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STATE OF ALABAMA

COUNTY OF TUSCALOOSA

CONDOMINIUM DECLARATION

FOR

MIDTOWN VILLAGE, A CONDOMINIUM

Made and Established on July 27, 2007

Prepared by:
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STATE OF ALABAMA

COUNTY OF TUSCALOOSA

**CONDOMINIUM DECLARATION
FOR
MIDTOWN VILLAGE, A CONDOMINIUM**

This Condominium Declaration is made and established on the 27th day of July, 2007, by
Declarant;

RECITALS:

- A. Declarant is the fee simple owner of the Property.
- B. Declarant desires to create a Condominium pursuant to the provisions of the Act.
- C. Declarant intends hereby to establish a plan for the individual ownership of estates in real property consisting of the Units and the appurtenant undivided interests in the Common Elements.

NOW, THEREFORE, Declarant does hereby submit the Property to the provisions of the Act and the Condominium established hereby, and does hereby publish and declare that the following terms, provisions, covenants, conditions, easements, restrictions, reservations, uses, limitations and obligations are hereby established and shall be deemed to run with the Property and shall be a burden and benefit to Declarant, the Association, the Owners and their respective heirs, legal representatives, successors and assigns:

ARTICLE I

Definitions

Section 1.1 Terms Defined. As used in this Declaration, the following terms shall have the meanings set forth below:

"Access Easement." An easement as more particularly described in Section 3.8(a) of this Declaration.

"Act." The Alabama Uniform Condominium Act of 1991, Ala. Code Sections 35-8A-101, et seq., as amended from time to time.

"Acquired Property." Shall have the meaning set forth in Section 13.2 of this Declaration.

"Affiliate." As defined in Section 35-8A-103(1) of the Act.

"Allocated Interests." The undivided interests of each Owner in the Common Elements and the Common Expenses allocated to each Unit as reflected on Exhibit "C" to this Declaration, as may be reallocated in accordance with the Reallocation Percentages as required from time to time pursuant to the provisions of this Declaration.

"Articles." The Certificate of Incorporation of the Association originally filed of record in the State of Delaware, in the Office of the Secretary of State - Division of Corporations (SRV 60924977 - 4231938 FILE), a copy of which is attached hereto as Exhibit "D" and incorporated herein by reference.

"Assessments." Monthly Assessments, Special Assessments and Individual Assessments owing to the Association by an Owner or levied against a Unit by the Association.

"Association." Midtown Village Condominium Association, Inc., a Delaware corporation organized under the Act and the General Corporation Law of Delaware and created for the purposes and possessing the rights, powers and authority set forth in the Governing Documents.

"Board of Directors." The board of directors of the Association named in the Articles and their successors as duly elected and qualified from time to time.

"Budget." A budget prepared by the Association and delivered to each Owner that includes the anticipated Common Expenses for the Property for the ensuing year and a statement setting forth each Owner's monthly share thereof.

"Building." The building (whether one or more) located on the Land in which the Units are located.

"Bylaws." The bylaws of the Association, as amended from time to time, adopted by the Board of Directors, a copy of initial Bylaws being attached hereto as Exhibit "E" and incorporated herein by reference.

"CGL." The broadest available form of commercial general liability insurance (utilizing the then prevailing ISO form or an equivalent form approved by the Board of Directors and reasonably acceptable to Declarant's Mortgagee).

"Common Elements." All portions of the Condominium, other than the Units.

"Common Elements Easement." An easement as more particularly described in Section 3.8(b) of this Declaration.

"Common Expenses." Expenses for which the Association is responsible, including those related to: (i) maintenance and repair of the applicable Common Elements; (ii) casualty, public liability and other insurance coverages required or permitted to be maintained by the Association under the Governing Documents; (iii) Governmental Impositions levied and assessed against the Common Elements; (iv) utilities relating to the applicable Common Elements; (v) professional services, such

as management, accounting and legal services; (vi) trash removal of any other common services and (vii) such other costs and expenses as may be reasonably related to the proper maintenance, care, operation and management of the Common Elements and the administration of the Association.

"Condominium." The form of real property established by this Declaration with respect to the Property located in the County, in which portions of the Property are designated for individual ownership or occupancy and the remainder of the Property is designated for common ownership or occupancy solely by the Owners of such portions, containing a maximum of 224 Units.

"Condominium Records." The books maintained by the Office of the Judge of Probate of Tuscaloosa County, Alabama entitled "Condominium Book No. ___" in accordance with the provisions of Section 35-8A-201(b) of the Act.

"Construction Dispute." Any claim, grievance or other dispute involving Declarant or any Affiliate of Declarant, including any construction company which is an Affiliate of Declarant, and arising out of or relating to the construction or design of the Property, including the interpretation or enforcement of any warranty.

"County." Tuscaloosa County, Alabama.

"Damaged Unit." One or more Units damaged or destroyed by fire or other casualty.

"Declarant." Carlyle-Cypress Tuscaloosa I, LLC, a Delaware limited liability company, whose address for notice is 15601 Dallas Parkway, Suite 400, Addison, Texas 75001, and any successor or assignee of Declarant having the rights, powers, authority and obligations described in this Declaration evidenced by a written instrument filed for record in the Condominium Records assigning the rights, powers, authority and obligations of Declarant hereunder.

"Declarant Control." The period commencing on the date of this Declaration and continuing until the earlier to occur of the date which is (i) two years after Declarant has ceased to offer Units for sale in the ordinary course of business, (ii) two years after any Development Right to add new Units was last exercised, or (iii) 60 days after conveyance of 75% of the Units that may be created under this Declaration to the Unit Owners.

"Declarant's Mortgagee." Any Person that is the holder of any bona fide indebtedness which is the result of an arm's length negotiation that is secured by a first lien or encumbrance upon any portion of the Condominium owned by Declarant.

"Declaration." This Condominium Declaration for Midtown Village, a Condominium and all amendments thereto, which shall be recorded in the Condominium Records.

"Designee." A Person acting at the request of another Person, including contractors, subcontractors, employees, agents, representatives and licensees.

"Development Rights." A right or combination of rights: (i) to create, relocate or properly designate Units or Common Elements within the Condominium and to make and record corrections to the Plats and Plans to conform the Plats and Plans to the actual location of the Units and/or the proper designation of the elements of the Condominium as Units or Common Elements; (ii) to convert Units into Common Elements or convert Common Elements into Units; (iii) to withdraw or add real property from or to the Condominium; or (iv) to subdivide Units within the Condominium.

"Director." A member of the Board of Directors.

"Dispute." Any claim, grievance or other dispute, other than a Construction Dispute, arising out of or relating to: (i) the interpretation, application or enforcement of the Governing Documents; (ii) any conflict or dispute arising between or among two or more Owners; (iii) the proper party to bear a maintenance cost or expense or a capital expenditure or the proper amount of the expense, fee or Assessment to be charged or collected; (iv) the rights, obligations and duties of any Owner under the Governing Documents; (v) the authority of the Association or Declarant under any Legal Requirement or under the Governing Documents to: (a) require any Owner to take any action or not to take any action involving such Owner's Unit or (b) alter, subtract from or add to the Common Elements or the Condominium; or (vi) the failure of the Association, in accordance with Legal Requirements and the Governing Documents to: (w) properly conduct elections, (x) give adequate notice of meetings or actions, (y) properly conduct meetings, or (z) allow inspection of books or records. The following shall not be considered "Disputes" unless all parties shall otherwise agree to submit the matter to arbitration pursuant to Article XI of this Declaration: (i) any suit by the Association to obtain a temporary restraining order and such ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association's ability to enforce the provisions of the Governing Documents; (ii) any suit between Owners that does not include Declarant, the Association if such suit asserts a dispute that would constitute a cause of action independent of any of the Governing Documents; (iii) any disagreement that primarily involves title to any Unit or the Common Elements; or (iv) any suit in which the applicable statute of limitations would expire within 180 days of the giving of notice as provided in Article XI of this Declaration unless the Persons against whom the Dispute is made agree to toll the statute of limitations for a period of time necessary to comply with Article XI of this Declaration.

"Easements." Collectively, those Easements described in Section 3.8 and Section 3.9 of this Declaration.

"General Common Elements." All portions of the Common Elements that are not Limited Common Elements.

"Governing Documents." Individually and collectively, the Act, Articles, Bylaws, this Declaration, Regulations, and the Restrictive Covenants.

"Governmental Authority." Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental entity

(federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Governmental Impositions." All real estate and personal property taxes, charges, assessments, standby fees, excises and levies and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after the execution hereof, may be assessed, levied or imposed upon the Condominium or any Unit therein by any Governmental Authority.

"Improvements." The Building and its infrastructure, and the pavement, fencing, landscaping, facilities, Systems and man-made objects of every type, existing or in the future placed on the Land, including all cable television, cellular phone, internet and other utility or communication installations or equipment.

"Individual Assessments." The assessments levied by the Association against one or more Owners pursuant to Section 7.2 of this Declaration.

"Insurance Proceeds." Any and all proceeds that the Association or an Owner is entitled to receive from an insurance company as a result of a casualty loss, including such proceeds in connection with a casualty loss to a Unit, the Common Elements or to improvements within an Easement area established pursuant to this Declaration.

"Insurance Trustee." The Association acting in the capacity of a trustee in accordance with the provisions of Section 6.5 of this Declaration to receive, hold and disburse Insurance Proceeds under any property insurance policies required to be obtained by the Association in this Declaration.

