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

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

Section 13. Resignations. Any director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Such resignation shall take effect at the time specified therefor; and the acceptance of such resignation shall not be necessary to make it effective.

Section 14. Place of Meeting. The Board of Directors may designate any place within or without the State of Alabama as the place of meeting for any regular or special meeting of the Board of Directors.

Section 15. Presumption of Assent. A director of the Association who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

#### ARTICLE IV

##### OFFICERS

Section 1. Number. The officers of the Association shall be a President, one or more Vice President(s) (the number thereof to be determined by the Board of Directors), a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed

necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the President and Secretary. The failure of the Board of Directors to elect any officer other than a President and a Secretary shall not constitute a violation of these By-Laws.

Section 2. Election and Term of Office. The officers of the Association to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Membership. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed at any time, by the affirmative vote of the Board of Directors, whenever in their judgment the best interests of the Association will be served thereby. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not of itself create any contract rights in favor of such officer.

Section 4. Vacancies. A vacancy in any office elected or appointed by the Board of Directors because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall preside at all meetings of the Membership. He shall, with the Secretary or an Assistant Secretary, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. Vice President. In the absence of the President or in the event of his death, inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President, or by the Board of Directors.

Section 7. Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the Members and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each member which shall be furnished to the Secretary by such member; (e) have general charge of the transfer books of the

members of the Association; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 8. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these By-Laws; and (c) in general perform all of the duties as from time to time may be assigned to him by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 9. Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors. The Assistant Treasurers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

Section 10. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Association.

#### ARTICLE V

#### CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits: All funds of the Association, not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

Section 5. Proxies. Unless otherwise provided by resolution of the Board of Directors, the President may from time to time appoint an attorney or agent of the Association, in the name and on behalf of the Association, to cast the votes which the Association may be entitled to cast as the holder of stock or other securities in any other corporation any of whose stock or other securities may be held by the Association, at meetings of the holders of the stock or other securities of such other corpora-

tion, or to consent in writing, in the name and on behalf of the Association, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Association and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

#### ARTICLE VI

#### BOOKS AND RECORDS

Section 1. Accounting. The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the members, Board of Directors and committees thereof and shall keep at its registered or principal office in Alabama a record of the names and addresses of members entitled to vote, directors and officers. The accounting records shall be maintained in accordance with generally accepted accounting principles. All books and records of the Association shall be open to inspection by the members or their authorized representatives for any proper purpose at any reasonable time. Such records shall include:

(a) Association Accounts. The receipts and expenditures of the Association shall be credited and charged to the appropriate account as set forth below.

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

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

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

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

Section 3. Assessments. Assessments against the members for their shares of the items of the budget shall be made for the calendar year annually in advance on or before December 31, preceding the year for which the assessments are made. Such assessments shall be due in quarterly or monthly installments, as may be determined by the Board of Directors of the Association. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors.

Section 4. Assessments for Emergencies. Assessments for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need for such is given to the members concerned, and it shall be due 30 days after such notice in such manner as the Board of Directors of the Association may require in the notice of assessment.

Section 5. Audit. An audit of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the audit report shall be furnished to each member.

Section 6. Bonds. Fidelity bonds shall be required by the Board of Directors from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors, but shall not be less than three times the amount of the total annual assessments against members for Common Expenses. The premiums of such bonds shall be paid by the Association.

#### ARTICLE VII

##### SEAL

The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association and the state of incorporation and such other words as the Board of Directors may prescribe.

#### ARTICLE VIII

##### WAIVER OF NOTICE

Whenever any notice is required to be given to any member or director of the Association under the provisions of these By-Laws, the Articles of Incorporation, the Declaration, the Provisions of the Alabama Nonprofit Corporation Act, and any act amendatory thereof, supplementary thereto or substituted therefor, the provisions of the Condominium Ownership Act of Alabama, and any act amendatory thereof, supplemental thereto or substituted therefor, or the Alabama Constitution, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

#### ARTICLE IX

##### FISCAL YEAR

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

#### ARTICLE X

##### INDEMNIFICATION

Section 1. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably in-

curred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

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

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

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

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

The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of stockholders or disinterested director or otherwise, both as to

action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

#### ARTICLE XI

#### AMENDMENT

Section 1. Amendment to By-Laws. These By-Laws may be amended, altered or repealed in the following manner:

(a) By the Developer until such time as four months have elapsed since 75% of the Units have been conveyed to purchasers other than the Developer as provided in Article III, Section 3 of these By-Laws; or

(b) By the members at any regular or special meeting upon the affirmative vote of the holders of not less than two-thirds of the outstanding votes.

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



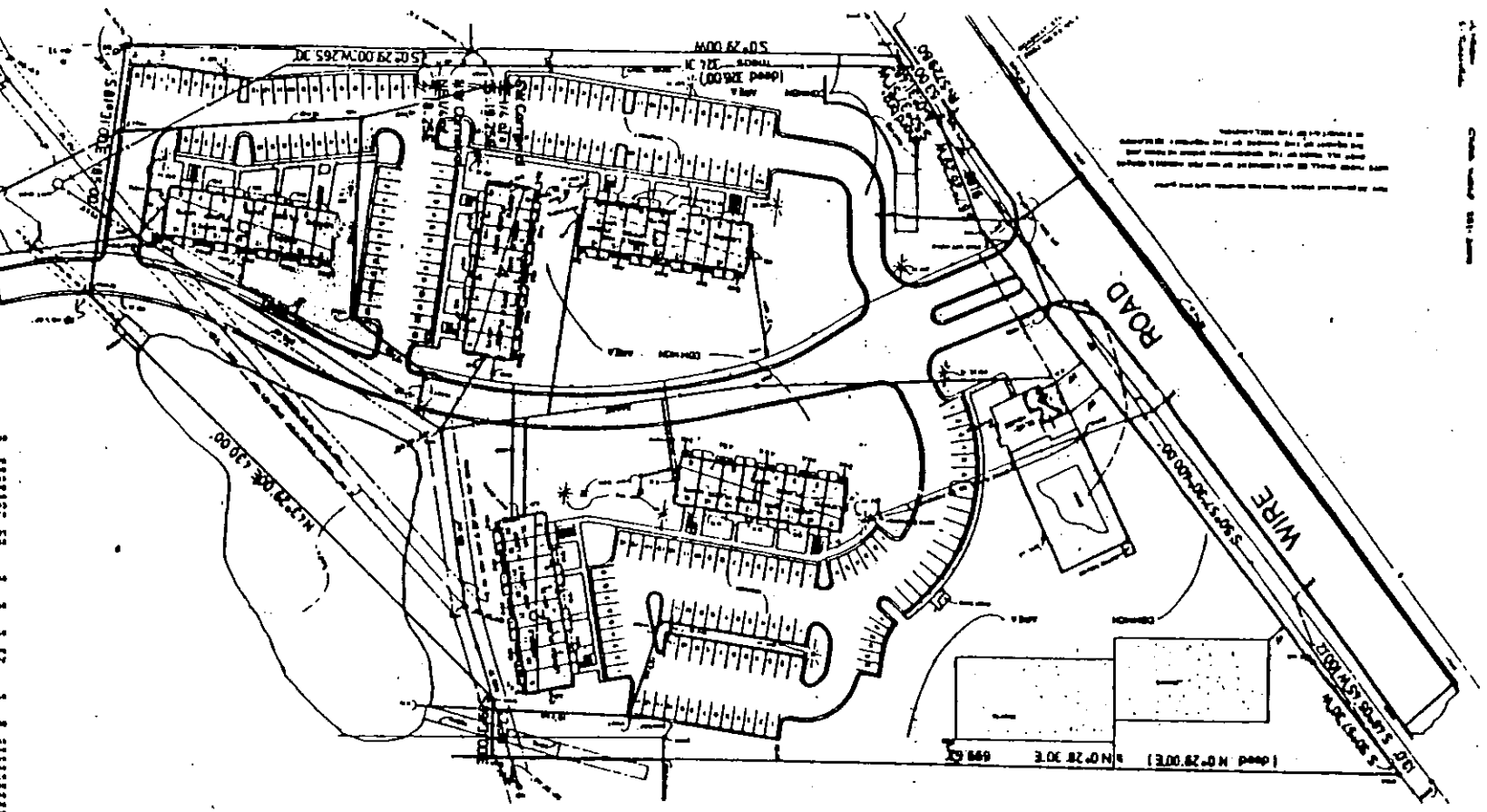
*Handwritten notes and signatures at the top left of the page.*

*Vertical text block on the left side, possibly a title or address.*

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**PHASE I, THE BROOKES, A Condominium,**  
Auburn, Alabama

