

**BY-LAWS**  
**OF**  
**CAPSTONE QUARTERS CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE I**  
**THE ASSOCIATION**

**Section 1.     Identity.** These are the By-Laws of Capstone Quarters Condominium 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.) (the "Nonprofit Act") by filing the Articles of Incorporation of the Capstone Quarters Condominium Association, Inc. (the "Articles"), with the Office of the Judge of Probate of Tuscaloosa County, Alabama, on July \_\_, 2005. The Association has been organized for the purpose of providing for the acquisition, operation, management, maintenance, care, control and administration of the properties of Capstone Quarters, A Condominium (the "Condominium"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991 (Code of Alabama §§ 35-8A-101 et seq.) (the "Condominium Act") and the Declaration of Condominium of Capstone Quarters, A Condominium (the "Declaration"), as filed with the Office of the Judge of Probate of Tuscaloosa County, Alabama, in accordance with the provisions of the Condominium Act. The terms capitalized herein shall be deemed to have the meanings set forth in the Declaration and the Condominium Act.

**Section 2.     Principal Office.** The principal office of the Association in the State of Alabama shall be located in the City of Tuscaloosa, County of Tuscaloosa. 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 Nonprofit Act to be maintained in the State of Alabama, may be, but need not be, identical to 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 first Saturday in the month of October in each year, beginning with the year 2005 at the hour of 10:00 a.m., or at such other time on such other day within such month as shall be fixed by the Board of Directors, for the purpose of electing directors, if the period of exclusive Developer control of the election of Members of the Board of Directors has ended, and in any event, 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 may be convenient.

**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 a majority of the Board of Directors and shall be called by the President or the Secretary at the request of holders of not less than twenty (20%) percent 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 sixty (60) 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 thirty (30) 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 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 and the number of votes to which he is entitled, 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 members entitled to cast twenty (20%) percent 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 and reconvene from time to time without further notice. At any such reconvened 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. A proxy is void if it is not dated or purports to be revocable without notice. 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 one (1) year from the date of its execution, unless a shorter term is provided in the proxy.

**Section 10. Voting Rights.** If only one of the multiple Owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is a majority agreement if any one of the multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

**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 affairs of the Association shall be managed by or under the direction of its Board of Directors.

**Section 2. Number, Tenure and Qualifications.** The initial Board of Directors shall consist of three (3) directors. These By-Laws may be amended from time to time as provided for herein to increase or decrease the number of directors of the Association to not less than three (3) nor more than five (5) directors. Each director shall hold office until the next annual meeting of the members and 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, as provided for herein. A director need not be a member of the Association.

**Section 3. Election of Directors.**

(a) **General Election Procedure.** Election of directors entitled to be elected by the members shall be held at the annual meeting, or, if required in accordance with sub-paragraph (b) below, at a special meeting of the Membership. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. The Owner of each whole Unit shall be entitled to cast his votes for each of as many nominees as there are vacancies to be filled at the time of the election. There shall be no cumulative voting.

(b) **Developer Control.** Notwithstanding the provisions of sub-paragraph (a) above, or anything in these By-Laws to the contrary, the Developer (as defined in the Declaration), its successors and assigns, and not the members of the Association, shall have the exclusive right to control the Association by electing all of the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill such vacancies, until such time as either (i) the expiration of sixty (60) days following the conveyance of seventy-five percent (75%) of the Units in the Condominium to purchasers of Units other than Developer, or (ii) the expiration of two (2) years from the date the Developer has ceased to offer Units for sale in the ordinary course of business, or (iii) the Developer elects by written notice to the Association, at its option, to terminate such control of the Association, whichever first occurs; provided, however, and in limitation of the foregoing, no later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units, members of the Association, other than the Developer, shall be entitled to elect twenty-five percent (25%) of the members of the Board and not later than ninety (90) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than Developer, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board shall be elected by the members of the Association other than the Developer. 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 five percent (5%) of the Units in the Condominium and such right is not violative of the then provisions of the Condominium Act. Within sixty (60) days before 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 (2) directors.

**Section 6. Notice.** Notice of any special meeting shall be given at least three (3) days prior thereto by written notice delivered personally or mailed to each director at his business address, by U.S. mail or private carrier. 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 private carrier, such notice shall be deemed to be delivered when the notice is delivered to the private carrier. 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 determined in the manner 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, except as otherwise provided in Section 3 of this Article III. 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. 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 (2) or more directors and which, to the extent provided in said resolution or resolutions or in these By-Laws 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 these 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 12. Resignations.** Any director of the Association may resign at anytime, 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 therefore, and the acceptance of such resignation shall not be necessary to make it effective.