"Land." That certain real property located in the County and more particularly described in Exhibit "A" attached to this Declaration, together with all and singular the rights and appurtenances pertaining thereto, including any additional real property that becomes part of the Property, but excluding, to the extent appurtenant, the Easements.

"Legal Requirements." The Restrictive Covenants and any other matters of record and any and all then-current judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to any Owner's use and enjoyment of the Condominium, any Unit or the Property, including zoning ordinances, subdivision and building codes, flood disaster laws and applicable architectural barrier, health and environmental laws and regulations.

"Limited Common Elements." Those portions of the Common Elements that are allocated by this Declaration and the Plats and Plans or by operation of Sections 35-8A-202(2) or (4) of the Act for the exclusive use of less than all of the Units, including the following: Storage Space(s) accompanying each Unit. (Further, due to an Owner's purchase of an additional Storage Space as contemplated in Section 3.3, it is anticipated that some of the Units will have more than one (1) Storage Space as a Limited Common Element). Should any Limited Common Element ever be determined not to be a Limited Common Element under the Act, the same shall be deemed to be part of the Common

Elements with an exclusive easement of use appurtenant to the Unit to which it was originally assigned as a Limited Common Element.

"Maintenance Standard." Good repair, and in an attractive and clean condition, including the operation, upkeep, repair and restoration, ordinary wear and tear excepted, to the extent necessary to maintain the Condominium or Unit, as applicable, in a condition reasonably suitable for its intended purpose and shall include: (a) regular and timely removal of litter, trash and waste; (b) maintenance of the Systems; (c) keeping walks, driveways, ramps, stairwells and all other facilities clean and in good repair including maintaining surface areas in a smooth condition by repatching holes and resurfacing from time to time; and (d) repainting stripes (indicating Parking Spaces and/or traffic lanes), as necessary from time to time.

"Manager." Any professional manager or management company with whom the Association contracts for the day-to-day management of either or both of the Property or the administration of the Association and the Condominium.

"Monthly Assessment." Assessments established and collected by the Association pursuant to Article VII of this Declaration for payment of the Common Expenses when due.

"Mortgagee." Any Person, including Declarant's Mortgagee, that is the holder, insurer or guarantor of any bona fide indebtedness which is the result of an arm's length negotiation, that is secured by a first lien or encumbrance upon the Property and/or a Unit and which has provided the Association with written notice of its name, address and description of the Unit encumbered thereby.

"Owner." Any Person (including Declarant) owning fee title to a Unit, but excluding any Person having an interest in a Unit solely as security for an obligation.

"Parking Spaces." Those 529 parking spaces used exclusively for the parking of automobiles by Owners, Tenants and their guests, which are designated as General Common Elements, as more particularly described in Section 3.4 of this Declaration.

"Past Due Rate." The maximum lawful rate of interest under Alabama law or, if no maximum lawful rate exists, the rate of 18% per annum.

"Person." Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other legal entity, including any Governmental Authority and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Plats and Plans" The plats and plans in Exhibit "B" attached to (or referred to an incorporated by reference in) this Declaration and made a part of this Declaration, including a survey plat of the Property and dimensional drawings that horizontally and vertically identify and describe the Units and the Common Elements.

"Priority Lien Indebtedness." Any bona fide indebtedness, which is the result of an arm's length negotiation, that is secured by a first lien or encumbrance upon the Property and/or a Unit and which shall also include subordinate financing in connection with a purchase or refinancing of a Unit or home equity loan or reverse mortgage loan secured by a Unit, and such other indebtedness as is approved by the Association on a case by case basis as Priority Lien Indebtedness.

"Property." The Units and the Common Elements.

"Real Property Records." The records of the County where instruments concerning real property are recorded.

"Reallocation Percentage." The percentage of the undivided interest of each Owner in the Common Elements as set forth on a Supplemental Declaration (if applicable), determined by dividing (i) the square footage of a such Owner's Unit by (ii) the combined total square footage of all Units, which measurement of the square feet within each Unit shall be done in the same manner as the measurement used to establish the initial Allocated Interests set forth on Exhibit "C" to this Declaration.

"Regulations." The rules and regulations of the Association initially adopted by the Board of Directors and as amended from time to time, relating to the appearance, use and occupancy of the Property, including the exterior appearance, use and occupancy of the Units and certain construction on the Property.

"Rents." Any and all rental or other income received by an Owner in connection with the leasing of such Owner's Unit or the granting or licensing of a right to use all or any portion of such Unit.

"Restrictive Covenants." Collectively, all items filed of record in the Real Property Records affecting title to the Land.

"Sales Restriction Period." A period commencing on the date that a Unit is conveyed to an Owner by Declarant and ending on the earlier of (i) September 1, 2008 and (ii) the date the last of the Units is conveyed to an Owner by the Declarant.

"Special Assessments." Assessments established and collected from time to time by the Association pursuant to Section 7.1(c) of this Declaration, when due.

"Special Declarant Rights." Rights reserved for the benefit of Declarant to: (i) complete the Improvements shown on the Plats and Plans; (ii) make the Condominium a part of a larger condominium or planned community; (iii) exercise any Development Right; (iv) maintain the sales, management and leasing offices and models described in Section 3.6 of this Declaration and use signs advertising the Units or the Condominium; (v) use any Easement for the purpose of making improvements within the Condominium; and (vi) appoint or remove any officer or board member of the Association during the period of Declarant Control.

"Storage Spaces." Those 224 storage spaces, used exclusively for the storage of items by the Owners, each of which are designated as a Limited Common Element appurtenant to the applicable Unit, as more particularly described in Section 3.3 of this Declaration, and as Storage Spaces are shown and numbered on the Plats and Plans.

"Structure." All foundations, footings, columns, flat slabs, sheer walls, girders, support beams, post tension cables or rods and including any and all other structural components that support, uphold or are a part of the Building or other Improvements.

"Supplemental Declaration." An instrument executed by Declarant and recorded in the Condominium Records for the purpose of (i) modifying the Allocated Interests, (ii) adding real property to the Condominium, (iii) withdrawing any portion of the Condominium from the effect of this Declaration, or (iv) for such other purposes as are provided in this Declaration.

"Support Easement." An easement as more particularly described in Section 3.8(c) of this Declaration.

"Systems." All fixtures, utilities, equipment, pipes, lines, wires, computer cables, conduits, circuits, junction boxes, hangers, pull boxes, terminal points, electronic devices, air compressors, air handlers, chillers and other systems used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage, audio and video signals and other utility services, including the main switch gear conduits, plumbing chases and mechanical shafts on the Property.

"Systems Easement." An easement as more particularly described in Section 3.8(d) of this Declaration.

"Taking." The taking or threat of taking of all or a portion of the Property for any public or quasi-public use, by eminent domain proceedings or otherwise, by a Governmental Authority or by an action in the nature of eminent domain (whether permanent or temporary) or the sale or other transfer of the Property in lieu thereof.

"Tenant." Any Person having the right to occupy a Unit pursuant to a lease granted by an Owner.

"Unit." A physical portion of the Condominium that is designated for separate ownership or occupancy (the boundaries of which are depicted on the Plats and Plans), which is contained within the perimeter walls, floor, ceiling, windows and doors of a Unit depicted on the Plats and Plans, and includes (i) the finish materials, fixtures and appliances contained in the Unit and (ii) all Systems which exclusively serve such Unit, but excludes (i) Systems which serve more than one Unit and (ii) any portion of the Structure, all as subject to and further described in Section 35-8A-205(a)(5) of the Act.

"Utility Easement." An easement as more particularly described in Section 3.8(e) of this Declaration.

"Working Capital Contribution." An amount equal to the Monthly Assessment multiplied by two to be contributed to the Association by each Owner, not including Declarant as provided in Section 10.3 of this Declaration.

ARTICLE II

General Provisions

Section 2.1 Creation of Units, Plats and Plans.

(a) Division of Property. The Property is hereby divided into fee simple estates composed of separately designated Units and each such Unit's undivided interest in and to the Common Elements. Each Unit, together with such Unit's undivided interests in the Common Elements, is for all purposes a separate parcel of and estate in real property. The separate parcels of and estates in real property designated hereby shall be created on the date of filing of this Declaration in the Condominium Records and shall continue until this Declaration is revoked or terminated in the manner provided in this Declaration.

(b) Plats and Plans. The Plats and Plans sets forth the following: (i) a general description and diagrammatic plan of the Condominium; (ii) the location and dimension of all real property subject to the Development Rights; (iii) all major Improvements, including each Unit, showing its location within the Building, the floor(s) and the number of the Unit and the Limited Common Elements appurtenant to each Unit (including Storage Spaces); and (iv) such other information as is desirable or required pursuant to the Act, including a certification as to compliance with the Act. The measurements set forth on the Plats and Plans as to each Unit are approximate values taken from the plans and specifications for the Property and may not be precisely accurate as to any Unit due to variances in construction and interior floor plans. NEITHER THE DECLARANT NOR ANY OWNER SHALL BE LIABLE TO ANY OTHER OWNER AS A RESULT OF ANY DISCREPANCIES IN ACTUAL MEASUREMENTS FROM THOSE SET FORTH ON THE PLATS AND PLANS OR IN ANY CONDOMINIUM PURCHASE CONTRACT TO WHICH DECLARANT OR ANY OWNER IS OR WAS A PARTY, AND EACH OWNER, BY ACCEPTING A DEED TO A UNIT, WAIVES ANY SUCH CLAIM OR CAUSE OF ACTION. Upon completion of the construction of Improvements contemplated by Declarant, if deemed necessary by Declarant, Declarant, (without the joinder of any Owner) shall file a Supplemental Declaration amending the Plats and Plans to reflect the actual measurements for each Unit, any other appropriate changes, and amending Exhibit "C" attached to this Declaration to reflect the Allocated Interests based upon completion of construction.