**EXHIBIT C**

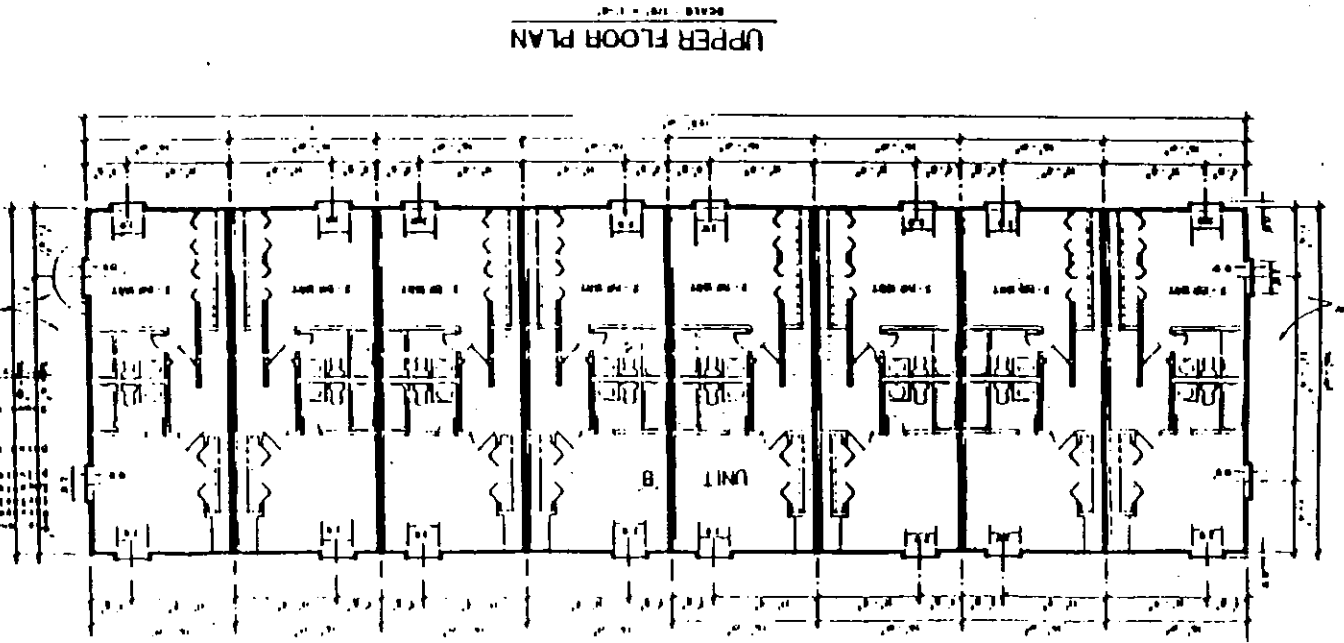
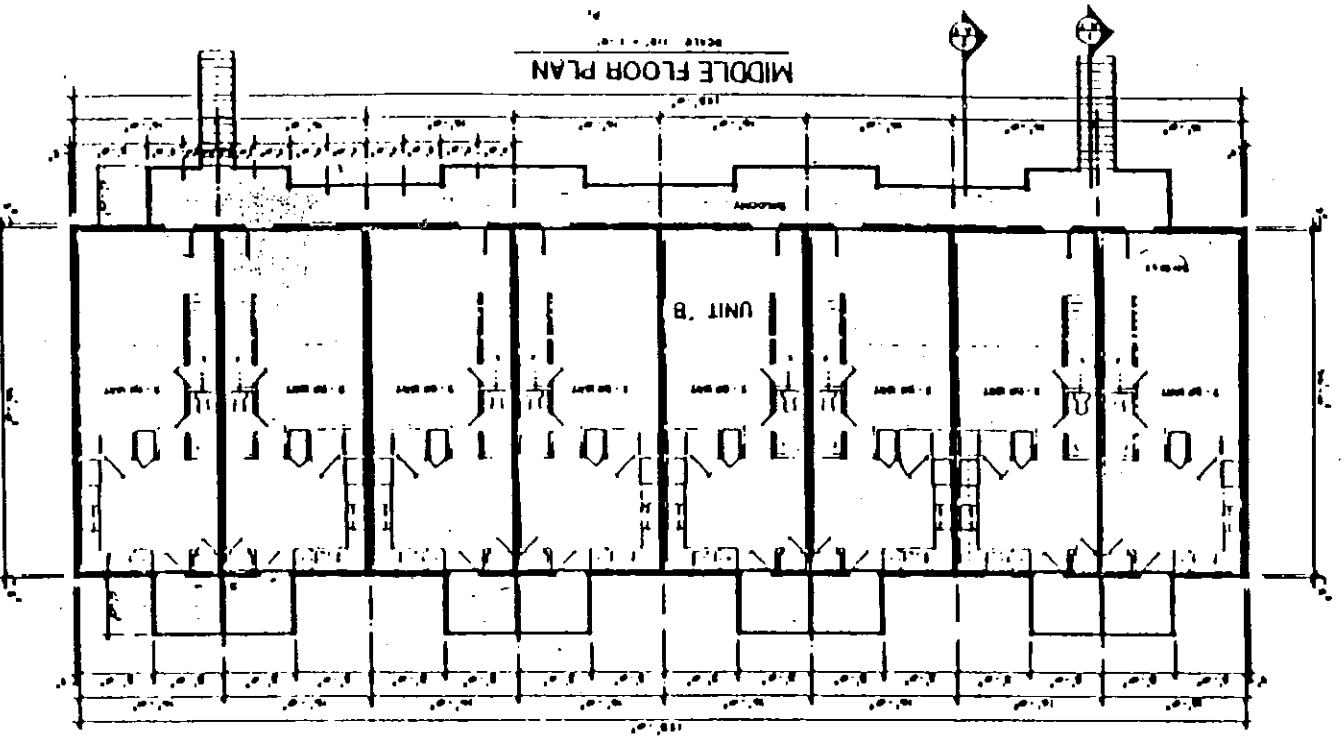
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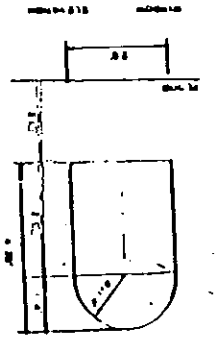
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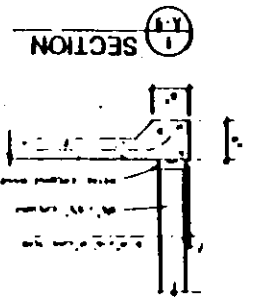
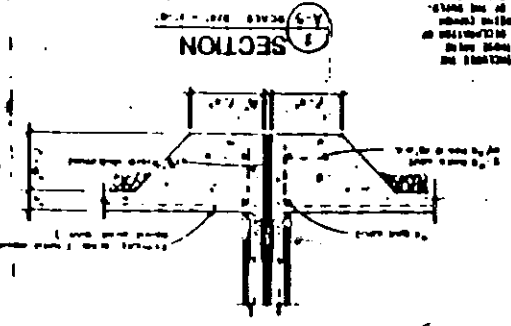
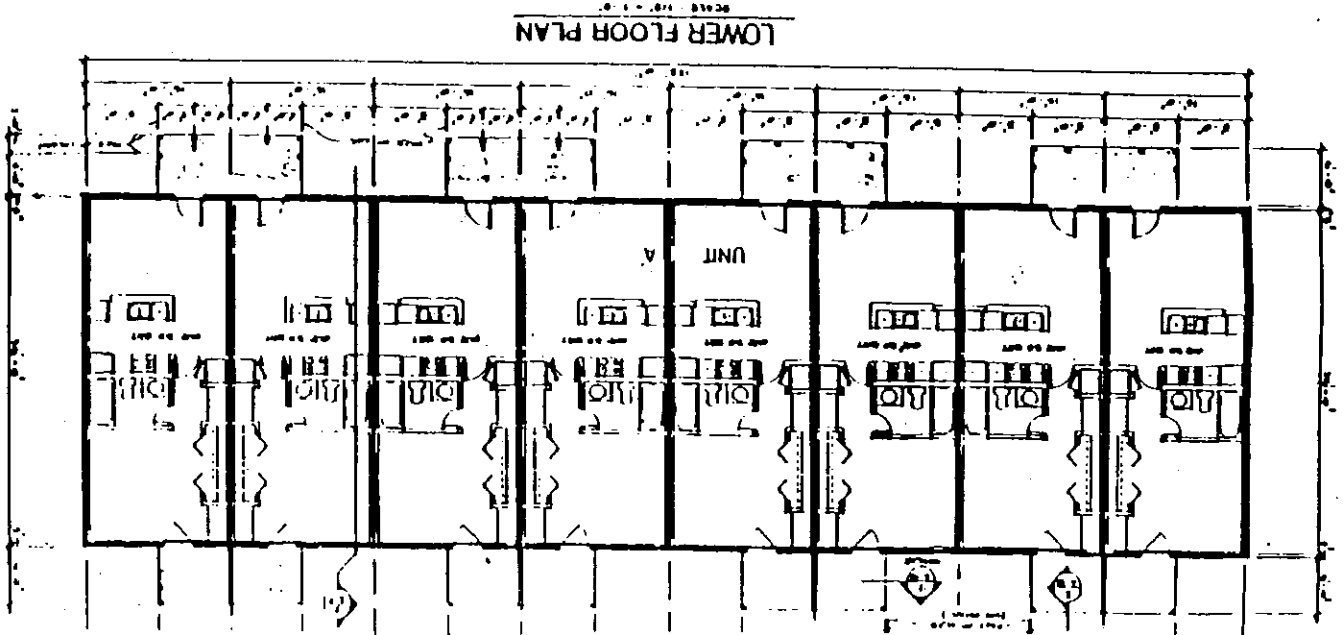
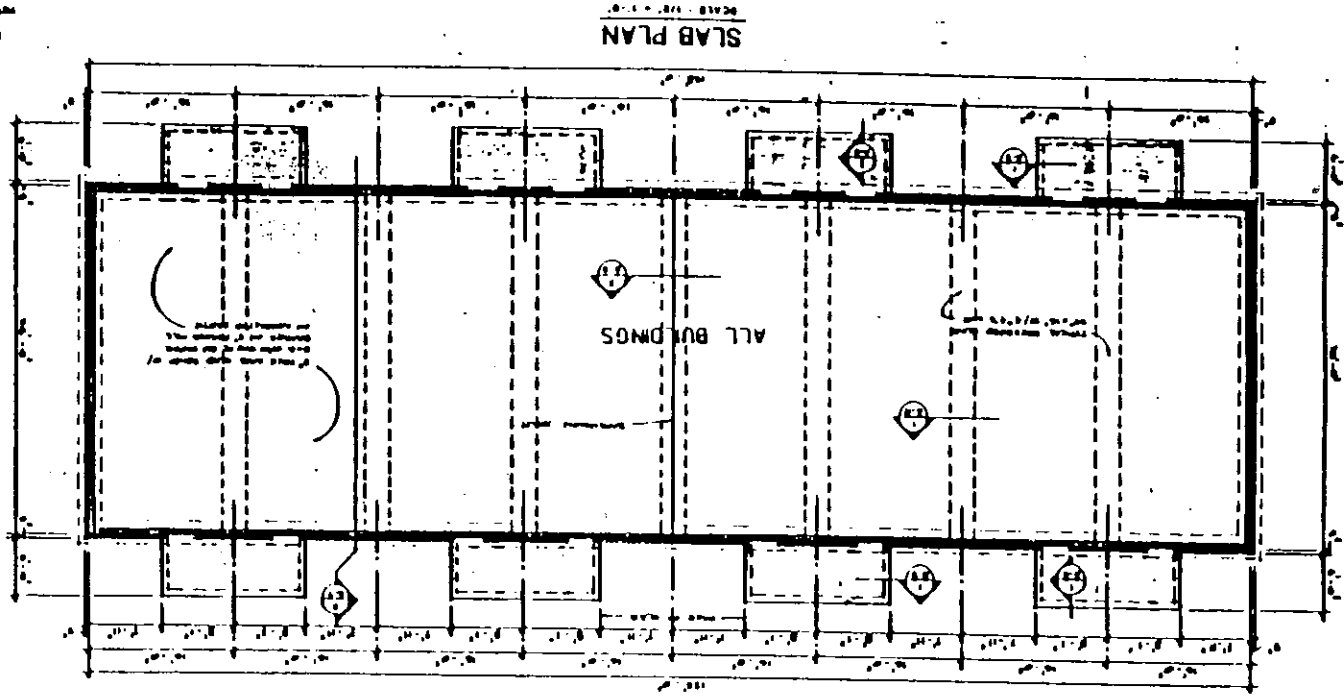
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NO.	DESCRIPTION	QUANTITY	UNIT	TOTAL
1	CONCRETE	100	CU YD	100
2	STEEL	50	TONS	50
3	BRICK	200	1000'S	200
4	CEMENT	100	TONS	100
5	SAND	200	CU YD	200
6	GRAVEL	100	CU YD	100
7	ASPHALT	50	1000'S	50
8	PAINT	100	1000'S	100
9	GLASS	50	1000'S	50
10	DOORS	50	1000'S	50
11	WINDOWS	100	1000'S	100
12	ROOFING	100	1000'S	100
13	MECHANICAL	50	1000'S	50
14	ELECTRICAL	50	1000'S	50
15	PLUMBING	50	1000'S	50
16	FINISHES	100	1000'S	100
17	LANDSCAPE	50	1000'S	50
18	UTILITIES	50	1000'S	50
19	CONCRETE	100	CU YD	100
20	STEEL	50	TONS	50
21	BRICK	200	1000'S	200
22	CEMENT	100	TONS	100
23	SAND	200	CU YD	200
24	GRAVEL	100	CU YD	100
25	ASPHALT	50	1000'S	50
26	PAINT	100	1000'S	100
27	GLASS	50	1000'S	50
28	DOORS	50	1000'S	50
29	WINDOWS	100	1000'S	100
30	ROOFING	100	1000'S	100
31	MECHANICAL	50	1000'S	50
32	ELECTRICAL	50	1000'S	50
33	PLUMBING	50	1000'S	50
34	FINISHES	100	1000'S	100
35	LANDSCAPE	50	1000'S	50
36	UTILITIES	50	1000'S	50



NOTED: ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY UPON RECEIPT OF ANY PERMITS OR APPROVALS. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES. THE CONTRACTOR SHALL MAINTAIN A RECORD OF ALL WORK DONE AND SHALL SUBMIT A COMPLETION REPORT TO THE ARCHITECT UPON COMPLETION OF THE PROJECT.



NOTES:
 

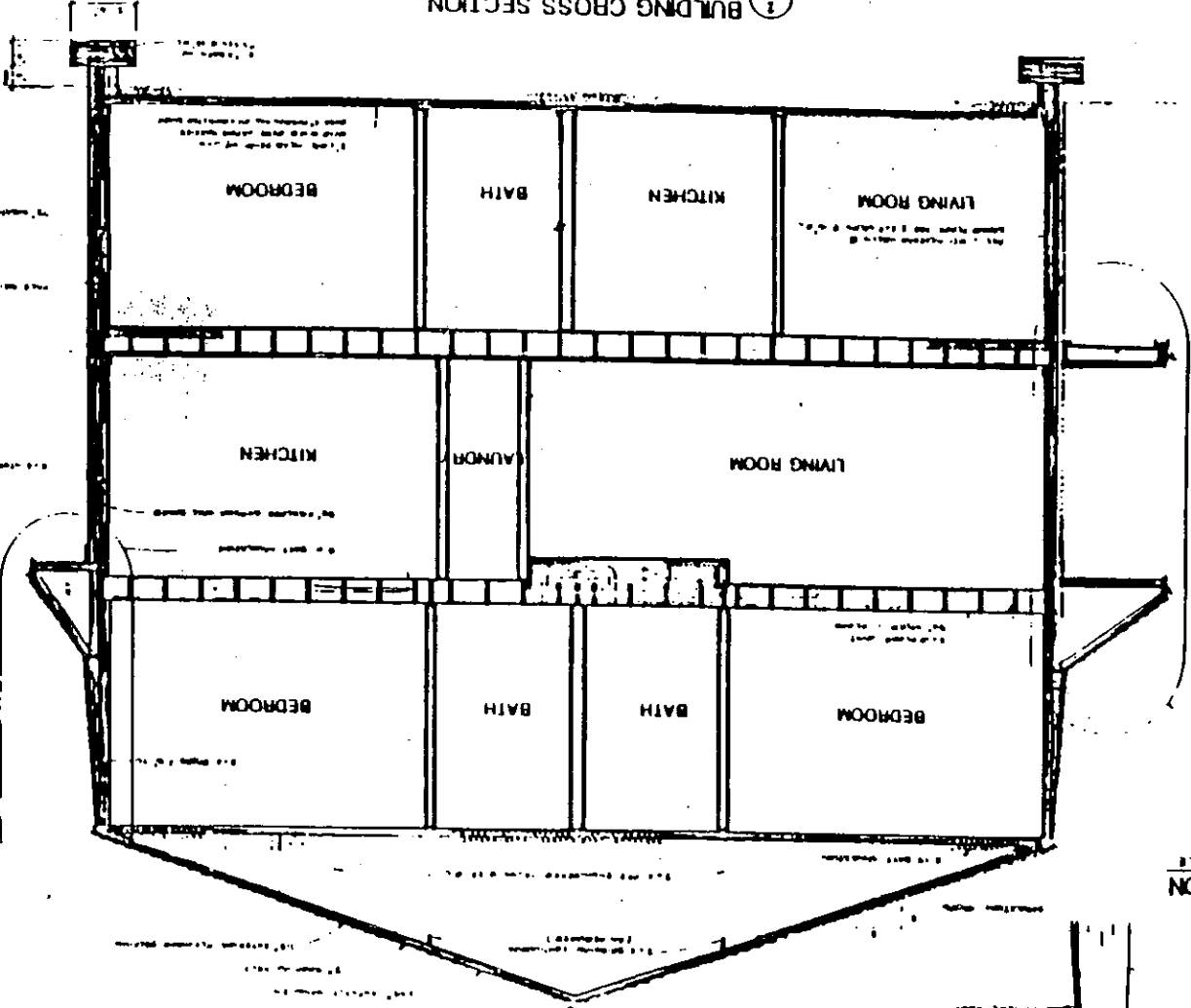
1. ALL DIMENSIONS TO FACE UNLESS NOTED OTHERWISE.
2. ALL WALLS TO BE CONCRETE.
3. ALL FLOORS TO BE CONCRETE.
4. ALL CEILING TO BE CONCRETE.
5. ALL ROOF TO BE CONCRETE.
6. ALL FOUNDATIONS TO BE CONCRETE.
7. ALL STRUCTURAL STEEL TO BE A36.
8. ALL STRUCTURAL WOOD TO BE SYP.
9. ALL MECHANICAL AND ELECTRICAL TO BE INSTALLED AS SHOWN.
10. ALL FINISHES TO BE AS NOTED.