**Section 13. Place of Meeting.** The Board of Directors may designate any place within or without the State of Alabama as the place of meeting for any regular or special meeting of the Board of Directors.

**Section 14. Presumption of Assent.** A director of the Association who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the 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. An officer need not be a member of the Association. The failure of the Board of Directors to elect any officers other than a President, a Treasurer 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 may be convenient. 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 may sign, 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 the 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 mailing 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 Treasurer.** The Assistant Secretaries and Assistant Treasurers, in general, 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, if any, 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 corporation, or to consent in writing, in the name and on behalf of the Association, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Association and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

## **ARTICLE 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 the members entitled to vote for 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 in Tuscaloosa County, Alabama. 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 and Limited 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 and Limited 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 and Limited Common Elements shall be held in the Reserve Fund Account.

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

**Section 2.     Budget.** At least sixty (60) days prior to the beginning of each calendar year, the Board of Directors shall adopt a proposed budget for each calendar year that shall

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

**Section 3. Assessments.** Subject to the terms and conditions of the Declaration, 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. Such assessments shall constitute a lien as provided for in the Declaration.

**Section 4. Assessments for Emergencies.** Subject to the terms and conditions of the Declaration, assessments for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need for such is given to the members concerned, and it shall be due thirty (30) days after such notice in such manner as the Board of Directors of the Association may require in the notice of assessment. Such assessments shall constitute a lien as provided for in the Declaration.

**Section 5. Audit or Compilation.** An audit or compilation of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the audit report shall be made available for examination by each member in Tuscaloosa County, Alabama.

**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 (3) times the amount of the total annual assessments against members for Common Expenses and Limited Common Expenses. The premiums of such bonds shall be paid by the Association.

**Section 7. Rules & Regulations and Violation of any Documents.** Subject to the terms and conditions of the Declaration, the Board of Directors may establish, abolish or amend reasonable rules and regulations concerning the use of the Common Elements. The text of such rules and regulations shall be furnished or made available to the members. The Board shall have the power, upon violation of the rules and regulations, or upon violation of the terms of the Declaration or these By-Laws to impose monetary fines on a member which shall constitute a lien and shall be enforceable in like manner as provided for assessments or to suspend for a reasonable period of time either the member's right to the use of common facilities within the Common Elements or the member's right to vote.

## **ARTICLE VII 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 Nonprofit Act, and any act amendatory thereof, supplementary thereto or substituted therefor, the provisions of the Condominium Act, 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 VIII FISCAL YEAR**

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

## **ARTICLE IX INDEMNIFICATION**

The Association shall have the right to 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, by reason of the fact that he is or was a director, officer, employee or agent of the Association. The indemnification provided for herein shall not be deemed exclusive of and shall be in addition to any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

## **ARTICLE X AMENDMENT**

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

(a) **By the Board.** By the Board of Directors for such period of time as the Developer has the right to elect at least a majority of the members of the Board of Directors of the Association in accordance with Section 3(b) of Article III hereof; and thereafter,

(b) **By the Members.** By the members at any regular or special meeting upon the affirmative vote of the holders of not less than sixty-seven percent (67%) of the outstanding votes present and entitled to vote at such meeting in person or represented by proxy, at which a quorum is present.

**Section 2. Recordation.** No modification or amendment to these 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 Tuscaloosa County, Alabama.

This Instrument Prepared By:  
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**ARTICLES OF INCORPORATION OF**  
**CAPSTONE QUARTERS CONDOMINIUM ASSOCIATION, INC.,**  
**AN ALABAMA NONPROFIT CORPORATION**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, acting as Incorporator, does hereby form a corporation under the Alabama Nonprofit Corporation Act (1975 Code of Alabama, Section 10-3A-1 et seq.), and adopts the following Articles of Incorporation:

**ARTICLE I - NAME**

The name of this Corporation shall be Capstone Quarters Condominium Association, Inc. (hereinafter the "Corporation" or the "Association").

**ARTICLE II - PERIOD OF DURATION**

The Association shall exist perpetually, unless terminated according to the terms of these Articles of Incorporation.