Section 2.2 Allocation of Interests in Common Elements. The initial Allocated Interests have been determined by dividing the square footage of each Unit by the square feet of all Units and are shown opposite the Unit numbers in Exhibit "C" attached to this Declaration. The Common Elements shall remain undivided. Each Supplemental Declaration filed in accordance with this Section 2.2 shall include a revised listing of all the Units reflecting the Allocated Interests opposite the Unit description.

Section 2.3 Inseparability of Units; No Partition. Each Unit shall be inseparable and shall be acquired, owned, conveyed, transferred, leased and encumbered only as an entirety. In no event shall a Unit be subject to physical partition and no Owner shall bring or be entitled to maintain an action for the partition or division of a Unit or the Common Elements. Any purported conveyance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements without the Unit to which such Common Elements are allocated is void *ab initio*.

Section 2.4 Permissible Relationships; Description.

(a) Ownership of Units. A Unit may be acquired and held by more than one Person in any form of ownership recognized by the Legal Requirements.

(b) Description of Units. Any contract or other instrument relating to the acquisition, ownership, conveyance, transfer, lease or encumbrance of a Unit shall legally describe such Unit as follows: " Unit _____ of Midtown Village, a Condominium, located in Tuscaloosa County, Alabama," with further reference to the recording data for this Declaration (including the Plats and Plans and any amendments to the Declaration in the Condominium Records). Every such description shall be good and sufficient for all purposes to acquire, own, convey, transfer, lease, encumber or otherwise deal with such Unit, and any such description shall be construed to include all incidents of ownership relating to a Unit.

Section 2.5 Mortgage of Unit. An Owner shall be entitled from time to time to mortgage or encumber its Unit by creating a lien or liens covering such Unit under the provisions of a mortgage or deed of trust, but any lien created thereby shall be subject to the terms and provisions of this Declaration and any mortgagee or other lienholder which acquires a Unit through judicial foreclosure, public sale or any other means shall be subject to the terms and provisions of this Declaration. An Owner that mortgages its Unit shall notify the Association, giving the name and address of said Owner's mortgagee, and the Association shall maintain such information.

ARTICLE III

Uses, Reservations and Restrictions

Section 3.1 Permitted Use. Except as otherwise provided in the Governing Documents, no Unit shall be used or occupied for other than residential purposes. No Storage Space shall be use for other than storage uses. Each Unit shall also be subject to limitations on use, occupancy, architectural standards and such other matters as are set forth in the Governing Documents.

Section 3.2 Leases. Units may be leased; however: (i) each lease shall be for a term of at least one year; (ii) such lease shall be in writing, shall state that it is subject in all respects to the provisions of the Governing Documents and shall provide that any failure by the Tenant thereunder to comply with the terms and provisions of Governing Documents shall constitute a default under such lease; (iii) each lease shall be subject to leasing restrictions set forth by the Association in the Governing Documents; (iv) an executed copy of each lease shall be submitted

to the Association promptly following execution; and (v) all leases shall be on forms approved by the Association.

Section 3.3 Storage Spaces. All Storage Spaces shall be for the use of the Owners and their Tenants and shall be subject to the procedures and regulations adopted for the same from time to time by the Association as described in the Regulations. Each Unit shall have at least one (1) Storage Space which shall be assigned to such Unit when originally conveyed by Declarant and thereafter a Limited Common Element appurtenant to such Unit. The Declarant shall also have the right to assign an additional Storage Space(s) to a Unit and, in such event, any such additional Storage Space(s) so assigned shall become a Limited Common Element appurtenant to such Unit.

Section 3.4 Parking Spaces. All Parking Spaces shall be subject to the procedures and regulations adopted for the same from time to time by Association as described in the Regulations. The Association shall establish procedures for Parking Spaces, which procedures may include, without limitation, making Parking Spaces available on a first-come, first-served basis.

Section 3.5 Compliance with Governing Documents. Each Owner, by accepting a deed conveying title to a Unit and any Tenant, by execution of a lease or by occupancy of a Unit, shall automatically be deemed to have agreed to strictly comply with the provisions of the Governing Documents and all Legal Requirements. A failure or refusal of an Owner or Tenant to so comply with any such provisions, after written notice, shall constitute a Dispute (to the extent so included within the definition of "Dispute" set forth in Section 1.1 of this Declaration), that shall be resolved in accordance with Article XI of this Declaration. In addition, an Owner's voting rights in the Association may by written notice be suspended by the Association during the period of such noncompliance.

Section 3.6 Rights of Declarant. In accordance with, and only if permitted by the Act, Declarant reserves the following rights:

(a) the Development Rights and the Special Declarant Rights, at all times while Declarant or any Affiliate of Declarant owns any Unit or any other real property interest in the Condominium. Declarant will not assign the Development Rights or the Special Declarant Rights without obtaining prior written consent to such assignment by Declarant's Mortgagee, so long as Compass Bank is Declarant's Mortgagee.

(b) the right (but not the obligation), by a Supplemental Declaration, to supplement or modify any Unit by adding additional facilities or deleting facilities, to designate additional portions of the Condominium as part of any Unit, or to combine Units; provided, however, Declarant may not add or delete facilities from any Unit or combine Units, unless Declarant or an Affiliate of Declarant is the owner of such Unit or Units. No such addition or deletion to any such Unit or combination of Units shall affect the interest in the Common Elements, the share of Common Expenses or the voting rights appurtenant to the Units. Any Units which are combined shall be treated for all such purposes as separate Units. Declarant may separate any Units it has combined, at its sole expense, into separate and distinct Units as originally set forth in the survey and the Plats

and Plans. Nothing in this Declaration, however, shall obligate Declarant to add to the Condominium or otherwise take any of the actions to which Declarant is entitled pursuant to this Section 3.6(b);

(c) the right to maintain a model unit and a sales, leasing and/or management office within any Unit or on the Common Elements in connection with the sale, leasing and/or management of Units, in such location as determined by Declarant. No such model unit or office shall be larger than 1,400 square feet and Declarant shall have the right to relocate such model unit and/or office from time to time. Declarant shall have the right to authorize placement, upon the Common Elements, of signs designating any such model unit and/or sales, leasing and/or management office and advertising the sale or leasing of the Units. Such signs may be placed in such locations and shall be of such size and character as Declarant may determine;

(d) the right to include, in any instrument initially conveying a Unit, such additional reservations, exceptions and exclusions as it may deem consistent with and in the right to include, in any instrument initially conveying a Unit, such additional reservations, exceptions and exclusions as it may deem consistent with and in the best interests of the Owners and the Association;

(e) the right, without the vote or consent of the Association or any other Owner, to: (i) make alterations, additions or improvements in, to and upon any Units owned by Declarant or its Affiliates, whether structural or non-structural; and (ii) change the floor plan and layout of any Unit owned by Declarant or its Affiliates. However, in no event shall any such alteration, improvement or change interfere with any structural support of any Unit or the Common Elements or the provision of utility service to any Unit or the Common Elements. All work done in accordance with the provisions of this Section 3.6(e) shall be done in compliance with the Governing Documents and all applicable Legal Requirements; and

(f) for as long as Declarant or its Designees remain liable under any warranty, whether statutory, express or implied, for any act or omission of Declarant or its Designees in the development, construction, sale and marketing of any portion of the Condominium or of the Future Development Area, whether such Future Development Area has been included within the Condominium, the right, for itself and its Designees, in Declarant's sole discretion and from time to time, to enter the Common Elements and the Units for the purpose of making necessary inspections, tests, repairs, improvements or replacements required for Declarant or its Designees to fulfill any of its warranty obligations, provided that no such entry into a Unit shall unreasonably interfere with the use of such Unit by its Owner. Failure of the Association or any Owner to provide such access may result in the appropriate warranty being nullified and of no further force or effect. Nothing in this Section 3.6(f) shall be deemed or construed as Declarant making or offering any warranty, all of which are disclaimed.

In addition to all other rights granted or reserved to Declarant in the Governing Documents, in order that the development of the Condominium may be undertaken and established as a fully operating development, Declarant shall have the following rights, and the Owners and the

Association shall refrain from interfering with Declarant's activities in such regard: (i) Declarant and its Designees shall have the right to conduct any activity or operations on or in connection with the Condominium that Declarant determines to be necessary or advisable in connection with the completion of the development of the Condominium, including the right to alter its construction plans and designs as Declarant deems advisable in the course of development or enlargement of any Improvements; (ii) Declarant and its Designees shall have the right to erect, construct and maintain on any of the Property owned by Declarant or its Affiliates, such structures as may be reasonably necessary for the conduct of its or their business of completing said development and establishing the Condominium as a community and disposing of the same by sale, lease or otherwise; (iii) Declarant and its Designees shall have the right to conduct on the Property its business of developing, subdividing, grading and constructing Improvements in the Condominium and of disposing of the Units thereon by sale, lease or otherwise; (iv) Declarant shall have the right to determine in its sole discretion the nature of and the types of Improvements to be constructed as part of the Condominium; (v) Declarant shall have the right to file any amendments or any Supplemental Declarations to this Declaration; (vi) Declarant and its Designees shall have the right to modify, change, re-configure, remove and otherwise alter any Improvements located on the Common Elements, except as prohibited or limited elsewhere by the Governing Documents; and (vii) Declarant and its Designees shall have the right to enter upon the Property and operate thereon such vehicles and equipment as shall be necessary in the sole discretion of Declarant or its Designees for such purposes. In general, Declarant shall be exempt from all restrictions set forth in this Declaration to the extent such restrictions interfere in any manner with Declarant's plans for construction, development, use, sale, lease or other disposition of all or any portion of the Property.