BUILDING PLAN

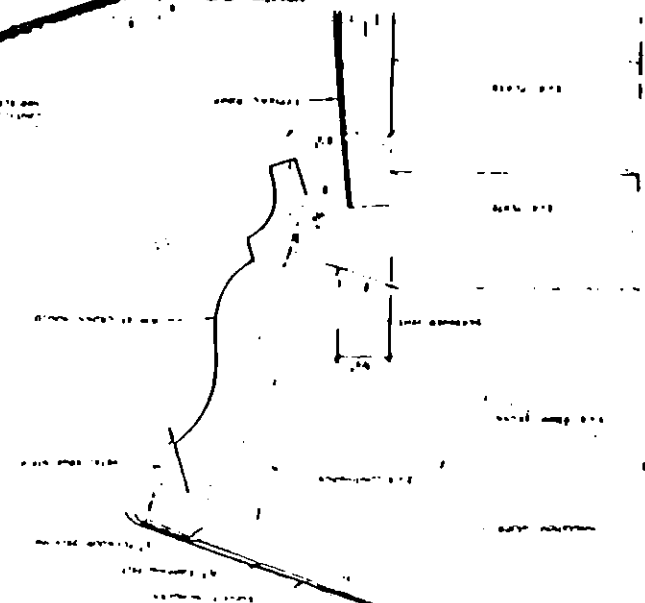
K B WENG AND ASSOC.

SHEET

2 BUILDING CROSS SECTION

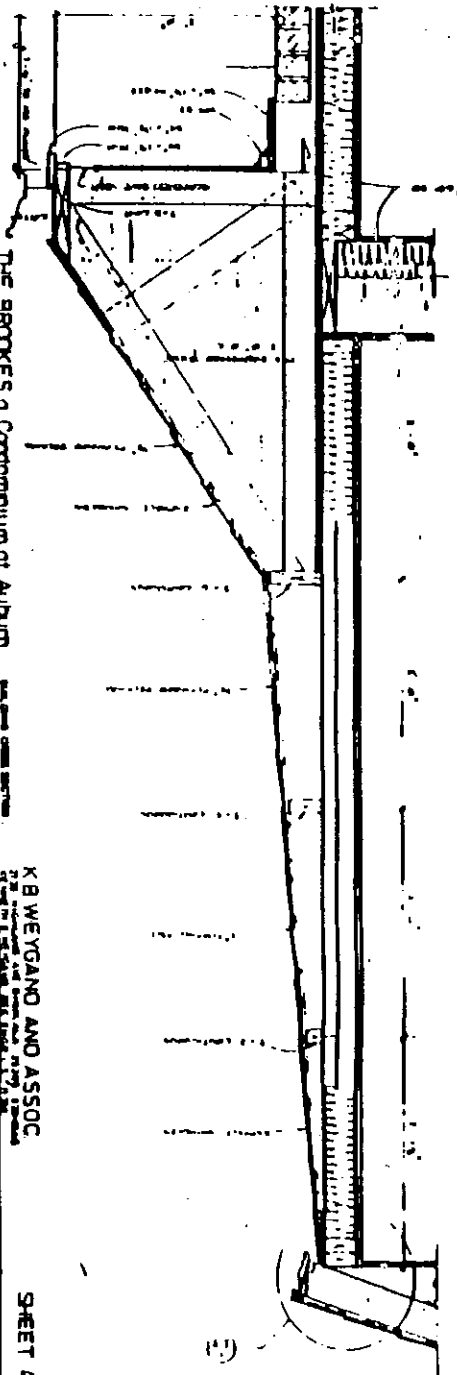


1 SECTION  
1/4" = 1'-0" SCALE



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3 SECTION  
1/4" = 1'-0" SCALE



THE PROGRESS Condominium of Auburn

K.B. WEYGAND AND ASSOC.  
ARCHITECTS

SHEET 4 OF 6

THE BROOKES, a condominium at Auburn BUILDING PLAN

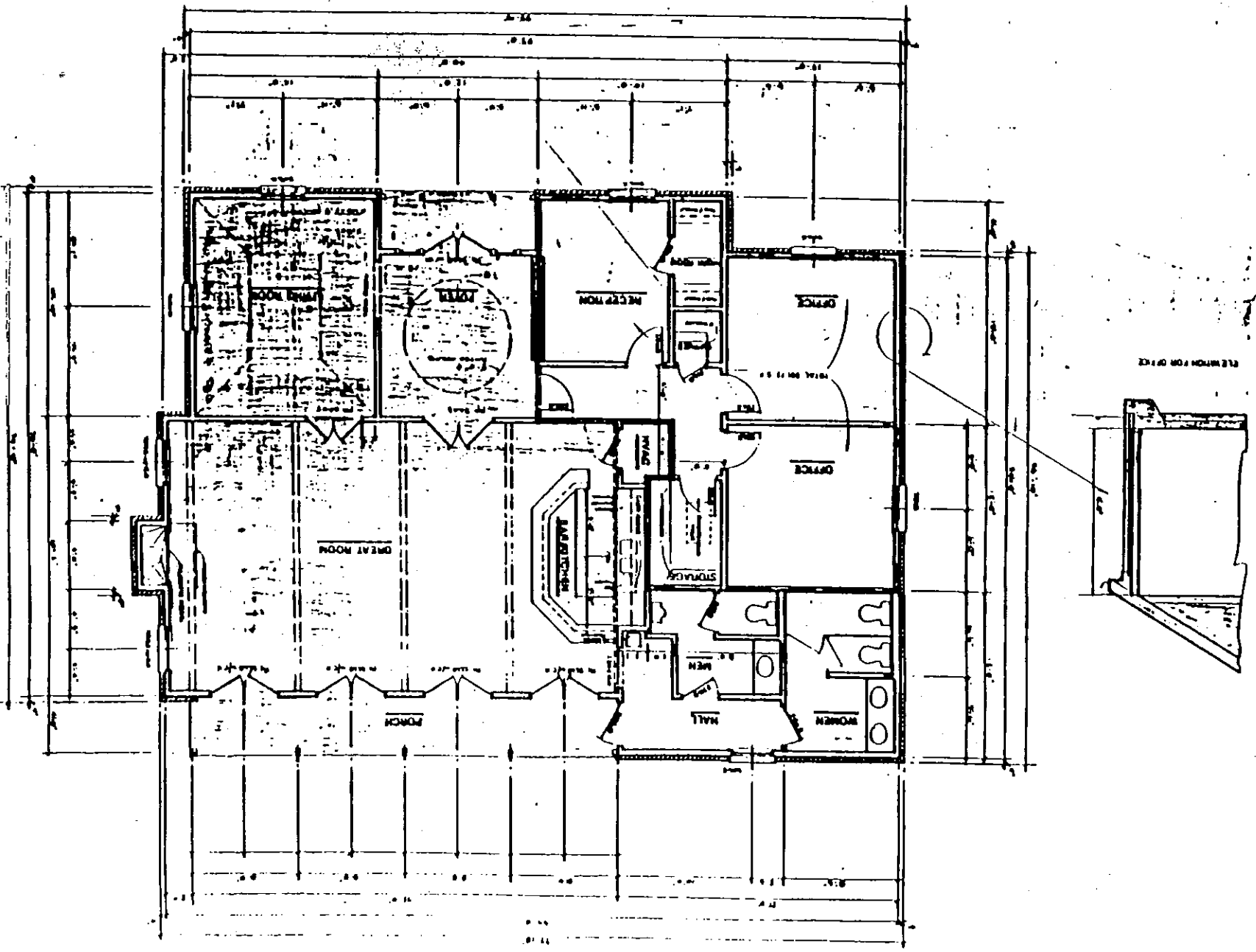
FRANKLIN & ASSOCIATES, ARCHITECTS - SUITE 1001, 1001  
17th Street, N.W., Atlanta, Georgia, 30333

DATE: 4-28-88

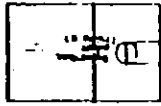
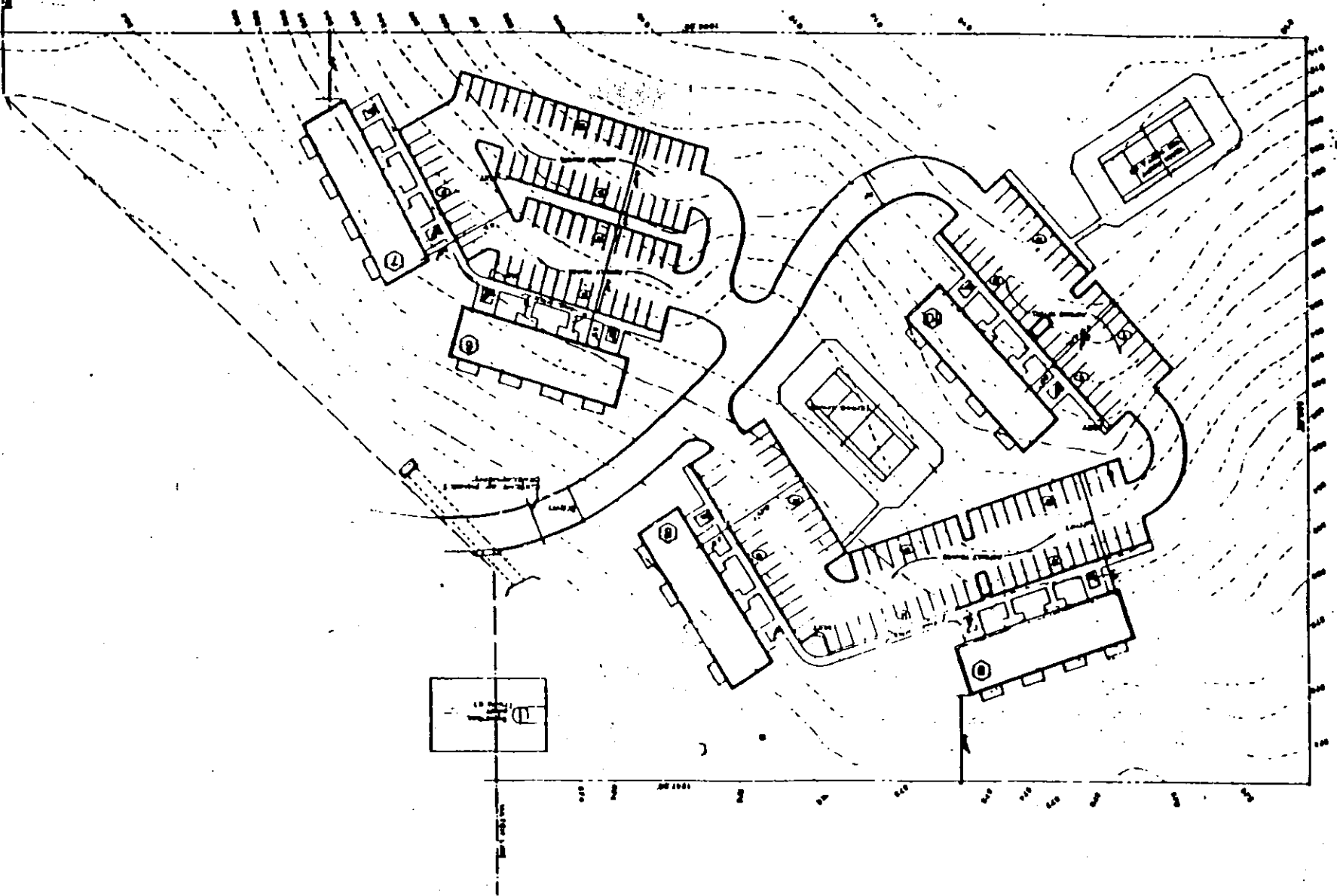
SHEET

1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.  
2. FINISHES ARE TO BE DETERMINED BY THE ARCHITECT.  
3. SEE NOTES ON SHEET 1-1 FOR FINISHES.  
4. SEE NOTES ON SHEET 1-2 FOR FINISHES.  
5. SEE NOTES ON SHEET 1-3 FOR FINISHES.  
6. SEE NOTES ON SHEET 1-4 FOR FINISHES.  
7. SEE NOTES ON SHEET 1-5 FOR FINISHES.  
8. SEE NOTES ON SHEET 1-6 FOR FINISHES.  
9. SEE NOTES ON SHEET 1-7 FOR FINISHES.  
10. SEE NOTES ON SHEET 1-8 FOR FINISHES.