**ARTICLE III - NOT FOR PROFIT**

This Association is not organized for profit and the purpose for which the Association is organized is to provide an entity pursuant to the Alabama Uniform Condominium Act of 1991, Code of Alabama 1975, §§ 35-8A-101 et seq., (the "Condominium Act") for the acquisition, operation, management, maintenance, care, control and administration of all those properties known as Capstone Quarters, A Condominium, located in Tuscaloosa, Alabama (the "Condominium"). Any income received by the Association shall be applied only to the nonprofit purposes and objectives of the Association, and no part of the net earnings thereof shall inure to the benefit of any private member, officer, director or individual. This Association shall be without capital stock. The members of this Association shall not be personally liable for the debts, liabilities or obligations of this Association.



#### **ARTICLE IV - PURPOSES AND POWERS**

A. The Association shall have all the common law and statutory powers of a nonprofit corporation and shall have all the powers which an association may have or exercise under the Condominium Act, which are not in conflict with the terms of these Articles of Incorporation or the Declaration of Condominium of Capstone Quarters, A Condominium (the "Declaration"), being recorded in the Probate records of Tuscaloosa County, Alabama, as such may be amended from time to time, including, but not limited to, the following (with the terms capitalized herein having the meanings set forth in the Declaration or the Condominium Act and to which reference is made hereto):

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 or 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 lease or grant easements or licenses for use of the Limited Common Elements or the Common Elements of the Condominium in a manner not inconsistent with the rights of owners of the Units in the Condominium;
6. To enforce by legal means the provisions of the Condominium Act, the Declaration, the Articles of Incorporation and By-Laws of the Association, and the rules and regulations for the use of the property of the Condominium or the Association;
7. 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;
8. The objects and purposes set forth in Article III of these Articles of Incorporation 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;
9. 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 Articles III and IV herein; and

10. 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 to properties acquired by the Association and the proceeds therefrom shall be held in trust for the Members of the Association in accordance with the provisions of the Condominium Act, the Declaration and the By-Laws of the Association.

#### **ARTICLE V - MEMBERSHIP**

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 of the Association 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 record title to a Unit in the Condominium recorded in the Probate Office of Tuscaloosa County, Alabama. Upon such recordation, 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 number of votes to be cast by Owner(s) of a Unit and the manner of exercising voting rights shall be determined by the Declaration and the By-Laws of the Association.

Notwithstanding the foregoing, any person or entity who holds an interest in a Unit in the Condominium merely as security for the performance of an obligation shall not be a Member of the Association, unless and until such security holder or mortgagee has acquired title to the Unit pursuant to foreclosure or any proceeding in lieu thereof and the deed thereby evidencing title has been duly and properly recorded, at which time such security holder or mortgagee shall become a Member, and the debtor's membership shall thereupon cease, regardless of whether or not there is an outstanding right of redemption to the Unit.

#### **ARTICLE VI - DIRECTORS**

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 (3) Directors and not more than five (5) Directors and, in the absence of a provision in the By-Laws to the contrary, shall consist of three (3) Directors. Directors of the Association shall be elected at the annual meeting of the Members in the manner determined by the By-Laws and as limited below. 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 VI of these Articles of Incorporation or in any provision of the By-Laws granting to the Members the right to elect and

remove members of the Board of Directors, Capstone Quarters - Tuscaloosa, LLC, an Alabama limited liability company (the "Developer"), its successors and assigns, shall have exclusive control of the Board of Directors of the Association by electing or appointing, removing and in the event of vacancies, filling such vacancies in all of the positions of the members of the Board of Directors of the Association until such time as either (a) the expiration of sixty (60) days following the conveyance of seventy-five percent (75%) of the Units in the Condominium to purchasers of Units other than the Developer, or (b) the expiration of two (2) years from the date the Developer has ceased to offer Units for sale in the ordinary course of business or (c) the Developer elects by written notice to the Association, at Developer's option, to terminate such control of the Association, whichever first occurs. Notwithstanding the above, within ninety (90) days after conveyance of twenty-five percent (25%) of the Units, the Members of the Association, other than Developer, shall be entitled to elect twenty-five percent (25%) of the members of the Board of Directors. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units to Unit Owners, other than the Developer, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board shall be elected by the Members of the Association other than the Developer. Further, the Developer shall be entitled to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units in the Condominium and such right is not violative of the then provisions of the Condominium Act. Within sixty (60) days before 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 to be elected by the Members other than the Developer.