Development Rights may be exercised as to different portions of the Property at different times. Declarant provides no assurance whether any Development Right will be exercised, the portions of the Property as to which Development Rights may be exercised or as to the order of exercise of any Development Rights. The exercise of any Development Right in any portion of the Property does not obligate Declarant to exercise that Development Right in any other portion of the Property.

Section 3.7 Restriction on Resale of Units. No Owner shall offer any Unit for sale or advertise or otherwise market or attempt to market a Unit for sale in any way during the Sales Restriction Period. Each Owner agrees that the breach of this provision during the Sales Restriction Period shall entitle the Association and the Declarant to exercise the remedy of specific performance or damages against the Owner. This restriction shall not apply to any foreclosure or exercise of the power of sale by the holder of any Priority Lien Indebtedness.

Section 3.8 Easements. Each Owner accepts a deed conveying title to a Unit subject to the Easements granted and reserved, as applicable, in this Section 3.8, which Easements (and all related rights and obligations related to such Easements arising on or after the date of any transfer) shall run with the Condominium.

(a) Access Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Access Easement over, on and across each Unit as may reasonably be necessary for its own benefit and for the benefit of each Owner and the Association, and its agents, employees and representatives as applicable, as may be

reasonably necessary for: (i) the maintenance, repair or replacement of any of the Common Elements thereon or accessible therefrom; (ii) the use of a Unit by its Owner, provided no other reasonable means of access exists; (iii) the exercise by Declarant of the Special Declarant Rights or the performance of any obligations of Declarant under the Governing Documents; (iv) the making of emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit; (v) the evacuation of all or any part of the Property in the event of an emergency; and (vi) such other reasonable purposes as are deemed by the Association to be necessary for the performance of the obligations of the Association as described herein and in the Bylaws.

The Association, its agents, employees and representatives, may enter a Unit to the extent reasonably necessary in case of an emergency originating in or threatening the Unit or any other Unit whether or not the Owner or Tenant of such Unit is present at the time. The Person making such entry shall take reasonable precautions to protect such premises and any property contained therein from damage and theft. This right of entry may be exercised by all police officers, firefighters and other emergency personnel in the performance of their respective duties. Also, the Association, its agents, employees and representatives may enter a Unit to perform installations, alterations or repairs to the mechanical, electrical or utility services which, if not performed, would affect the use of other Units or the Common Elements; provided that, if possible, requests for any entry shall be made in advance and at a time convenient to the Owner and further subject to the foregoing limitations. In case of an emergency, the right of entry is immediate and if an Owner refuses to provide entry, such Owner is liable for the cost of repairs to the Unit or the Common Elements caused by the chosen method of access under such circumstances.

(b) Common Elements Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Common Elements Easement over, on and across the Common Elements for its own benefit and for the benefit of each Unit which is an intended beneficiary of such Common Element and the Association for ingress and egress from each Unit and for the use of the Common Elements.

(c) Support Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Support Easement over, on and across the Structure for its own benefit and the benefit of each Unit for support of all portions of the Improvements. The Structure shall be maintained by the Association in accordance with the Maintenance Standard and Section 5.2 of this Declaration.

(d) Systems Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Systems Easement over, on and across the Systems for its own benefit and for the benefit of each Owner and the Association for the use of and the connection to any portion of the Systems intended for such Owner's or the Association's use.

(e) Utility Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Utility Easement over, on and across the Common Elements for its own benefit and the benefit of utility companies supplying utility service to the Condominium for supplying utility service to any part of the Condominium.

Declarant hereby reserves for Declarant, prior to the termination of Declarant Control, and grants to the Association, after the termination of Declarant Control, the right to grant easements for purpose of utilities over any and all of the Common Elements. Declarant may record an easement agreement or easement relocation agreement in the Condominium Records, specifically locating or relocating any Utility Easement subsequent to the recordation of this Declaration, and each Owner, by acceptance of the deed to a Unit, hereby grants Declarant an irrevocable power of attorney, coupled with an interest, with full power and authority to locate or relocate any Utility Easement.

(f) Declaration of Easement Obligations and Restrictions. An instrument entitled Declaration of Easement Obligations and Restrictions executed by Declarant and filed in the Real Property Records (or to be filed in the Real Property Records) which shall be for the benefit of the Property and other real property adjoining the real property being developed by Declarant as the Midtown Village Shopping Center Property, said term being defined in the said Declaration of Easement Obligations and Restrictions.

(g) Miscellaneous. None of the Easements granted or reserved in this Section 3.8 shall be used in a manner which materially adversely affect the structural integrity of the Improvements. Except as otherwise provided by this Section 3.8, notwithstanding the assignability of the Easements, no Easement may be assigned to any Person that is not a Tenant of the Unit that is benefited by the respective Easement nor shall any Owner that is benefited by a Easement grant a sub-easement or a license to any area covered by any Easement Use and availability of any facilities or areas covered by the Easements are subject to the Regulations.

Section 3.9 Encroachments. If, as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance, any portion of the Common Elements encroaches upon a Unit, a perpetual easement over, on and across such Unit for such encroachment and for the maintenance of the same is hereby granted and conveyed to the Association by each Owner at the time each Unit is conveyed to the Owner. If as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance any portion of a Unit encroaches upon the Common Elements, or upon any adjoining Unit, an irrevocable and perpetual easement for such encroachment and for the maintenance of the same over, on and across such Unit, or such portion of the Common Elements, as applicable, is hereby granted to the Owner of such Unit. Such encroachments and easements shall not be considered or determined to be encumbrances either upon a Unit or upon the Common Elements.

ARTICLE IV

Matters Regarding the Association

Section 4.1 General. The Association is a nonprofit corporation incorporated under the GCLD In addition to the powers conferred on the Association under the GCLD, the Association may take all actions authorized by the Governing Documents. Any and all actions taken by the Association pursuant to the Governing Documents are binding on all Owners. This Declaration is not intended to place any limitations or restrictions on the power of the

Association or the Board of Directors, except as set forth in this Declaration or the Governing Documents.

Section 4.2 Allocation of Votes in the Association. Each Owner shall automatically be a member of the Association. Each member shall be entitled to cast one vote for each Unit owned with respect to any matter on which members of the Association are entitled to vote. Any matter described in this Declaration as requiring approval by a stated percentage or a majority of the Owners shall be calculated on the basis of the Allocated Interests.

Section 4.3 Suspended Voting Rights. All voting rights of an Owner may be suspended during any period that such Owner is delinquent in the payment of any Assessment duly established pursuant to this Declaration, or is otherwise in default under the terms of the Governing Documents. Following an Owner's cure of any such delinquency or default in full, its voting rights shall be completely reinstated 24 hours after such cure is effected.

Section 4.4 Right of Action by Owners, Limitation of Liability of Officers and Directors of Association. Owners, acting collectively or individually, shall have the right to maintain actions against the Association for its willful failure to perform its duties and responsibilities hereunder; provided, however, except as otherwise provided by the Governing Documents, no other action shall be brought against the Association or its affiliates, parents, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns by the Owners. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings in the name of any Owner. Subject to the Association's obligations under this Declaration, and except as otherwise provided by the Governing Documents, each Owner hereby releases, acquits and forever discharges the Association, and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns and agrees to hold such Persons harmless of and from any and all claims, damages, liabilities, costs and/or expenses (including reasonable attorneys' fees) relating to the construction of, repair or restoration of, or the sale to the Owners of the Units or the Common Elements. This release shall release and forever discharge the Association and its affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns from all claims and causes of action, whether statutory or under the common law, known or unknown, now accrued, or that arise in the future.

Section 4.5 Limitation of Liability of Officers and Directors of the Association. No officer or director of the Association shall be liable to any Owner of any Unit or any Tenant, for any claims, actions, demands, costs, expenses (including attorneys' fees), damages or liability, of any kind or nature, except as otherwise expressly set forth in the Governing Documents, and such officers and directors shall be indemnified in accordance with the provisions of the Governing Documents.

ARTICLE V

Maintenance, Alterations, Taxes and Utilities

Section 5.1 Maintenance.

(a) Maintenance of Units. All maintenance, repairs and replacements of, in or to any Unit, ordinary or extraordinary, foreseen or unforeseen, including maintenance, repair and replacement of interior non-structural walls, doors within or affording access to a Unit, fixtures, outlets and floor coverings, and all Systems exclusively serving such Unit, shall be performed by the Owner in accordance with the Maintenance Standard at the sole cost and expense of such Owner. In addition, all instances of water damage within a Unit or sightings of mold within the Condominium must be reported to the Association in writing immediately.

(b) Maintenance of Common Elements. All Common Elements shall be maintained by the Association (unless provided otherwise in the Regulations) in accordance with the Maintenance Standard, the cost and expense of which shall constitute a Common Expense. The Association shall establish and maintain an adequate reserve fund for such purposes, to be funded by Monthly Assessments rather than by Special Assessments; provided, however, that the Association may require Special Assessments for such purposes in accordance with Section 7.1(c) of this Declaration. Nothing in this Declaration shall be deemed or construed as relieving any Owner from liability or responsibility for damage to the Common Elements caused by the negligence or misconduct of an Owner or an Owner's occupants or invitees.