FLOOR PLAN  
1st - 1-8



SITE DEVELOPMENT PLAN - PHASE TWO



THE BROOKES

SITE DEVELOPMENT  
PLAN

K B WEYGAND & ASSO  
2130 HIGHLAND AVE BHAM AL 35205  
KENNEDY B Weygand Bldg. 1176A

DATE 10.29.85

SHEET 6 OF 6

EXHIBIT C-1

EXHIBIT D

BUILDING NUMBER	UNIT NUMBER	UNIT TYPE (# Bedroom(s))	APPROXIMATE SQUARE FOOTAGE (Sq. Ft.)	INDIVIDUAL PERCENTAGE INTEREST (%)
1	1-1	1	542	.826
1	1-2	1	542	.826
1	1-3	1	542	.826
1	1-4	1	542	.826
1	1-5	1	542	.826
1	1-6	1	542	.826
1	1-7	1	542	.826
1	1-8	1	542	.826
1	1-9	2	1084	1.651
1	1-10	2	1084	1.651
1	1-11	2	1084	1.651
1	1-12	2	1084	1.651
1	1-13	2	1084	1.651
1	1-14	2	1084	1.651
1	1-15	2	1084	1.651
1	1-16	2	1084	1.651
2	2-1	1	542	.826
2	2-2	1	542	.826
2	2-3	1	542	.826
2	2-4	1	542	.826
2	2-5	1	542	.826
2	2-6	1	542	.826
2	2-7	1	542	.826
2	2-8	1	542	.826
2	2-9	2	1084	1.651
2	2-10	2	1084	1.651
2	2-11	2	1084	1.651
2	2-12	2	1084	1.651
2	2-13	2	1084	1.651
2	2-14	2	1084	1.651
2	2-15	2	1084	1.651
2	2-16	2	1084	1.651
3	3-1	1	542	.826
3	3-2	1	542	.826
3	3-3	1	542	.826
3	3-4	1	542	.826
3	3-5	1	542	.826
3	3-6	1	542	.826
3	3-7	1	542	.826
3	3-8	1	542	.826
3	3-9	2	1084	1.651
3	3-10	2	1084	1.651
3	3-11	2	1084	1.651
3	3-12	2	1084	1.651
3	3-13	2	1084	1.651
3	3-14	2	1084	1.651
3	3-15	2	1084	1.651
3	3-16	2	1084	1.651
4	4-1	1	542	.826
4	4-2	1	542	.826
4	4-3	1	542	.826
4	4-4	1	542	.826
4	4-5	1	542	.826
4	4-6	1	542	.826
4	4-7	1	542	.826
4	4-8	1	542	.826
4	4-9	2	1084	1.651
4	4-10	2	1084	1.651
4	4-11	2	1084	1.651
4	4-12	2	1084	1.651
4	4-13	2	1084	1.651
4	4-14	2	1084	1.651
4	4-15	2	1084	1.651
4	4-16	2	1084	1.651
5	5-1	1	542	.826
5	5-2	1	542	.826
5	5-3	1	542	.826

5	5-4	1	542	.826
5	5-5	1	542	.826
5	5-6	1	542	.826
5	5-7	1	542	.826
5	5-8	1	542	.826
5	5-9	2	1084	1.651
5	5-10	2	1084	1.651
5	5-11	2	1084	1.651
5	5-12	2	1084	1.651
5	5-13	2	1084	1.651
5	5-14	2	1084	1.651
5	5-15	2	1084	1.651
5	5-16	2	1084	1.651
11	11-1	Office	602	.927
<b>TOTAL</b>			<b>65,642</b>	<b>100%</b>



EXHIBIT D-1

<u>BUILDING NUMBER</u>	<u>UNIT NUMBER</u>	<u>UNIT TYPE</u> <u>(# Bedroom(s))</u>	<u>APPROXIMATE SQUARE FOOTAGE</u> <u>(Sq. Ft.)</u>	<u>INDIVIDUAL PERCENTAGE INTEREST</u> <u>(%)</u>
1	1-1	1	542	.415
1	1-2	1	542	.415
1	1-3	1	542	.415
1	1-4	1	542	.415
1	1-5	1	542	.415
1	1-6	1	542	.415
1	1-7	1	542	.415
1	1-8	1	542	.415
1	1-9	2	1084	.830
1	1-10	2	1084	.830
1	1-11	2	1084	.830
1	1-12	2	1084	.830
1	1-13	2	1084	.830
1	1-14	2	1084	.830
1	1-15	2	1084	.830
1	1-16	2	1084	.830
2	2-1	1	542	.415
2	2-2	1	542	.415
2	2-3	1	542	.415
2	2-4	1	542	.415
2	2-5	1	542	.415
2	2-6	1	542	.415
2	2-7	1	542	.415
2	2-8	1	542	.415
2	2-9	2	1084	.830
2	2-10	2	1084	.830
2	2-11	2	1084	.830
2	2-12	2	1084	.830
2	2-13	2	1084	.830
2	2-14	2	1084	.830
2	2-15	2	1084	.830
2	2-16	2	1084	.830
3	3-1	1	542	.415
3	3-2	1	542	.415
3	3-3	1	542	.415
3	3-4	1	542	.415
3	3-5	1	542	.415
3	3-6	1	542	.415
3	3-7	1	542	.415
3	3-8	1	542	.415
3	3-9	2	1084	.830
3	3-10	2	1084	.830
3	3-11	2	1084	.830
3	3-13	2	1084	.830
3	3-14	2	1084	.830
3	3-15	2	1084	.830
3	3-16	2	1084	.830
4	4-1	1	542	.415
4	4-2	1	542	.415
4	4-3	1	542	.415
4	4-4	1	542	.415
4	4-5	1	542	.415
4	4-6	1	542	.415
4	4-7	1	542	.415
4	4-8	1	542	.415
4	4-9	2	1084	.830
4	4-10	2	1084	.830
4	4-11	2	1084	.830
4	4-12	2	1084	.830
4	4-13	2	1084	.830
4	4-14	2	1084	.830
4	4-15	2	1084	.830
4	4-16	2	1084	.830
5	5-1	1	542	.415
5	5-2	1	542	.415
5	5-3	1	542	.415

5	5-4	1	542	.415
5	5-5	1	542	.415
5	5-6	1	542	.415
5	5-7	1	542	.415
5	5-8	1	542	.415
5	5-9	2	1084	.830
5	5-10	2	1084	.830
5	5-11	2	1084	.830
5	5-12	2	1084	.830
5	5-13	2	1084	.830
5	5-14	2	1084	.830
5	5-15	2	1084	.830
5	5-16	2	1084	.830
11	11-1	Office	602	.927

THE BROOKES, AUBURN, ALABAMA

STATEMENT OF ANNUAL PROJECT OPERATING

BUDGET AND RESERVES FOR THE YEAR 1985-86

ESTIMATES:	PHASE I	PHASE II	TOTAL
Legal and audite	\$ 1,000.00	-0-	\$ 1,000.00
Utilities - Exterior lighting	2,800.00	2,000.00	4,800.00
- Clubhouse electricity	1,000.00	-0-	1,000.00
- Water and sewer	17,500.00	17,000.00	34,500.00
Trash and garbage removal	3,500.00	-0-	3,500.00
Exterminating	700.00	700.00	1,400.00
Pool Maintenance and repairs	750.00	-0-	750.00
Parking area maintenance and repairs	750.00	750.00	1,500.00
Gardening and yard maintenance	1,000.00	1,000.00	2,000.00
and repairs including shrub replacement	8,000.00	-0-	8,000.00
Maintenance personnel	12,000.00	12,000.00	24,000.00
Insurance premiums	15,000.00	-0-	15,000.00
Shuttle bus	7,610.00	7,610.00	15,220.00
Annual reserves			
TOTAL	71,110.00	41,060.00	112,170.00

ASSOCIATION FEES - 1st PHASE:  
 1 BR Unit [542 Ft./65,882 Ft. x 71,110] + 12 = \$48.75/month  
 2 BR Unit [1090 Ft./65,882 Ft. x 71,110] + 12 = \$98.00/month

ASSOCIATION FEES - 1st and 2nd PHASE:  
 1 BR Unit [542 Ft./131,164 Ft. x 112,170] + 12 = \$38.63/month  
 2 BR Unit [1090 Ft./131,164 Ft. x 112,170] + 12 = \$77.68/month

RESERVES - PHASE I	Years of Est.	Expected Replacement Cost	Average Yearly Cost
Roofing	15	\$ 17,500.00	\$ 1,167.00
Exterior Painting	4	15,000.00	3,750.00
Pool equipment	5	1,800.00	360.00
Miscellaneous fixtures	5	1,000.00	200.00
Parking area asphalt	15	30,000.00	2,000.00
Cutters	15	2,000.00	133.00
TOTAL			7,610.00

Exhibit E

STATE OF ALABAMA  
 LEE COUNTY

I, Neil Smith, Judge of Probate hereby certify the foregoing instrument is a true and correct copy of the same as the same appears in my office records. OS 61-A 1985  
 Given under my hand and seal of office this 5 day of Nov 1985  
 NEIL SMITH  
 Judge of Probate

This instrument was prepared by Jack P. Stephenson, Jr.  
1600 Bank for Savings Building, Birmingham, Alabama 35203

Filed: \_\_\_\_\_  
Date of \_\_\_\_\_ 1985  
ARTICLES OF INCORPORATION  
OF  
THE BROOKES OWNERS ASSOCIATION, INC.

W. L. Smith  
Wdg:  
3:45 P.M.

The undersigned, acting as incorporators of a nonprofit corporation under the Alabama Nonprofit Corporation Act, Code of Alabama 1975 §§10-3A-1 et seq., (the "Act"), adopt the following Articles of Incorporation for such corporation:

FIRST: The name of the corporation shall be The Brookes Owners Association, Inc., hereinafter referred to as "Association."

SECOND: The period of its duration is perpetual.

THIRD: This Association is not organized for profit and the purpose for which the Association is organized is to provide an entity pursuant to the Condominium Ownership Act of Alabama, Code of Alabama 1975 §§ 35-8-1 et seq., for the operation, management, maintenance, control and administration of The Brookes, a Condominium at Auburn, hereinafter referred to as the "Condominium."

FOURTH: The powers of the Association shall include and be governed by the following provisions:

A. The Association shall have all the common law and statutory powers of a nonprofit corporation which are not in conflict with the terms of these Articles or the Declaration of Condominium of the Condominium (the "Declaration"), as they may be amended from time to time, including but not limited to the following (capitalized terms shall have the meanings set forth in the Declaration):

1. To acquire, hold, lease, mortgage or convey real, personal or mixed property wherever situated, including without limitation, units in the Condominium.
2. To make and collect assessments against the members as provided in the Declaration to defray the costs, expenses and losses of the Condominium, any other business enterprise, venture or property interest of the Association, and to use the proceeds of the assessments in the exercise of the powers and duties herein provided.
3. To borrow funds to pay for such expenditures as may be authorized by the provisions of the Declaration.

4. To maintain, repair, replace, clean, sanitize and operate the property of the Condominium or the property of the Association.
5. To purchase insurance for the protection of the Condominium and the Association and its members.
6. To make and amend reasonable Rules and Regulations respecting the use of the property of the Condominium or the property of the Association.
7. To lease or license the use of the Common Elements of the Condominium in a manner not inconsistent with the rights of owners of Units in the Condominium.
8. To enforce by legal means the provisions of the Condominium Ownership Act of Alabama, the Declaration, the Articles and By-Laws of the Association, and the Rules and Regulations for the use of the property of the Condominium or the Association.
9. To contract for the management of the Condominium and to delegate to such contractor all powers and duties of the Association except such as are specifically required to be performed by the Association.
10. The objects and purposes set forth in Article Third of these Articles shall be construed as powers as well as objects and purposes, and the Association shall have and may exercise such powers as if such powers were set forth in full herein.
11. The Association shall have and may exercise all powers as shall enable it to do each and every thing necessary, suitable, convenient, expedient or proper for the accomplishment of any or all purposes and the attainment of any or all objects set forth in Article Third.
12. The Association shall have and may exercise all powers set forth in any other Article of these Articles of Incorporation.
- B. All funds and title of properties acquired by the Association and the proceeds therefrom shall be held in trust for the members in accordance with the provisions of the Declaration and the By-Laws of the Association.