The initial Board of Directors shall have three (3) 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:

	<b>NAME:</b>	<b>ADDRESS:</b>
1.	Rob Howland	431 Office Park Drive Birmingham, Alabama 35223
2.	Kent Campbell	431 Office Park Drive Birmingham, Alabama 35223
3.	John Chapman	431 Office Park Drive Birmingham, Alabama 35223

Other than a Board member elected or appointed by the Developer, any Director may be removed, either with or without cause, at any time, by the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of the persons present in person or represented by proxy and entitled to vote at a meeting at which a quorum is present, 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.

The initial By-Laws of this Association shall be adopted by its Board of Directors. The power to alter, amend, or repeal the By-Laws or adopt new By-Laws shall be vested in the Board of Directors of this Association for such period of time as the Developer has the right to elect at least a majority of the Members of the Board of Directors and thereafter, by the Members at any regular or special meeting upon the affirmative vote of the holders of not less than sixty-seven percent (67%) of the outstanding votes present at such meeting in person or represented by proxy, a quorum being present.

## **ARTICLE VII - AMENDMENTS**

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

## **ARTICLE VIII - REGISTERED OFFICE AND AGENT**

The address of the Association's initial registered office and the name of its initial registered agent at such address is as follows:

CSC Lawyers Incorporating Service, Inc.

Tuscaloosa, Alabama 3540\_\_

## **ARTICLE IX - RELATED PARTY TRANSACTIONS**

No contract or other transaction between the Association or 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 of the Association are directly or indirectly, pecuniarily or otherwise interested in such contract, transaction or other act, or are 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, 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 of 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.

## **ARTICLE X – INDEMNIFICATION**

The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (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, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such claim, 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 claim, 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.

The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, 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, partner, 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, 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 circumstances of the case, such person is fairly and reasonably entitled to indemnity or 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 paragraphs one and two of this Article, 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, notwithstanding that he has not been successful on any other claim, issue or matter in any such action, suit or proceeding. Any indemnification under the first two unnumbered paragraphs of this Article (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 this Article. Such determination shall be made in the manner provided by law.

Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, or proceeding as authorized by the Board of Directors in each specific case upon receipt of a written affirmation of good faith belief by or on behalf of the director, officer, employee or agent that he has met the required standard of good conduct together with his written undertaking and obligation to repay such amount if and to the extent that it shall be ultimately determined that he is not entitled to be indemnified by the Association as authorized in this Article.

The indemnification authorized by this Article shall not be deemed exclusive of and shall be in addition to any other right (whether created prior or subsequent to the recording of these Articles) to which those indemnified may be entitled under any statute, rule of law, provisions of articles of incorporation, by-law, agreement, or services as 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.

The Association shall have the power to purchase and maintain insurance on behalf of any person who 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, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

## **ARTICLE XI - DISSOLUTION**

The Association may be dissolved only upon the vote of Members entitled to cast not less than eighty percent (80%) of the votes of its membership present in person or represented by proxy and entitled to vote at a meeting called as provided for herein, at which a quorum is present. Written notice of a proposal to dissolve, setting forth the reasons therefor and the disposition to be made of the assets (which shall be in accordance with Article XII hereof) shall be mailed to every Member at least thirty (30) days in advance of any such action sought to be cast and shall be subject to prior approval of such dissolution by the Board of Directors in the manner required by the Alabama Nonprofit Corporation Act.

## ARTICLE XII - DISTRIBUTION UPON DISSOLUTION

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 property subject thereto upon termination of the Condominium to the extent that any such distribution is not inconsistent with the provisions of the Condominium Act.

## ARTICLE XIII - NAME AND ADDRESS OF INCORPORATOR

The name and address of the incorporator is as follows:

Michael A. Mouron  
431 Office Park Drive  
Birmingham, Alabama 35223

IN WITNESS WHEREOF, the incorporator has executed these Articles of Incorporation, by and through its duly authorized representative, on this the \_\_\_\_\_ day of July, 2005.

\_\_\_\_\_  
MICHAEL A. MOURON

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned Notary Public, in and for said County in said State, hereby certify that Michael A. Mouron, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily.

GIVEN under my hand and official seal this \_\_\_\_\_ day of July, 2005.

{AFFIX SEAL}

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_