(c) Limitation of Liability. The Association shall not be liable: (i) for injury or damage to any person or property caused by the elements or by an Owner or the occupant of any Unit, or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from or over any portion of the Common Elements, or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain under this Declaration; (ii) to any Owner or occupants of any Unit for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements; or (iii) to any Owner or occupant of a Unit for any damage or injury caused in whole or in part by the failure of the Association to discharge its responsibilities under this Section 5.1.

Section 5.2 Failure of Owner to Maintain Unit. If any Owner fails or neglects to maintain, repair, or clean its Unit as required by Section 5.1(a) of this Declaration, or any Limited Common Element appurtenant thereto required to be maintained by such Owner pursuant to the Regulations, and such failure or neglect continues for ten days after such Owner's receipt of written notice of such neglect or failure from the Association, then the Association acting on its own behalf may, but shall not be obligated to, enter the Unit or applicable Limited Common Element and take appropriate steps to perform, or cause to be performed, the maintenance, repair, cleaning and replacement in the manner as required by this Declaration. The defaulting Owner shall, upon demand, reimburse the Association for all costs and expenses incurred in exercise of its rights in this Declaration. Any such costs and expenses not paid within

ten days from the defaulting Owner's receipt of demand from the Association shall bear interest at the Past Due Rate.

Section 5.3 Additions, Alterations or Improvements by Owner. Subject to the provisions in this Declaration, no Owner (other than Declarant) shall: (i) make any addition, alteration or improvement in its Unit, to the extent either visible from any other Unit, the Common Elements or the exterior of the Building, whether structural or non-structural; (ii) make any addition, alteration or improvement to any Common Element; (iii) change the floor plan and layout of such Owner's Unit; or (iv) make any material changes to the configuration or size of any Unit, create apertures in or otherwise remove or alter any partition wall separating such Unit from any adjoining Unit or relocate the boundaries of such Unit and any adjoining Unit without the prior written approval of the Association, which approval may be withheld in the sole and absolute judgment of the Association. However, in no event shall any such alteration, improvement or change interfere with any structural support of any Unit, the Common Elements or any System serving another Unit. All work done in accordance with this Section 5.3 shall be done in compliance with the plans approved by the Association, all Legal Requirements and the Governing Documents. **THE OWNER, MAKING OR CAUSING TO BE MADE SUCH ADDITIONS, ALTERATIONS OR IMPROVEMENTS, AGREES, AND SHALL BE DEEMED TO HAVE AGREED, FOR SUCH OWNER, TO HOLD DECLARANT, THE ASSOCIATION, AND ALL OTHER OWNERS HARMLESS FROM AND TO INDEMNIFY THEM FOR ANY LIABILITY OR DAMAGE TO THE PROPERTY RESULTING FROM SUCH ADDITIONS, ALTERATIONS OR IMPROVEMENTS. ANY OTHER OWNER SUBMITTING PLANS HEREUNDER, BY DISSEMINATION OF THE SAME, AND ANY OWNER, BY ACQUIRING TITLE TO THE SAME, AGREES NOT TO SEEK DAMAGES FROM THE ASSOCIATION ARISING OUT OF ITS REVIEW OF ANY PLANS HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ASSOCIATION SHALL NOT BE RESPONSIBLE FOR REVIEWING, NOR SHALL ITS REVIEW OF ANY PLANS BE DEEMED APPROVAL OF ANY PLANS FROM THE STANDPOINT OF THE STRUCTURAL SAFETY, SOUNDNESS, WORKMANSHIP, MATERIALS, USEFULNESS, CONFORMITY WITH BUILDING OR OTHER CODES OR INDUSTRY STANDARDS, OR COMPLIANCE WITH THE GOVERNING DOCUMENTS AND ALL LEGAL REQUIREMENTS. FURTHER, EACH OWNER AGREES TO INDEMNIFY AND HOLD THE ASSOCIATION AND ITS OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, DAMAGES, EXPENSES OR LIABILITIES WHATSOEVER, ARISING AS A RESULT OF THE REVIEW OF ANY PLANS HEREUNDER.**

Section 5.4 Mechanic's Liens; Indemnification. No labor or services performed or materials furnished and incorporated in an Owner's Unit or any Common Element, shall be the basis for the filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the same or against the Common Elements. **EACH OWNER (TO THE EXTENT ARISING THROUGH SUCH OWNER) SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE OTHER OWNERS AND THE ASSOCIATION FROM AND AGAINST ALL LIABILITIES AND OBLIGATIONS ARISING FROM THE CLAIM OF ANY MECHANIC'S LIEN AGAINST THE UNIT OF SUCH OWNER, THE UNIT OF SUCH OTHER OWNERS AND/OR THE COMMON ELEMENTS.** All contracts for labor, services and/or materials with respect to any of the Units shall be in compliance with the provisions hereof.

Section 5.5 Taxes.

(a) Payment of Governmental Impositions. Each Owner shall be responsible for and shall pay when due all Governmental Impositions lawfully levied or assessed with respect to its Unit, except to the extent such Governmental Impositions are being actively and diligently contested in good faith by appropriate legal proceedings, and if requested by the Association, have been bonded or reserved in an amount and manner satisfactory to the Association. Any Governmental Impositions lawfully levied or assessed with respect to the Property not separately assessed to the Owners shall constitute a Common Expense and be payable by the Association when due.

(b) Notice to Taxing Authorities. Declarant shall give written notice to the appropriate taxing authorities of the creation of the Condominium established pursuant to this Declaration. Each Owner shall promptly request and diligently pursue from the applicable taxing authority separate tax parcel status and a separate tax identification number for its Unit.

(c) Units Not Separately Assessed. If any Governmental Impositions with respect to the Property are not separately assessed to the Owners of a Unit, each Owner shall pay its respective allocated portion of such Governmental Impositions (which allocations shall be determined in the manner set forth in this Declaration) when requested by the Association (but in no event prior to 20 days or later than ten days before the date of delinquency, without any additional notice or grace period) to permit the Association to make full payment of such Governmental Impositions prior to the date on which such Governmental Impositions would become delinquent; provided that the Association shall not require any Owner to make any payment to the Association for such Governmental Impositions to the extent such amounts have already been deposited by such Owner in accordance with any escrow arrangement.

(d) Failure to Pay Governmental Impositions. The Association or any Mortgagee may pay the portion of such Governmental Impositions that any Owner has failed to pay when due, and the Association or such Mortgagee shall have a lien against such Unit to secure repayment thereof that may be enforced by any means available at law or in equity, including non-judicial foreclosure sale of such Unit in accordance with Alabama Code Section 35-10-12 (as now written or hereafter amended); provided, however, no such lien for delinquent Governmental Impositions shall be valid until a notice of such lien is duly recorded in the Real Property Records, notwithstanding any applicable statute, law (including case law), equitable doctrine, ordinance or regulation that permits any such lien to attach absent such recordation in the Real Property Records. Each Owner, by its acquisition of such Unit, grants a power of sale in connection with such lien in favor of the Association or any Mortgagee that makes payment of the Governmental Impositions on behalf of a defaulting Owner. Any lien pursuant to this Section 5.5(d) shall have the same priority as a lien by the Association for Assessments; provided that any such lien for delinquent Governmental Impositions shall be subordinate to the lien of any Priority Lien Indebtedness encumbering the defaulting Unit, provided that such Priority Lien Indebtedness was recorded prior to the date such lien for Governmental Impositions was duly recorded (notwithstanding any applicable statute,

law (including case law), equitable doctrine ordinance or regulation that permits any such lien to attach absent such recordation in the Real Property Records).

(e) This Section 5.5 shall terminate and be of no further force or effect whatsoever, upon the later of the date upon which (i) each Unit within the Condominium shall be separately assessed and billed as a separate tax parcel by the tax assessor and (ii) all the Governmental Impositions due and owing prior to all Units being separately assessed and billed as a separate tax parcel by the tax assessor have been paid in full to the appropriate taxing authority.

Section 5.6 Utilities. Each Owner shall be responsible for and shall pay all charges for gas, electricity, water and other utilities relating to such services used or consumed at or with respect to the occupancy of its Unit, to the extent such charges are separately metered by the respective utility companies. Any utility charges not so separately metered and charges relating to such services used in connection with the use and maintenance of the Common Elements, shall constitute a Common Expense and be payable by the Association.

ARTICLE VI

Insurance

Section 6.1 Insurance. All insurance coverage required to be obtained pursuant to this Article VI or purchased at the election of an Owner or the Association shall:

(a) be in such form, approved by the Association and shall be issued by responsible insurance companies licensed to do business in the State of Alabama and shall be rated by Best's Insurance Guide (or any successor publication of comparable standing) as "A-/VI" or better;

(b) not be brought into contribution with insurance purchased by other Owners or the Association;

(c) waive any right to claim (i) by way of subrogation against Declarant, Tenants, the Association, the Board of Directors, any Manager, the Owners or any member of his household, and their respective agents and employees and (ii) invalidity arising from the acts of the insured; and

(d) provide that insurance trust agreements shall be recognized.

Section 6.2 Insurance by Association.

(a) Commencing upon the first conveyance of any Unit to an Owner other than Declarant, the Association shall obtain and maintain as a Common Expense, all insurance coverage required by the Act. In addition, each insurance policy maintained by the Association shall provide that: (i) each Owner is named as an insured under such policies with respect to liability arising out of the Owner's ownership of an undivided interest in the Common Elements or membership in the Association; (ii) no action or omission by any Owner, unless validly exercised on behalf of the Association, will void

the policy or be a condition to recovery under the policy; and (iii) such policy is primary insurance if at the time of a loss under the policy any Owner has other insurance covering the same property covered by the policy.