FIFTH: The members of the Association shall consist of all of the record owners of Units in the Condominium and after termination of the Condominium shall consist of those who are members at the time of such termination and their heirs, successors and

assigns. Membership in the Association shall be evidenced by a deed or other instrument establishing a record title to a Unit in the Condominium recorded in the Probate Office of Lee County, Alabama, and the delivery to the Association of a certified copy of such instrument. Upon such delivery, the owner of the Unit designated by such instrument shall become a member of the Association and the membership of the prior owner shall be terminated. The share of a member in the funds or assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to the Unit. The owner of each Unit shall be entitled to one (1) vote as a member of the Association. The exact number of votes to be cast by owner(s) of a Unit and the manner of exercising voting rights shall be determined by the By-Laws of the Association.

SIXTH: The affairs of the Association shall be managed by a Board of Directors consisting of the number of directors as shall be determined by the By-Laws; provided, however, that the Board of Directors shall consist of not less than three directors, and in the absence of a provision in the By-Laws shall consist of three Directors. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

Notwithstanding the provisions set forth in this Article Sixth, Juneman/Eddleman Development Co., an Alabama general partnership (the "Developer"), its successors and assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill vacancies, until such time as either (a) four months have elapsed since 75% of the Units in the Condominium have been conveyed to purchasers of Units other than the Developer, or (b) three years have elapsed from the conveyance of the first of such Units to a person other than the Developer, or (c) the Developer elects, at its option, to terminate control of the Association, whichever first occurs. The Developer shall be entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least 5% of the Units. Within sixty (60) days after the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the membership for the purpose of electing the members of the Board of Directors.

The initial Board of Directors shall have three directors. The names and addresses of the members of the Board of Directors who shall hold office until their successors are elected and have qualified, or until such Directors are removed, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
George B. Juneman	2645 VesClub Circle Birmingham, Alabama 35216
Billy D. Eddleman	510 Bank for Savings Building Birmingham, Alabama 35203
Douglas D. Eddleman	510 Bank for Savings Building Birmingham, Alabama 35203

Any director may be removed, either with or without cause, at any time, by the affirmative vote of a majority of the members at a meeting called for that purpose, and the vacancy in the Board caused by any such removal may be filled by the members at such meeting or at any subsequent meeting in the manner prescribed in the By-Laws for the filling of vacancies on the Board.

SEVENTH: The address of the Association's initial registered office is 1749 Wire Road, Auburn, Alabama 36830, and the name of its initial registered agent is Douglas D. Eddleman, with the same address.

EIGHTH: The Association shall have the right to indemnify each person who shall serve as a director, officer, employee, or agent of the Association, or shall serve at the request of the Association in a similar capacity with another corporation, joint venture, trust, or other enterprise, to the extent to which this Association is granted the power to so indemnify such persons by any and every statute of the State of Alabama or act of the Legislature of the State of Alabama.

NINTH: No contract or other transaction between the Association and any person, firm, association or corporation and no other act of the Association shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors or the Association are directly or indirectly, pecuniarily or otherwise interested in such contract, transaction or other act, or related to or interested in (either as director, stockholder, officer, employee, member or otherwise) such person, firm, association or corporation. Any director of the Association individually, or any firm or association of which any director may be a member of, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that the fact that he, individually, or such firm or association, is so interested, shall be disclosed or known to the Board of Directors or a majority of the members thereof as shall be present at any meeting of the Board of Directors, or of any committee of directors having the powers of the full Board, at which action upon any such contract, transaction or other act is taken; and if such fact shall be so disclosed or known, any

director of the Association so related or otherwise interested may be counted in determining the presence of a quorum at any meeting of the Board of Directors, or of such committee, at which action upon any such contract, transaction or act shall be taken, and may vote with respect to such action with like force and effect as if he were not so related or interested. Any director of the Association may vote upon any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

TENTH: Upon the dissolution of the Association, the assets of the Association shall be distributed to the members in the same manner as provided in the Declaration for the distribution of the property subject thereto upon termination of the Condominium to the extent that such distribution is not inconsistent with the provisions of the Act.

ELEVENTH: The Association reserves the right to amend, alter, change or repeal any provision contained in these Articles in the manner now or hereafter provided by law, and all right conferred upon officers and directors herein are granted subject to this reservation.

TWELFTH: The name and address of each incorporator is:

<u>NAME</u>	<u>ADDRESS</u>
George B. Juneman	2645 VesClub Circle Birmingham, Alabama 35216
Billy D. Eddleman	510 Bank for Savings Building Birmingham, Alabama 35203
Douglas D. Eddleman	510 Bank for Savings Building Birmingham, Alabama 35203

WHEREFORE, these incorporators file this, their Articles of Incorporation, and tender to the Probate Judge of Jefferson County, Alabama, the lawful fees and charges, and pray that these Articles may be examined and approved, and that the Association may be deemed to be incorporated for the purposes herein set out.



IN WITNESS WHEREOF, the undersigned incorporators have hereunto subscribed their signatures to these Articles of Incorporation this 31st day of October, 1985.

George B. Juneman  
George B. Juneman

Billy D. Eddleman  
Billy D. Eddleman

Douglas D. Eddleman  
Douglas D. Eddleman

STATE OF ALABAMA  
LEE COUNTY

I, Hal Smith, Judge of Probate hereby certify the foregoing

instrument is true and correct copy as the same appears of record in my office in Book 1209 Page 568

Given under my hand and seal of office this 5 day of Nov 1985

Hal Smith  
Judge of Probate

CORRECTED  
FIRST AMENDMENT TO DECLARATION OF  
CONDOMINIUM FOR THE BROOKES,  
A CONDOMINIUM AT AUBURN

BOOK 34 PAGE 89  
FILED IN THE CLERK'S OFFICE  
LEE COUNTY, ALA.  
1985 NOV 20 PM 2:49

THIS AMENDMENT to the Declaration of Condominium of <sup>the</sup> ~~the~~ ~~Brookes~~, a Condominium at Auburn, is made and entered into by Junemah/Eddleman Development Co., an Alabama general partnership (the "Developer"), for the purpose of amending the Declaration of Condominium pursuant to the provisions of Section 2.05 and Section 11.01 of the Declaration of Condominium for The Brookes, a Condominium at Auburn, as filed in the Office of the Judge of Probate of Lee County, Alabama on November 5, 1985 and recorded in Condominium Book 1-A at page 646 (the "Declaration").

W I T N E S S R T H:

WHEREAS, the Developer has filed the Declaration for the purpose of establishing the plan of condominium ownership for certain real property situated in Lee County, Alabama on which Developer has constructed six (6) buildings, containing a total of eighty-one (81) Units and certain other improvements in accordance with the Map of The Brookes, a Condominium at Auburn, prepared by K.B. Weygand & Associates, Inc., on October 29, 1985 and recorded in Condominium Book 1 at page 176 in the Office of the Judge of Probate of Lee County, Alabama (the "Plan") which Plan is included as part of Exhibit C to the Declaration;

WHEREAS, Section 2.05 of the Declaration permits the Developer to elect to submit the real property described on Exhibit A-1 to the Declaration together with improvements thereon to the Declaration and hence the condominium form of ownership as the Second Phase of The Brookes, a Condominium at Auburn by filing an amendment to such Declaration;

WHEREAS, Developer has elected to submit the real property described on Exhibit A-1 to the Declaration together with improvements thereon to the Declaration as the Second Phase of The Brookes, a Condominium at Auburn;

WHEREAS, Developer has completed construction of Second Phase and desires to amend the Declaration to submit the real property described on Exhibit A-1 to the Declaration to the condominium

form of ownership as Second Phase of The Brookes, a Condominium at Auburn; to amend the Declaration to include a copy of the As-Built Plan for Second Phase attached as Exhibit C-1, and to amend the Declaration to include Corrected Exhibit D-1 attached hereto, to show the percentage share of each Unit in the First Phase and Second Phase in the Common Elements and its respective percentage share of assessments for Common Expenses after the filing of this Amendment;

WHEREAS, Developer has completed construction of the Improvements located on the real property described on Exhibit A-1 to the Declaration, including five (5) buildings containing a total of eighty (80) Units, and such improvements are ready for occupancy;

NOW, THEREFORE, these premises considered, the Developer does hereby amend the Declaration of Condominium for The Brookes, as heretofore recorded in the Office of the Judge of Probate of Lee County, Alabama, in Condominium Book 1-A, at page 646, by submitting the Second Phase of The Brookes, a Condominium at Auburn, to the condominium form of ownership and by adding to Exhibit C-1 of the Declaration the As-Built Plan of Second Phase of The Brookes, a Condominium at Auburn, as prepared by Boles Engineering on, September 29, 1986 and recorded in Condominium Book 1 at page 181 in the Office of the Judge of Probate of Lee County, a copy of which is attached to this Amendment to the Declaration as Exhibit C-1. The Declaration is also hereby amended by adding Corrected Exhibit D-1 to the Declaration to indicate the percentage share of each Unit in the First Phase and Second Phase of The Brookes, a Condominium at Auburn in the Common Elements and its respective percentage share of assessment for Common Expenses.

This Amendment has been executed by the Developer and filed with the Office of the Judge of Probate of Lee County, Alabama, for the purpose of submitting the Second Phase to the Declaration, as herein provided. Except for the aforesaid additions to Exhibit C-1 and the substitution of Corrected Exhibit D-1 for Exhibit D-1 to the Declaration, the terms and conditions of the

Declaration shall continue to be in full force and effect without any changes whatsoever.

IN WITNESS WHEREOF, the said Juneman/Eddleman Development Co., by its authorized partner, has hereto set his signature and seal, this the 17th day of November, 1986.

JUNEMAN/EDDLEMAN DEVELOPMENT CO.,  
an Alabama General Partnership

By: Douglas D. Eddleman  
Douglas D. Eddleman, Partner

STATE OF ALABAMA )  
Jefferson COUNTY )

I, Donald C. Collins, a Notary Public in and for said County in said State, hereby certify that Douglas D. Eddleman whose name as partner of Juneman/Eddleman Development Co., an Alabama general partnership, is signed to the foregoing First Amendment To Declaration of Condominium For The Brookes, a Condominium at Auburn, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing First Amendment To Declaration of Condominium, he in his capacity as such partner, executed the same voluntarily on the date the same bears date.

Given under my hand and official seal of office this 17th day of November, 1986.

Donald C. Collins  
Notary Public  
My Commission Expires: 5/31/90

The undersigned, as Mortgagee under the Mortgage encumbering the real property identified in Exhibit A-1 to the Declaration of Condominium, for The Brookes, a Condominium at Auburn, joins in the execution of the foregoing First Amendment to the Declaration, for the sole purpose of establishing the validity of the First Amendment to the Declaration of Condominium of The Brookes, a Condominium at Auburn as required by Section 35-8-7 of the Code of Alabama, 1975. The undersigned is not the Developer, and does not assume any obligations whatsoever under the terms, conditions, covenants of the foregoing Declaration of Condominium, as amended hereby, and the execution hereof does not in any way subordinate or make the said Mortgage inferior or subject to said Declaration of Condominium, as amended.

JEFFERSON FEDERAL SAVINGS & LOAN  
ASSOCIATION OF BIRMINGHAM

BY: *Carol H. Stewart*  
Its *Senior Vice President*

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, Cynthia R. Spence, a Notary Public in and for said County in said State, hereby certify that Graham D. Hutson, Jr. whose name as Senior Vice President of Jefferson Federal Savings & Loan Association of Birmingham is signed to the foregoing First Amendment To Declaration of Condominium For The Brookes, a Condominium at Auburn, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing First Amendment To Declaration of Condominium, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal of office this 18th day of November, 1986.

*Cynthia R. Spence*  
Notary Public

My Commission Expires: 9-20-87

This instrument prepared by:

Carol H. Stewart  
3000 SouthTrust Tower  
Birmingham, Alabama 35203

PHASE II, THE BROOKES, A CONDOMINIUM AT AUBURN

AUBURN LEE COUNTY ALABAMA  
SEC. 35 T-19-N R-25-E

WE, TOM V. SPENCE AND DAVID H. HILLER, REGISTERED SURVEYORS IN THE STATE OF ALABAMA, HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT PLAT OF THE FOLLOWING DESCRIBED PARCEL OF LAND: Commencing at the Southwest Corner of the Northeast 1/4 of Section 35, T-19-N, R-25-E in Auburn, Lee County, Alabama; thence 50°-28'W, 783.1 feet to the True Point of Beginning of the Parcel of Land Herein Described; thence S81°-31'E, 185.0 feet; thence S63°-29'E, 430.0 feet; thence S87°-31'E, 42.36 feet; thence S0°-18'-30"W, 943.83 feet; thence N85°-37'-47"W, 518.98 feet; thence N0°-29'E, 653.1 feet to the True Point of Beginning; said Parcel Containing 8.9103 Acres; THAT THE BUILDINGS THEREON ARE LOCATED WITH RESPECT TO THE BOUNDARIES THEREOF; THAT THERE ARE NO ENCROACHMENTS, EASEMENTS, RIGHTS-OF-WAY OR JOINT DRIVEWAYS, OR OVER, OR ACROSS SAID PROPERTY, VISIBLE ON THE SURFACE, EXCEPT AS SHOWN ON THIS PLAT; THAT THE CORRECT ADDRESS IS 1728 WIRE ROAD, AUBURN, ALABAMA 36830, ACCORDING TO OUR SURVEY OF SEPTEMBER 18, 1984.

THIS IS TO CERTIFY THAT WE HAVE CONSULTED THE FEDERAL INSURANCE ADMINISTRATION FLOOD HAZARD BOUNDARY MAP AND FOUND THAT THE ABOVE DESCRIBED PARCEL OF LAND DOES NOT LIE IN A SPECIAL FLOOD HAZARD AREA.

*Tom V. Spence* *David H. Hiller*  
Certs. No. 10090 Cert. No. 6239

JUNEMAN/EDOLEMAN DEVELOPMENT COMPANY, AN ALABAMA GENERAL PARTNERSHIP, OWNER OF THE REAL PROPERTY SHOWN ON THIS PLAT, HEREBY JOINS IN THE STATEMENT OF TOM V. SPENCE AND DAVID H. HILLER, AND CERTIFY THAT IT HAS AND IS OUR PURPOSE TO DEVELOP THE LAND SO PLATTED AS SHOWN, IN WITNESS WHEREOF JUNEMAN/EDOLEMAN DEVELOPMENT COMPANY HAS CAUSED ITS NAME TO BE HERETO SIGNED AND ATTESTED BY  
DOUGLAS D. EDOLEMAN  
GENERAL PARTNER OF SAID COMPANY, ON THIS THE \_\_\_\_\_ AND DAY OF OCTOBER 1984.

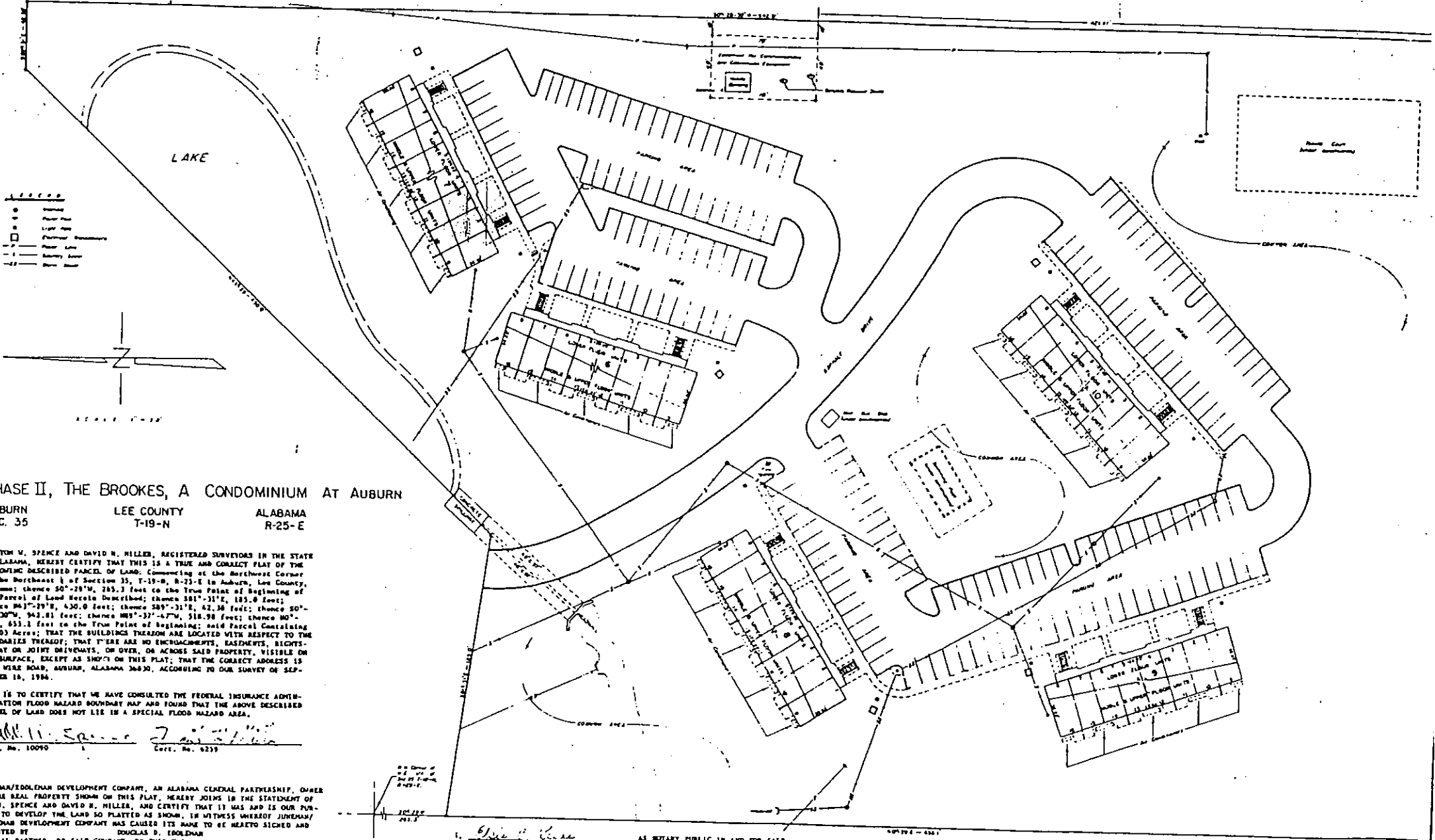
JUNEMAN/EDOLEMAN DEVELOPMENT COMPANY  
*Douglas D. Edoleman*  
Douglas D. Edoleman, Partner

I, *Glenn W. Kiser*, AS NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT EDOLEMAN WHOSE NAME IS SIGNED TO THE FOREGOING CERTIFICATE AS PARTNER OF JUNEMAN/EDOLEMAN COMPANY, AN ALABAMA GENERAL PARTNERSHIP, AND WHO IS KNOWN TO ME, ACKNOWLEDGED BEFORE ME ON THIS DATE THAT, BEING INFORMED OF THE CONTENTS OF SAID CERTIFICATE, HE EXECUTED THE SAME VOLUNTARILY AS SUCH PARTNER AND WITH FULL AUTHORITY.

GIVEN UNDER MY HAND AND SEAL THIS 2nd DAY OF October 1984.

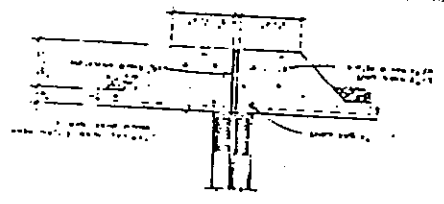
BY: *Glenn W. Kiser*  
Notary Public  
MY COMMISSION EXPIRES 10/1/87

*Glenn W. Kiser*  
Notary Public

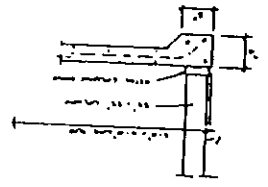


NOTE: THE REPORT AND EXCELLENCE THE  
WORK AND THE ARCHITECT  
REPRESENTED IN THE PREPARATION OF  
THIS PLAN. THE ARCHITECT IS NOT  
RESPONSIBLE FOR ANY ERRORS OR  
OMISSIONS IN THIS PLAN OR FOR  
ANY CONSTRUCTION OF THIS PLAN.