(b) The Association shall carry such other or additional insurance in such amounts and against such risks as the Association shall reasonably deem necessary or appropriate with respect to the Common Elements or the operation of the Association, including liability insurance for all officers, directors, trustees and employees of the Association. The premiums for all insurance coverages maintained by the Association pursuant to this Section 6.2 shall constitute a Common Expense and be payable by the Association.

Section 6.3 Insurance by Owners. An Owner shall be responsible for obtaining and maintaining at such Owner's sole cost and expense property insurance covering its Unit and all alterations, additions, betterments and improvements to its Unit and all other personal property located at its Unit or constituting a part thereof and insurance covering damage to other Units or property located therein, the cause of which originates from such Owner's Unit. Nothing in this Declaration shall be deemed or construed as prohibiting an Owner, at such Owner's sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as such Owner may deem necessary or appropriate.

Section 6.4 Other.

(a) The Association shall not be liable for failure to obtain any insurance coverage required by this Declaration or for any loss or damage resulting from such failure, if such failure is because such insurance coverage is not reasonably available.

(b) Neither the Association nor any Owner shall obtain any policy of insurance where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Owner or a Mortgagee or become a lien against the Condominium; (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Association, Owners or Mortgagees from collecting Insurance Proceeds.

Section 6.5 Insurance Trustee. By acceptance of a deed to a Unit, each Owner shall be deemed to have irrevocably appointed the Association as the Insurance Trustee. All property insurance policies required to be obtained by the Association as described in this Article VI shall be issued in the name of the Association as Insurance Trustee for the Condominium. Loss payable provisions shall be in favor of the Insurance Trustee as a trustee for the Association, each Owner and each Mortgagee. The Insurance Trustee shall not be liable for the payment of premiums, nor the renewal or sufficiency of policies, except those policies required to be purchased and maintained by the Association pursuant to this Article VI. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated in this Article VI and in Article VIII of this Declaration, and for the benefit of each Owner, including Declarant, and each Mortgagee.

ARTICLE VII

Assessments

Section 7.1 Monthly and Special Assessments by Association. The Association shall possess the right, power, authority and obligation to establish a regular Monthly Assessment for payment of Common Expenses and such Special Assessments as provided for in this Declaration.

(a) Common Expenses. The Association shall possess the right, power, authority and obligation to establish a regular Monthly Assessment sufficient in the judgment of the Association to pay all Common Expenses when due and to maintain an adequate reserve fund for such purposes. Such Monthly Assessments so established shall be payable by the Owners on the first day of each calendar month, and shall be applied to the payment of Common Expenses for which the Association is responsible.

(b) Budget for Common Expenses. Prior to the commencement of each fiscal year of the Association, the Association shall deliver to the Owners a Budget. Such Budget shall be in sufficient detail so as to inform each Owner of the nature and extent of the Common Expenses anticipated to be incurred in the upcoming fiscal year, and shall be accompanied by a statement setting forth each Owner's monthly share thereof, which shall be determined in accordance with such Owner's Allocated Interests, and the date as of which such Monthly Assessment commences to be payable. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the Monthly Assessment payable hereunder and the failure of the Association to timely deliver the Budget shall in no event excuse or relieve an Owner from the payment of the Monthly Assessments contemplated hereby, in which case, each Owner shall continue to pay to the Association an amount equal to such Owner's Monthly Assessment as established pursuant to the most recent Budget delivered to the Owners. Within 30 days after adoption of any proposed Budget, the Board of Directors shall provide a copy of the Budget to all Owners, and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than 14 nor more than 30 days after delivery or mailing of the Budget to the Owners. Unless at that meeting 67% of all the Owners present in person or by proxy reject the Budget, the Budget is ratified, whether or not a quorum is present. In the event the proposed Budget is rejected, the periodic Budget last ratified by the Owners shall be continued unit such time as the unit Owners ratify a subsequent budget proposed by the Board of Directors.

(c) Special Assessments. In addition to the Monthly Assessments contemplated by Section 7.1(a) and Section 7.1(b) of this Declaration, the Association shall possess the right, power, authority and obligation to establish Special Assessments from time to time as may be necessary or appropriate in the judgment of the Association to pay non-recurring Common Expenses relating to the maintenance, care, alteration, improvement, replacement, operation and management of the Condominium and the administration of the Association.

Section 7.2 Individual Assessments. In addition to Monthly Assessments and Special Assessments contemplated in Section 7.1 of this Declaration, the Association shall possess the right, power and authority to establish or levy Individual Assessments in accordance with the provisions of this Declaration against individual Owners or an Owner's Unit for charges properly borne solely by one or more but less than all the Owners, such as (without limitation) charges for additional services, damages, fines or fees, or insurance deductible payments. Individual Assessments shall be the personal obligation of the Owner against whom the Individual Assessment is assessed, and shall constitute a lien against the Unit in the same manner and with the same consequences as the Monthly Assessment and any duly authorized Special Assessment.

Section 7.3 Obligation to Pay Assessments. Each Owner shall be personally obligated to pay such Owner's share of all Assessments duly established pursuant to this Declaration to the Association. Unpaid Assessments due as of the date of the conveyance or transfer of a Unit shall not constitute a personal obligation of the new Owner (other than such new Owner's pro rata share of any reallocation thereof); however, the former Owner shall continue to be personally liable for such unpaid Assessment. No Owner shall be entitled to exemption from liability for the Owner's obligation to pay such Assessments by waiver of the use and enjoyment of the Common Elements, by an abandonment of its Unit or by any other action or otherwise. Any Assessment not paid within five days of the date due shall bear interest at the Past Due Rate, and shall be recoverable by the Association, together with interest as aforesaid and all costs and expenses of collection, including reasonable attorneys' fees, by suit in a court of competent jurisdiction sitting in the County. It shall be the responsibility of the Association to collect any such delinquent Assessment, the existence of which shall be made known by written notice delivered to the defaulting Owner and, where requested, the Owner's Mortgagee. The Association shall give written notice of any 60 day delinquency in the payment of Assessments by an Owner to such Owner's Mortgagee to the extent the Mortgagee has requested such notices be provided.

Section 7.4 Lien to Secure Payment of Assessments. Declarant hereby reserves and assigns to the Association a lien, pursuant to the provisions of the Act, against each Unit, the Rents, if any, payable to the Owner of any Unit and Insurance Proceeds to which an Owner may be entitled, to secure the payment of all Assessments, which lien shall be and constitute a lien and encumbrance, in favor of the Association, upon such Units, the Rents, and any Insurance Proceeds. The liens established in this Declaration shall be prior and superior to all other liens and encumbrances subsequently created upon such Units, Rents and Insurance Proceeds, regardless of how created, evidenced or perfected, other than the lien securing the payment of Priority Lien Indebtedness (provided such lien was recorded prior to the date on which the Assessment became delinquent) and the liens for Governmental Impositions. The liens and encumbrances created in this Declaration may be enforced by any means available at law or in equity, including a non-judicial foreclosure sale of the Unit of a defaulting Owner; such sale to be conducted in the manner set forth in Code of Alabama §35-10-1, et seq. (as now written or as hereafter amended). Each Owner, by acquisition of its Unit, grants to the Association a power of sale in connection with the Association's liens. By written resolution, the Association may appoint, from time to time, an officer, agent, trustee or attorney of the Association to exercise the power of sale on behalf of the Association. The Association may bid for and purchase the Unit, as a Common Expense, at any such foreclosure sale. The foreclosure of a lien encumbering a

Unit in order to satisfy the Priority Lien Indebtedness will extinguish the subordinate lien for any Assessments which became payable prior to the date of such foreclosure sale, provided that in no event shall a defaulting Owner be relieved from liability incurred for past Assessments.

Section 7.5 Commencement of Obligation to Pay Assessments. Each Owner, other than Declarant, shall be obligated to commence payment of all Assessments against its Unit on the date the Unit is conveyed to the Owner. If such date is other than the first day of a month, then such Owner shall be obligated to pay only a pro rata share of the Assessment against its Unit based on the number of days during such month that the Owner will hold title to its Unit. If a Tenant occupies a Unit and the Owner of that Unit becomes delinquent in the payment of any Assessment against such Unit, the Association shall have the right, upon written notice to the Tenant and Owner, to collect any rental payments due from the Tenant until the full amount of the Assessment plus any applicable late fees or fines is collected. Prior to the commencement of the obligation to pay the initial Monthly Assessment, Declarant shall pay all Common Expenses of the Condominium (excluding portions thereof allocable to reserves and less Assessments paid by other Owners); provided, however, nothing contained in this Declaration shall prevent Declarant from collecting from the purchaser of a Unit at closing any expenses, such as Governmental Impositions or insurance premiums, to the extent that Declarant prepaid such expenses on behalf of the Unit being purchased. After commencement of the initial Monthly Assessment and prior to the end of the period of Declarant Control, Declarant shall pay the amount by which the Common Expenses of the Condominium (excluding the portion thereof allocable to reserves) exceed Monthly Assessments required to be paid by Owners other than Declarant; thereafter, Declarant shall pay Monthly Assessments the same as any other Owner. If such date is other than the first day of a month, then Declarant shall be obligated to pay only a pro rata share of the Assessments against such Unit based on the number of days remaining during such month.

Section 7.6 Redemption by Owner. The Owner of a Unit purchased by the Association at a foreclosure sale of the Association's lien for Assessments may redeem the Unit in accordance with the provisions of the Act.

Section 7.7 Notice of Default. If an Owner defaults in its monetary obligations to the Association, the Association may notify other lienholders of the default and the Association's intent to foreclose its lien. The Association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a Unit which has given the Association a written request for notification of the Owner's monetary default or the Association's intent to foreclose its lien.