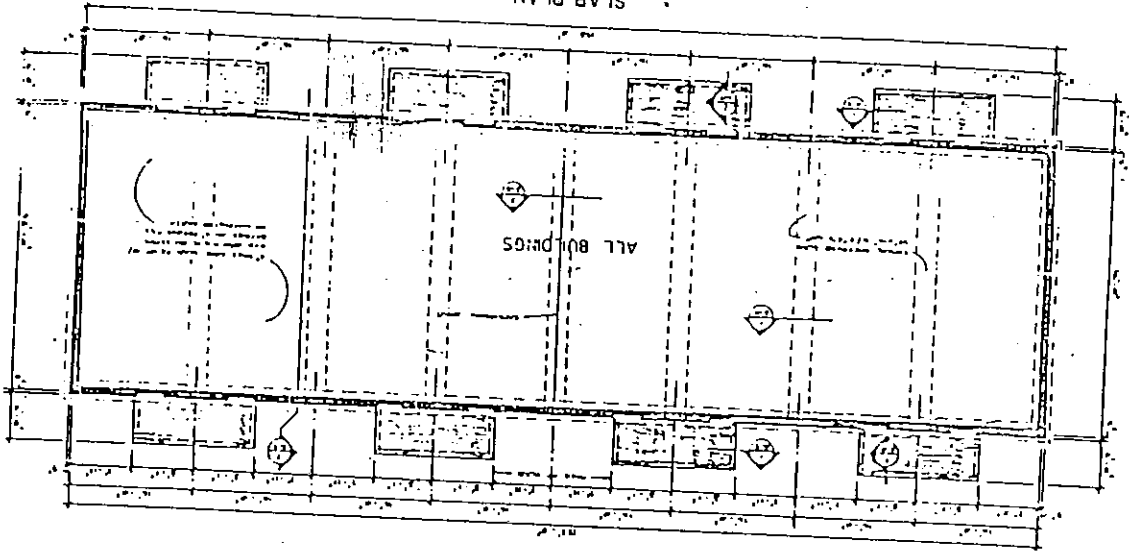
SECTION 1



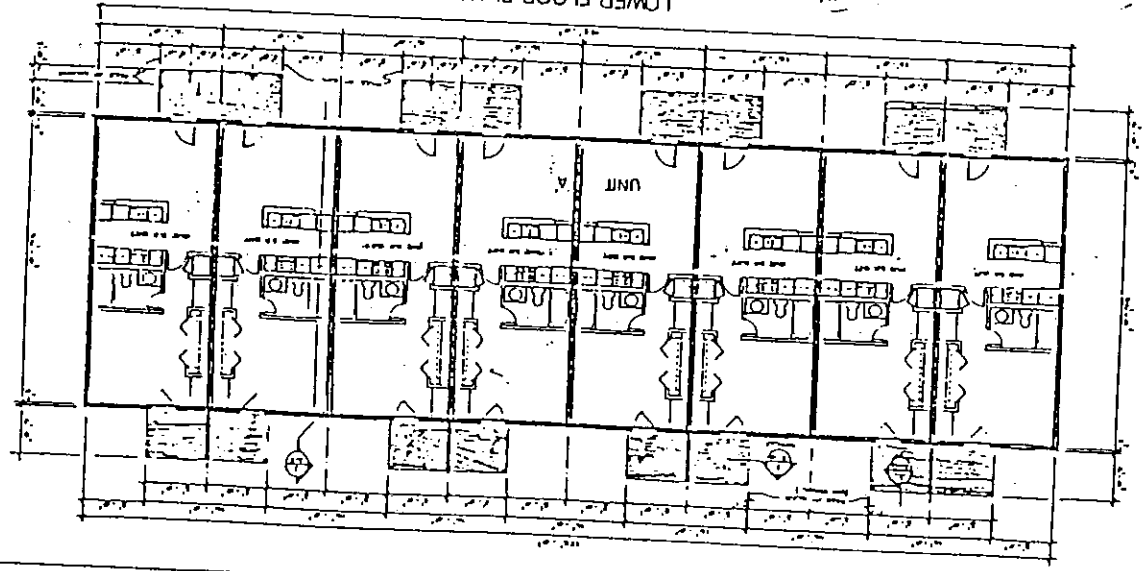
SECTION 2



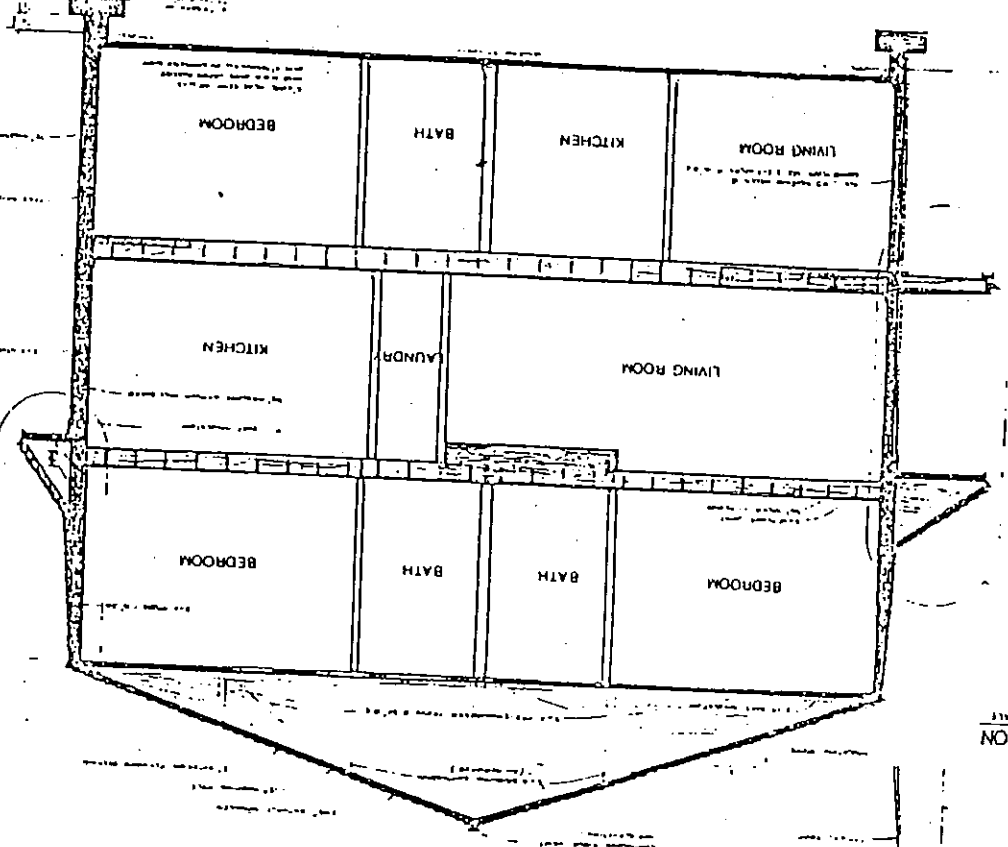
SLAB PLAN



LOWER FLOOR PLAN

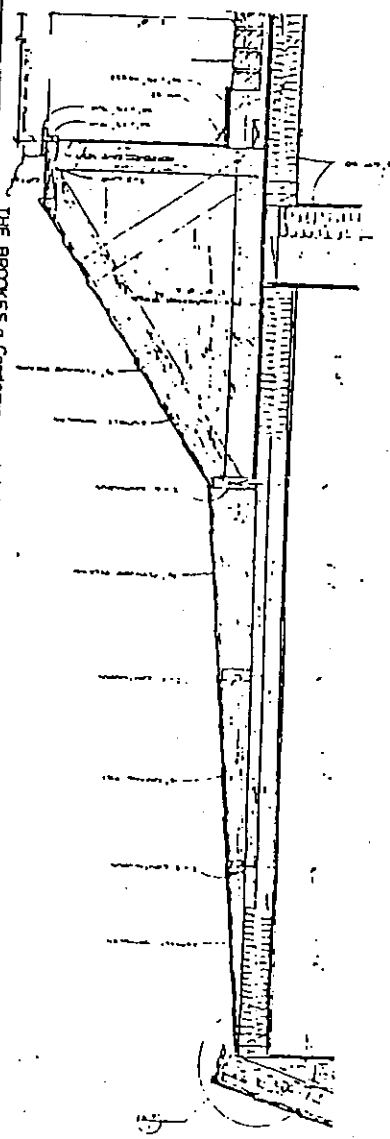


1 BUILDING CROSS SECTION



1 SECTION  
1/4" = 1'-0" SCALE

2 SECTION  
1/4" = 1'-0" SCALE



THE BROOKES & CO. ARCHITECTS, AUBURN, MASS.

SHEET 4 OF 4

NOTES: THE ARCHITECT HAS NOT BEEN ADVISED BY THE OWNER OF ANY CHANGES IN THE DESIGN SINCE THE DATE OF THE LAST MEETING. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED IN THIS DRAWING. THE ARCHITECT HAS NOT BEEN ADVISED OF ANY CHANGES IN THE DESIGN SINCE THE DATE OF THE LAST MEETING.



Corrected  
EXHIBIT D-1

<u>BUILDING NUMBER</u>	<u>UNIT NUMBER</u>	<u>UNIT TYPE</u> (#Bedroom(s))	<u>APPROXIMATE SQUARE FOOTAGE</u> (Sq. Ft.)	<u>INDIVIDUAL PERCENTAGE INTEREST</u> (%)
1	1-1	1	542	.415
1	1-2	1	542	.415
1	1-3	1	542	.415
1	1-4	1	542	.415
1	1-5	1	542	.415
1	1-6	1	542	.415
1	1-7	1	542	.415
1	1-8	1	542	.415
1	1-9	1	542	.415
1	1-10	2	1084	.830
1	1-11	2	1084	.830
1	1-12	2	1084	.830
1	1-13	2	1084	.830
1	1-14	2	1084	.830
1	1-15	2	1084	.830
1	1-16	2	1084	.830
2	2-1	1	542	.415
2	2-2	1	542	.415
2	2-3	1	542	.415
2	2-4	1	542	.415
2	2-5	1	542	.415
2	2-6	1	542	.415
2	2-7	1	542	.415
2	2-8	1	542	.415
2	2-9	2	1084	.830
2	2-10	2	1084	.830
2	2-11	2	1084	.830
2	2-12	2	1084	.830
2	2-13	2	1084	.830
2	2-14	2	1084	.830
2	2-15	2	1084	.830
2	2-16	2	1084	.830
3	3-1	1	542	.415
3	3-2	1	542	.415
3	3-3	1	542	.415
3	3-4	1	542	.415
3	3-5	1	542	.415
3	3-6	1	542	.415
3	3-7	1	542	.415
3	3-8	1	542	.415
3	3-9	2	1084	.830
3	3-10	2	1084	.830
3	3-11	2	1084	.830
3	3-12	2	1084	.830
3	3-13	2	1084	.830
3	3-14	2	1084	.830
3	3-15	2	1084	.830
3	3-16	2	1084	.830
4	4-1	1	542	.415
4	4-2	1	542	.415
4	4-3	1	542	.415
4	4-4	1	542	.415
4	4-5	1	542	.415
4	4-6	1	542	.415
4	4-7	1	542	.415
4	4-8	1	542	.415
4	4-9	2	1084	.830
4	4-10	2	1084	.830
4	4-11	2	1084	.830
4	4-12	2	1084	.830
4	4-13	2	1084	.830
4	4-14	2	1084	.830
4	4-15	2	1084	.830
4	4-16	2	1084	.830
5	5-1	1	542	.415

5	5-2	1	542	.415
5	5-3	1	542	.415
5	5-4	1	542	.415
5	5-5	1	542	.415
5	5-6	1	542	.415
5	5-7	1	542	.415
5	5-8	1	542	.415
5	5-9	2	1084	.415
5	5-10	2	1084	.830
5	5-11	2	1084	.830
5	5-12	2	1084	.830
5	5-13	2	1084	.830
5	5-14	2	1084	.830
5	5-15	2	1084	.830
5	5-16	2	1084	.830
6	6-1	1	542	.415
6	6-2	1	542	.415
6	6-3	1	542	.415
6	6-4	1	542	.415
6	6-5	1	542	.415
6	6-6	1	542	.415
6	6-7	1	542	.415
6	6-8	1	542	.415
6	6-9	2	1084	.830
6	6-10	2	1084	.830
6	6-11	2	1084	.830
6	6-12	2	1084	.830
6	6-13	2	1084	.830
6	6-14	2	1084	.830
6	6-15	2	1084	.830
6	6-16	2	1084	.830
7	7-1	1	542	.415
7	7-2	1	542	.415
7	7-3	1	542	.415
7	7-4	1	542	.415
7	7-5	1	542	.415
7	7-6	1	542	.415
7	7-7	1	542	.415
7	7-8	1	542	.415
7	7-9	2	1084	.830
7	7-10	2	1084	.830
7	7-11	2	1084	.830
7	7-12	2	1084	.830
7	7-13	2	1084	.830
7	7-14	2	1084	.830
7	7-15	2	1084	.830
7	7-16	2	1084	.830
8	8-1	1	542	.415
8	8-2	1	542	.415
8	8-3	1	542	.415
8	8-4	1	542	.415
8	8-5	1	542	.415
8	8-6	1	542	.415
8	8-7	1	542	.415
8	8-8	1	542	.415
8	8-9	2	1084	.830
8	8-10	2	1084	.830
8	8-11	2	1084	.830
8	8-12	2	1084	.830
8	8-13	2	1084	.830
8	8-14	2	1084	.830
8	8-15	2	1084	.830
8	8-16	2	1084	.830
9	9-1	1	542	.415
9	9-2	1	542	.415
9	9-3	1	542	.415
9	9-4	1	542	.415
9	9-5	1	542	.415

9	9-6	1	542	.415
9	9-7	1	542	.415
9	9-8	1	542	.415
9	9-9	2	1084	.830
9	9-10	2	1084	.830
9	9-11	2	1084	.830
9	9-12	2	1084	.830
9	9-13	2	1084	.830
9	9-14	2	1084	.830
9	9-15	2	1084	.830
9	9-16	2	1084	.830
10	10-1	1	542	.830
10	10-2	1	542	.415
10	10-3	1	542	.415
10	10-4	1	542	.415
10	10-5	1	542	.415
10	10-6	1	542	.415
10	10-7	1	542	.415
10	10-8	1	542	.415
10	10-9	2	1084	.830
10	10-10	2	1084	.830
10	10-11	2	1084	.830
10	10-12	2	1084	.830
10	10-13	2	1084	.830
10	10-14	2	1084	.830
10	10-15	2	1084	.830
10	10-16	2	1084	.830
11	11-1	2	602	.461

Office



SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM  
FOR THE BROOKES, A CONDOMINIUM AT AUBURN

BOOK 2-4 PAGE 109  
RECORDED IN THE OFFICE  
OF THE CLERK OF THE ALA.

1985 NOV 20 PM 2:49

This Second Amendment to the Declaration of Condominium of The Brookes, A Condominium at Auburn, is made and entered into by The Brookes Owners Association, Inc., an Alabama not-for-profit corporation (the "Association"), and Juneman/Eddleman Development Co., an Alabama general partnership (the "Developer") for the purpose of amending the Declaration of Condominium pursuant to the provisions of Article XI of the Declaration of Condominium for The Brookes, A Condominium at Auburn, as filed in the Office of the Judge of Probate of Lee County, Alabama, on November 5, 1985, and recorded in Condominium Book 1-A at page 646, and as amended by the First Amendment to Declaration of Condominium for The Brookes, A Condominium at Auburn, as recorded on October 2, 1986, in Condominium Book 2-A at page 02 (the "Declaration").

W I T N E S S E T H :

WHEREAS, the Developer has filed the Declaration for the purpose of establishing the plan of condominium ownership for certain real property situated in Lee County, Alabama, on which Developer has constructed eleven (11) buildings containing a total of one hundred sixty-one (161) units and certain other improvements in accordance with the Map of The Brookes, A Condominium at Auburn, prepared by K. B. Weygand & Associates, Inc., on October 29, 1985, and recorded in Condominium Book 1 at page 176, in the Office of the Judge of Probate of Lee County, Alabama, and in accordance with the Map of Phase II, The Brookes, A Condominium at Auburn, prepared by Boles Engineering on September 29, 1986, and recorded in Condominium Book 1 at page 181, in the Office of the Judge of Probate of Lee County, Alabama (the "Plan"), which Plan is included as part of Exhibit "C" and Exhibit "C-1" to the Declaration;

WHEREAS, Section 11.02 of the Declaration permits the Unit Owners and the Developer to amend the Declaration in accordance with the procedure set forth in Article XI of such Declaration;

WHEREAS, as a condition of making a loan secured by an interest in a Unit, the Veterans Administration requires that certain amendments to the Declaration be made;

WHEREAS, the Developer and Unit Owners desire to have the Veterans Administration approve said Declaration for the purpose of insuring loans;

WHEREAS, a meeting of the members of the Association was called for the purpose of considering a proposal to amend the Declaration and said proposal to amend the Declaration was approved by the affirmative vote of the members owning not less than sixty-seven percent (67%) of the Units and by the affirmative vote of the Mortgagees holding not less than fifty-one percent (51%) of the Mortgages on Units;

NOW, THEREFORE, these premises considered, the Association and the Developer do hereby amend the Declaration of Condominium for The Brookes, A Condominium at Auburn, as heretofore recorded in the Office of the Judge of Probate of Lee County, Alabama, in Condominium Book 1-A at page 646, as amended by the First Amendment to Declaration of Condominium for The Brookes, A Condominium at Auburn, as heretofore recorded in the Office of the Judge of Probate of Lee County, Alabama, in Condominium Book 2-A at page 02, by deleting Section 11.01(a) and substituting therefor the following language:

(a) The Developer reserves the right to amend the Declaration, By-Laws and Articles of Incorporation of the Association until such time as 75% of the Units have been conveyed to purchasers of Units as provided in Section 12.01 below. Such right to amend shall be subject to the prior written approval of the Veterans Administration.