Section 7.8 Alternative Actions. Nothing contained in this Declaration shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

Section 7.9 Statement of Expenses and Access to Records. Upon request, the Association shall promptly provide any Owner, contract purchaser or Mortgagee with a written statement of all unpaid Assessments due with respect to such Unit. The Association may impose a reasonable charge for the preparation of such statement to the extent permitted by the Act. The Association shall make available during normal business hours for inspection, upon request by the Owners, Mortgagees, Tenants, prospective purchasers and any of their authorized agents,

current copies of the books, records and financial statements of the Association (including, if such is prepared, the most recent annual audited financial statement available).

ARTICLE VIII

Loss and Obsolescence

Section 8.1 Loss or Damage to Common Elements. The following provisions shall govern if the Common Elements or any part thereof, are damaged or destroyed by fire or other casualty: (a) prompt written notice of any substantial damage or destruction shall be given (i) by the affected Owner or Owners to the Association and (ii) by the Association to all of the Mortgagees; (b) the Association shall promptly proceed with the full restoration and repair of such damage or destruction unless (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any Legal Requirement; or (iii) at least 80% of the votes in the Association, including each Owner of a Unit to which a Limited Common Element that will not be rebuilt or repaired is assigned, vote not to rebuild; (c) the amount by which such restoration and repair costs exceed collectible Insurance Proceeds shall be and constitute a Special Assessment payable by the Owners within 60 days of the date notice of such Special Assessment is delivered by the Association, in accordance with Section 7.1(c) of this Declaration; (d) any excess Insurance Proceeds remaining after such restoration and repair, or any insurance or sales proceeds available absent such restoration and repair, shall be received and held in trust by the Insurance Trustee in separate accounts for each Owner, as their interests may appear (with any proceeds attributable to Limited Common Elements allocated among the Owners of the Units to which such Limited Common Elements were assigned in this Declaration and any other proceeds allocated in accordance with the Allocated Interests of the Owners), and distributed as follows: (i) first, to the payment of any Governmental Impositions in favor of any assessing entity having authority with respect to the Common Elements or such Unit; (ii) second, to the payment of the balance of the Priority Lien Indebtedness of such Owner; (iii) third, to the payment of any delinquent Assessment with respect to such Unit; and (iv) the balance, if any, to each Owner entitled thereto.

Section 8.2 Damaged Units. The following provisions shall govern in relation to a Damaged Unit: (a) prompt written notice of any substantial damage or destruction shall be given by the Owner of the Damaged Unit to the Association and the Mortgagee of the Damaged Unit; (b) the Owner of the Damaged Unit shall promptly proceed with the full restoration and repair of such damage or destruction unless: (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any Legal Requirement; or (iii) the Owners holding at least 80% of the votes in the Association, including the Owner of the Damaged Unit, vote not to rebuild; and (c) the Owner of each Damaged Unit shall pay all costs of such restoration, repair and replacement or rebuilding in excess of the net proceeds of the collectible Insurance Proceeds.

Section 8.3 Obsolescence of Common Elements. If the Owners holding not less than 100% of the Allocated Interests shall vote, at a meeting of the Association duly called for purposes of considering same, that the Common Elements, or any part thereof, (or any Systems which serve only, or are a part of, individual Units), are obsolete, the Association shall promptly proceed with the necessary replacements and improvements thereto pursuant to a budget established for such purpose, and the cost thereof shall be and constitute a Special Assessment

payable by all the Owners within 30 days of the date notice of such Special Assessment is delivered to them by the Association.

Section 8.4 Association as Attorney-in-Fact. Each Owner, by acceptance of a deed to a Unit, hereby irrevocably makes, constitutes and appoints the Association, and each and every one of its successors in interest hereunder (which appointment shall be deemed a power coupled with an interest), as such Owner's true and lawful attorney-in-fact, for and in such Owner's name, place and stead, upon the damage or destruction of the Condominium, or any part thereof, or upon any determination by the Owners made pursuant to this Article VIII, to take any and all actions, and to execute and deliver any and all instruments, as the Association may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article VIII, hereby giving and granting unto the Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the premises as fully, to all intents and purposes, as an Owner might or could do, hereby ratifying and confirming whatsoever the Association may do by virtue hereof. The Association is hereby authorized, in the name and on behalf of all Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article VIII as aforesaid, including the power and authority to make and settle claims under any insurance policies maintained by the Association, contract for and with respect to restoration and repair work, contract for and with respect to replacements and improvements to the Common Elements (to the extent authorized as contemplated by Section 8.3 of this Declaration) and to execute and deliver all instruments necessary or incidental to any such actions.

Section 8.5 Matters Relating to Restoration and Repairs. Any restoration and repair work undertaken by the Association or an Owner pursuant to this Article VIII shall be performed in a good and workmanlike manner in order to restore the Improvements to a condition similar to that existing prior to such damage or destruction; provided, however, that in no event shall the Association be responsible for restoring, repairing or replacing any improvements to a Unit made by an Owner, or the contents located in such Unit. All such restoration and repair work, whether done by the Association or an Owner, shall be effected in a manner so as to observe all vertical and horizontal Unit boundaries existing prior to such damage or destruction.

ARTICLE IX

Condemnation

Section 9.1 General Provisions. If all or any part of the Property is subject to a Taking, the Association and each Owner affected thereby shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give such notice as it receives of such proceeding to all the Owners and to all the Mortgagees which have requested such notice; provided, however, that the failure of the Association to give such notice shall not prejudice the right of any Mortgagee to participate in such proceedings. The expense of participation in such proceedings by the Association shall be a Common Expense. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such

proceedings. Any restoration or repair of the Property following a partial Taking shall be performed in accordance with the provisions of this Declaration and shall follow, as nearly as possible, the original plans and specifications for the Property, unless otherwise approved by all the Mortgagees.

Section 9.2 Taking of All or Substantially All of One Unit. If a Unit (or a substantial part thereof such that the remnant may not practically or lawfully be used for any purpose permitted by this Declaration) is subject to a Taking, the Owner and any Mortgagee of such Owner shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and, after payment thereof, such Owner and any Mortgagee of such Owner shall be divested of all interest in the Property. In such event, the condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the Taking, unless the decree relating to the Taking provides otherwise. A remnant of a Unit remaining after part of a Unit is the subject of a Taking described in this Section 9.2 shall be a Common Element. If any repair or rebuilding of the remaining portions of the Property is required as a result of such Taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Association either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and this Declaration shall be amended to reflect such Taking. This Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests following the Taking.

Section 9.3 Partial Taking of a Unit. If only a portion of a Unit is subject to a Taking, such that the remaining portion of such Unit can practically and lawfully be used for any purpose permitted by this Declaration, the Owner shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and the Allocated Interest of the Unit subject to such Taking shall be reduced and the Allocated Interests of the other Units shall be increased in accordance with the Reallocation Percentage. The Owner of such Unit, at its sole cost and expense, shall promptly repair, restore and rebuild the remaining portions of such Unit as nearly as possible to the condition which existed prior to such Taking.

Section 9.4 Taking of Common Elements. If an action is brought to effect a Taking of all or any portion of the Common Elements together with or apart from any Unit, the Board of Directors, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding unless the action involves a material portion of the Common Elements in which case such decision shall be made by the affirmative vote or written consent of the Owners holding not less than 80% of the votes in the Association. With respect to any such Taking of the Common Elements only, all damages and awards shall be determined for such Taking as a whole and not for any Owner's interest therein. After the damages or awards for a Taking of the Common Elements are determined, such damages or awards shall be held by the Association, acting as trustee for each Owner, and their Mortgagees, as their interests shall appear, and any amounts not

used for repair or restoration of the remaining Common Elements shall be divided among the Owners in proportion to each Owner's Allocated Interest before the Taking, except that such portion of any such award attributable to the condemnation of a Limited Common Element shall be divided among the Owners of the Units served by such Limited Common Elements, as such Owners' interests existed in the Limited Common Elements condemned. The Owners shall determine by the affirmative vote or written consent of the Owners holding not less than 80% of the votes in the Association either to rebuild or repair the remaining Common Elements or to take such other action as such Owners may deem appropriate. If it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration and the Plats and Plans attached hereto shall be duly amended by instrument executed by the Board of Directors on behalf of the Owners and recorded in the Condominium Records.

Section 9.5 Taking of Several Units. If an eminent domain proceeding results in the Taking of all or part of multiple Units, then the damage and awards for such Taking shall be determined and paid for each Unit as described in Sections 9.2 and 9.3 of this Declaration, and the following shall apply: (a) the Association shall determine which of the Units damaged by such Taking may be practically and lawfully used for any purpose permitted by this Declaration, taking into account the nature of the Property and the reduced size of each Unit so damaged; (b) if the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Association, with the written consent of 51% of the Mortgagees, that it is not reasonably practicable to operate the undamaged Units and the damaged Units which can be practically and lawfully used for any purpose permitted by this Declaration as a condominium project in the manner provided in this Declaration, then the Property shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interests by all the remaining Owners, as tenants-in-common, in the percentage of the Allocated Interest of each Owner (after reallocation in accordance with the procedures described in Section 9.2 and 9.3 of this Declaration); and (c) if the Condominium is not so terminated, then the damages and awards made with respect to each Unit which can be practically and lawfully used for any purpose permitted by this Declaration shall be applied to repair and reconstruct such Unit as provided in Section 9.3 of this Declaration. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed pro rata against the Owners of those Units which are being repaired or reconstructed. With respect to those Units which may not be practically or lawfully used for any purpose permitted by this Declaration, after payment of the award, such Owner and any Mortgagee of such Owner shall be divested of all interest in the Property and the condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the Taking, unless the decree relating to the Taking provides otherwise. A remnant of a Unit remaining after part of a Unit is the subject of a Taking, if the remnant of such Unit cannot be practically or lawfully used for any purposed permitted by this Declaration, shall be a Common Element. If any repair or rebuilding of the remaining portions of the Property (other than Units which can be practically and lawfully used for any purposed permitted by this Declaration) is required as a result of such Taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Association either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall

be resurveyed, if necessary, and this Declaration shall be amended to reflect such Taking. This Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests following the Taking.