The Declaration is further amended to insert Section 2.06 under Article II which shall provide as follows:

Section 2.06. Plan of Phase Maintenance. The Condominium Property is hereby divided into five (5) phases to be designated Phase A, Phase B, Phase C, Phase D and Phase E for purposes of securing project approval of the Veterans Administration. Phase A shall consist of Buildings 2, 6, 7, 8 and 10 and all Units contained therein. Phase B shall consist of Buildings 4 and 9 and the Units contained therein. Phase C shall include Building 1 and the Units contained therein. Phase D shall consist of Building 3 and the Units contained therein; and Phase E shall consist of Building 5 and the Units contained therein. After fifty-one percent (51%) of the total number of Units in the Condominium Property is sold, the designation of Phase A, B, C, D and E shall no longer be used and this Section of the Condominium Documents shall no longer have any force or effect.

IN WITNESS WHEREOF, the undersigned President and Secretary of the Association and the said Juneman/Eddleman Development Company, by its authorized partner, have hereto set their signatures and seals this 17th day of November, 1986.

THE BROOKES OWNERS ASSOCIATION, INC.,  
an Alabama Not-for-Profit Corporation

BY: Richard L. Eddleman  
Its President

BY: Valley D. Eddleman  
Its Secretary

STATE OF ALABAMA )  
LEE COUNTY )

I, a Notary Public in and for said County in said State, hereby certify that Douglas D. Eddleman, as President of The Brookes Owners Association, Inc., an Alabama not-for-profit corporation, is signed to the foregoing Second Amendment to Declaration of Condominium for The Brookes, A Condominium at Auburn, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Second Amendment, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Association on the day the same bears date.

Given under my hand and official seal of office this 17th day of November, 1986.

Blaine C. Collins  
Notary Public  
My Commission Expires: 5/21/90

STATE OF ALABAMA )  
LEE COUNTY )

I, a Notary Public in and for said County in said State, hereby certify that Billy D. Eddleman, as Secretary of The Brookes Owners Association, Inc., a not-for-profit corporation, is signed to the foregoing Second Amendment to Declaration of Condominium for The Brookes, A Condominium at Auburn, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Second Amendment, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Association on the day the same bears date.

Given under my hand and official seal of office this 17th day of November, 1986.

David C. Collins  
Notary Public  
My Commission Expires: 5/21/90

JUNEMAN/EDDLEMAN DEVELOPMENT CO.,  
an Alabama General Partnership

By: Douglas D. Eddleman  
Douglas D. Eddleman, Partner

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, a Notary Public in and for said County in said State, hereby certify that Douglas D. Eddleman, as authorized partner of Juneman/Eddleman Development Co., is signed to the foregoing Second Amendment to Declaration of Condominium for The Brookes, A Condominium at Auburn, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Second Amendment, he, as such authorized partner, and with full authority, executed the same voluntarily for and as the act of said Juneman/Eddleman Development Co., on the day the same bears date.

Given under my hand and official seal of office this 17th day of November, 1986.

David C. Collins  
Notary Public  
My Commission Expires: 5/21/90

The undersigned, as Mortgagee under the Mortgage encumbering the real property identified in the Declaration of Condominium for The Brookes, A Condominium at Auburn, joins in the execution of the foregoing Second Amendment to the Declaration for the sole purpose of establishing the validity of the First Amendment to the Declaration of Condominium of The Brookes, A Condominium at Auburn, as required by § 35-8-7 of the Code of Alabama, 1975. The undersigned is not the Developer, and does not assume any obligations whatsoever under the terms, conditions, and covenants of the foregoing Declaration of Condominium, as amended, and as amended hereby, and the execution hereof does not in any subordinate or make the said Mortgage inferior or subject to said Declaration of Condominium, as amended.

JEFFERSON FEDERAL SAVINGS & LOAN  
ASSOCIATION OF BIRMINGHAM

BY: *Graham D. Hutson, Jr.*  
Its *Assistant Vice President*

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, a Notary Public in and for said County in said State, hereby certify that Graham D. Hutson, Jr. whose name as ~~Senior Vice President~~ of Jefferson Federal Savings & Loan Association of Birmingham is signed to the foregoing Second Amendment to the Declaration of Condominium for The Brookes, A Condominium at Auburn, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Second Amendment to the Declaration of Condominium, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal of office this 18th day of November, 1986.

*Anthony R. Spence*  
Notary Public  
My Commission expires: 9-20-87

This instrument was prepared by:

Carol H. Stewart  
3000 SouthTrust Tower  
Birmingham, Alabama 35203

This instrument was prepared by Jack P. Stephenson, Jr.  
1600 Bank For Savings Building, Birmingham, Alabama 35203

ARTICLES OF INCORPORATION  
OF

THE BROOKES OWNERS ASSOCIATION, INC.

Filed  
5 day of Jan. 1985  
Jack Smith  
Addy:  
3:45 P.M.

The undersigned, acting as incorporators of a nonprofit corporation under the Alabama Nonprofit Corporation Act, Code of Alabama 1975 §§10-3A-1 et seq., (the "Act"), adopt the following Articles of Incorporation for such corporation:

FIRST: The name of the corporation shall be The Brookes Owners Association, Inc., hereinafter referred to as "Association."

SECOND: The period of its duration is perpetual.

THIRD: This Association is not organized for profit and the purpose for which the Association is organized is to provide an entity pursuant to the Condominium Ownership Act of Alabama, Code of Alabama 1975 §§ 35-8-1 et seq., for the operation, management, maintenance, control and administration of The Brookes, a Condominium at Auburn, hereinafter referred to as the "Condominium."

FOURTH: The powers of the Association shall include and be governed by the following provisions:

A. The Association shall have all the common law and statutory powers of a nonprofit corporation which are not in conflict with the terms of these Articles or the Declaration of Condominium of the Condominium (the "Declaration"), as they may be amended from time to time, including but not limited to the following (capitalized terms shall have the meanings set forth in the Declaration):

1. To acquire, hold, lease, mortgage or convey real, personal or mixed property wherever situated, including without limitation, units in the Condominium.
2. To make and collect assessments against the members as provided in the Declaration to defray the costs, expenses and losses of the Condominium, any other business enterprise, venture or property interest of the Association, and to use the proceeds of the assessments in the exercise of the powers and duties herein provided.
3. To borrow funds to pay for such expenditures as may be authorized by the provisions of the Declaration.



4. To maintain, repair, replace, clean, sanitize and operate the property of the Condominium or the property of the Association.

5. To purchase insurance for the protection of the Condominium and the Association and its members.

6. To make and amend reasonable Rules and Regulations respecting the use of the property of the Condominium or the property of the Association.

7. To lease or license the use of the Common Elements of the Condominium in a manner not inconsistent with the rights of owners of Units in the Condominium.

8. To enforce by legal means the provisions of the Condominium Ownership Act of Alabama, the Declaration, the Articles and By-Laws of the Association, and the Rules and Regulations for the use of the property of the Condominium or the Association.

9. To contract for the management of the Condominium and to delegate to such contractor all powers and duties of the Association except such as are specifically required to be performed by the Association.

10. The objects and purposes set forth in Article Third of these Articles shall be construed as powers as well as objects and purposes, and the Association shall have and may exercise such powers as if such powers were set forth in full herein.

11. The Association shall have and may exercise all powers as shall enable it to do each and every thing necessary, suitable, convenient, expedient or proper for the accomplishment of any or all purposes and the attainment of any or all objects set forth in Article Third.

12. The Association shall have and may exercise all powers set forth in any other Article of these Articles of Incorporation.

B. All funds and title of properties acquired by the Association and the proceeds therefrom shall be held in trust for the members in accordance with the provisions of the Declaration and the By-Laws of the Association.

FIFTH: The members of the Association shall consist of all of the record owners of Units in the Condominium and after termination of the Condominium shall consist of those who are members at the time of such termination and their heirs, successors and

assigns. Membership in the Association shall be evidenced by a deed or other instrument establishing a record title to a Unit in the Condominium recorded in the Probate Office of Lee County, Alabama, and the delivery to the Association of a certified copy of such instrument. Upon such delivery, the owner of the Unit designated by such instrument shall become a member of the Association and the membership of the prior owner shall be terminated. The share of a member in the funds or assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to the Unit. The owner of each Unit shall be entitled to one (1) vote as a member of the Association. The exact number of votes to be cast by owner(s) of a Unit and the manner of exercising voting rights shall be determined by the By-Laws of the Association.

SIXTH: The affairs of the Association shall be managed by a Board of Directors consisting of the number of directors as shall be determined by the By-Laws; provided, however, that the Board of Directors shall consist of not less than three directors, and in the absence of a provision in the By-Laws shall consist of three Directors. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

Notwithstanding the provisions set forth in this Article Sixth, Juneman/Eddleman Development Co., an Alabama general Partnership (the "Developer"), its successors and assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill vacancies, until such time as either (a) four months have elapsed since 75% of the Units in the Condominium have been conveyed to purchasers of Units other than Developer, or (b) three years have elapsed from the conveyance of the first of such Units to a person other than the Developer, or (c) the Developer elects, at its option, to terminate control of the Association, whichever first occurs. The Developer shall be entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least 5% of the Units. Within sixty (60) days after the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the membership for the purpose of electing the members of the Board of Directors.

The Initial Board of Directors shall have three directors. The names and addresses of the members of the Board of Directors who shall hold office until their successors are elected and have qualified, or until such Directors are removed, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
George B. Juneman	2645 VesClub Circle Birmingham, Alabama 35216
Billy D. Eddleman	510 Bank for Savings Building Birmingham, Alabama 35203
Douglas D. Eddleman	510 Bank for Savings Building Birmingham, Alabama 35203

Any director may be removed, either with or without cause, at any time, by the affirmative vote of a majority of the members at a meeting called for that purpose, and the vacancy in the Board caused by any such removal may be filled by the members at such meeting or at any subsequent meeting in the manner prescribed in the By-Laws for the filling of vacancies on the Board.

SEVENTH: The address of the Association's initial registered office is 1749 Wire Road, Auburn, Alabama 36830, and the name of its initial registered agent is Douglas D. Eddleman, with the same address.

EIGHTH: The Association shall have the right to indemnify each person who shall serve as a director, officer, employee, or agent of the Association, or shall serve at the request of the Association in a similar capacity with another corporation, joint venture, trust, or other enterprise, to the extent to which this Association is granted the power to so indemnify such persons by any and every statute of the State of Alabama or act of the Legislature of the State of Alabama.

NINTH: No contract or other transaction between the Association and any person, firm, association or corporation and no other act of the Association shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors or the Association are directly or indirectly, pecuniarily or otherwise interested in such contract, transaction or other act, or related to or interested in (either as director, stockholder, officer, employee, member or otherwise) such person, firm, association or corporation. Any director of the Association individually, or any firm or association of which any director may be a member of, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that the fact that he, individually, or such firm or association, is so interested, shall be disclosed or known to the Board of Directors or a majority of the members thereof as shall be present at any meeting of the Board of Directors, or of any committee of directors having the powers of the full Board, at which action upon any such contract, transaction or other act is taken; and if such fact shall be so disclosed or known, any

director of the Association so related or otherwise interested may be counted in determining the presence of a quorum at any meeting of the Board of Directors, or of such committee, at which action upon any such contract, transaction or act shall be taken, and may vote with respect to such action with like force and effect as if he were not so related or interested. Any director of the Association may vote upon any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

TENTH: Upon the dissolution of the Association, the assets of the Association shall be distributed to the members in the same manner as provided in the Declaration for the distribution of the property subject thereto upon termination of the Condominium to the extent that such distribution is not inconsistent with the provisions of the Act.

ELEVENTH: The Association reserves the right to amend, alter, change or repeal any provision contained in these Articles in the manner now or hereafter provided by law, and all right conferred upon officers and directors herein are granted subject to this reservation.

TWELFTH: The name and address of each incorporator is:

<u>NAME</u>	<u>ADDRESS</u>
George B. Juneman	2645 VesClub Circle Birmingham, Alabama 35216
Billy D. Eddleman	510 Bank for Savings Building Birmingham, Alabama 35203
Douglas D. Eddleman	510 Bank for Savings Building Birmingham, Alabama 35203

WHEREFORE, these incorporators file this, their Articles of Incorporation, and tender to the Probate Judge of Jefferson County, Alabama, the lawful fees and charges, and pray that these Articles may be examined and approved, and that the Association may be deemed to be incorporated for the purposes herein set out.

IN WITNESS WHEREOF, the undersigned incorporators have hereunto subscribed their signatures to these Articles of Incorporation this 31st day of October, 1985.

George B. Juneman  
George B. Juneman

Billy D. Eddleman  
Billy D. Eddleman

Douglas D. Eddleman  
Douglas D. Eddleman

STATE OF ALABAMA  
LEE COUNTY

I, Hal Smith, Judge of Probate hereby certify the foregoing instrument: is true and correct copy of as the same appears of of record in my office in Book 1209 Page 568.  
Given under my hand and seal of office this 5 day of Nov. 1985

Hal Smith  
Judge of Probate