Section 9.6 Complete Taking of Property. If all of the Property is the subject of a Taking, all damages and awards shall be held by the Association, acting as trustee, for the accounts of all the Owners and their Mortgagees, as their interests shall appear, and shall be paid to or for the accounts of the Owners in proportion to their Allocated Interests and this Condominium shall terminate upon such payment.

Section 9.7 Payment of Awards and Damages. Any damages or awards provided in this Article IX to be paid to or for the account of any Owner by the Association, acting as trustee, shall be applied first to the payment of any Governmental Impositions past due and unpaid with respect to that Unit; second, to any Priority Lien Indebtedness on that Unit; third, to the payment of any Assessments charged to or made against the Unit and unpaid; and finally to the Owner.

Section 9.8 Association as Attorney-in-Fact. Each Owner, by acceptance of a deed to a Unit, hereby irrevocably makes, constitutes and appoints the Association, and each and every one of its successors in interest hereunder (which appointment shall be deemed a power coupled with an interest), as such Owner's true and lawful attorney-in-fact, for and in such Owner's name, place and stead, upon the condemnation of the Condominium, or any part thereof, or upon any determination by the Owners made pursuant to this Article IX, to take any and all actions, and to execute and deliver any and all instruments, as the Association may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article IX, hereby giving and granting unto the Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the premises as fully, to all intents and purposes, as an Owner might or could do, hereby ratifying and confirming whatsoever the Association may do by virtue hereof. The Association is hereby authorized, in the name and on behalf of all Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article IX as aforesaid, and to execute and deliver all instruments necessary or incidental to any such actions.

ARTICLE X

Development Period; Working Capital Contributions

Section 10.1 Initial Directors. The initial Directors shall be those Directors named in the Articles.

Section 10.2 Period of Declarant Control.

(a) Except as is provided below, Declarant shall have the right to appoint and remove members of the Board of Directors during the period of Declarant Control. If Declarant voluntarily surrenders the right to appoint and remove members of the Board of Directors prior to the termination of the period of Declarant Control, Declarant may require that specified actions of the Board of Directors be subject to Declarant approval until the expiration of the period of Declarant Control.

(b) Not later than 90 days after Declarant has conveyed to Owners other than Declarant title to 25% of the Units, an election shall be held by the Association, pursuant to the Bylaws, for the election of one Director by Owners other than Declarant, who shall be elected for a two year term. Such newly elected Director shall replace one of the initial Directors of the Association.

(c) Not later than 90 days after Declarant has conveyed to Owners other than Declarant title to 50% of the Units, an election shall be held by the Association, pursuant to the Bylaws, for the election of one Director by Owners other than Declarant, who shall be elected for a two year term. Such newly elected Director shall replace one of the initial Directors of the Association.

(d) At least 30 days prior to the termination of the period of Declarant Control, the Association shall elect one Director pursuant to the Bylaws, who shall be elected for a two year term, such term to commence as of the date on which the period of Declarant Control terminates. Such newly elected Director shall replace the last remaining initial Director of the Association.

Section 10.3 Working Capital Contributions.

(a) Each Owner shall, at the time such Owner purchases a Unit from Declarant, contribute an amount to the Association equal to the Working Capital Contribution. Such amount shall be a contribution of working capital to the Association and shall not be considered as an advance payment of the Monthly Assessments. Declarant shall not be required to make any Working Capital Contribution.

(b) Any purchaser of a Unit from an Owner other than Declarant shall contribute an amount to the Association equal to the Working Capital Contribution at the time of purchase. Such amount shall be a contribution of working capital to the Association and shall not be considered as an advance payment of Monthly Assessments.

ARTICLE XI

Matters for Mediation and Arbitration

Section 11.1 Mediation. All Disputes, except those relating to equitable remedies, which are not resolved within 15 days after same have arisen (unless such greater time is provided elsewhere in the Governing Documents) shall be submitted for, or determined by, non-binding mediation. Mediation of any Dispute shall be initiated by any Owner making a written demand therefor to the other Owner or Owners involved in such Dispute and the Association; provided, however, if the Association is a party to any such Dispute the Association shall have the right to elect not to be governed by the provisions of this Article XI by giving to the Owner or Owners, within ten days after the Association's receipt from such Owner or Owners of a demand for mediation of a Dispute, written notice of the Association's election not to be governed by the provisions of this Article XI and to instead exercise the Association's remedies at law or in equity. With respect to such mediation, the parties shall, within ten days after delivery of such written notice to the Association, agree upon a mediator who is: (i) a reputable person actively engaged in the commercial real estate industry for a continuous period of not less

than ten years and (ii) is in no way affiliated, or has had material business dealings with any Owner or any member of the Association. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be appointed by the American Arbitration Association office in Tuscaloosa, Alabama. Such mediation shall occur within 30 days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location in Tuscaloosa, Alabama. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorneys' fees); provided, however, that if the Dispute is not resolved pursuant to such mediation, the provisions of Section 11.2 of this Declaration shall govern the payment of attorneys fees and costs and expenses of mediation and arbitration under this Article XI.

Section 11.2 Final Offer Arbitration. If the parties are unable to resolve any Dispute at mediation the parties shall submit their Dispute to binding arbitration, no later than 30 calendar days after the parties have reached an impasse at mediation. The parties agree to select a single impartial arbitrator from a list taken from the American Arbitration Association of commercial arbitrators, and if they cannot agree on an arbitrator, each party shall select a person and those two so selected shall then select the single impartial arbitrator who shall thereafter serve as arbitrator with respect to the Dispute. The issues in dispute shall be submitted as "baseball" or final-offer arbitration, whereby each party shall submit what it deems to be its most reasonable position to the arbitrator and the arbitrator shall select one of those two positions. The arbitrator shall have no discretion to select or award a position other than to select one of those submitted by the parties. To the extent rules governing arbitration are deemed necessary by the arbitrator (or by agreement of the parties), the current Rules for Commercial Mediation and Arbitration promulgated by the American Arbitration Association shall apply. The decision of the arbitrator shall be rendered no later than ten days from the initiation of the arbitration procedure. The parties may resort to any court of competent jurisdiction for enforcement of, or any other action relating to, the arbitrator's award. The party or parties whose position is not selected or awarded shall be responsible for all attorneys fees, costs and expenses (incurred in connection with the mediation and arbitration of a Dispute under this Article XI) of the party whose position is selected or awarded for the arbitration of the Dispute under this Article XI.

Section 11.3 Construction Disputes.

(a) Any Construction Dispute not resolved within fifteen days after same has arisen shall be submitted for, or determined by, non-binding mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by any party. Mediation of any Construction Dispute shall be initiated by any party making a written demand therefor to all other parties involved in such Construction Dispute. Any mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the time the Construction Dispute arises. With respect to such mediation, the parties shall, within 15 days after demand is filed agree upon a mediator who is: (i) a reputable person actively engaged in the construction industry or a lawyer experienced in the practice of construction law for a continuous period of not less than ten years and (ii) is in no way affiliated, or has had material business dealings with any Owner, any member of the Association, or any other party involved in the mediation. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be appointed by the American Arbitration

Association office in Tuscaloosa, Alabama. Such mediation shall occur within 30 days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location in Tuscaloosa, Alabama. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorneys' fees); provided, however, that if the Construction Dispute is not resolved pursuant to such mediation, the provisions of Section 11.3(d) of this Declaration shall govern the payment of attorneys' fees and costs and expenses of mediation, arbitration or litigation under this Article XI.

(b) Any Construction Dispute not resolved by mediation as described in Section 11.3(a) above shall be resolved by arbitration or litigation, which determination shall be made by Declarant, in Declarant's sole and absolute discretion, within thirty (30) days after: (i) the parties have reached an impasse at mediation and (ii) citation is served on Declarant in litigation; provided, however, that even if no such citation is served on Declarant, Declarant may institute an arbitration or litigation proceeding after an impasse is reached at mediation. Any election for arbitration shall be made by written notice by the Declarant to the parties involved in the Construction Dispute or by the Declarant filing a motion to compel arbitration in the litigation proceeding. If the Declarant elects for such Construction Dispute to be resolved by litigation, the parties hereby agree that the judge shall be the fact finder in any such litigation. EACH OWNER, BY ACCEPTANCE OF A DEED TO ITS UNIT, ON BEHALF OF ITSELF, ITS TENANTS, THE ASSOCIATION AND ALL PARTIES CLAIMING BY, THROUGH OR UNDER IT, IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY CONSTRUCTION DISPUTE.

(c) If Declarant elects that a Construction Dispute be resolved by arbitration such arbitration shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. With respect to the arbitration, the parties shall, within 15 days after receipt of Declarant's notice of arbitration referenced in Section 11.3(b) above or within 15 days after entry of a Order compelling arbitration, agree upon an arbitrator. If the parties cannot agree upon an arbitrator, a demand for arbitration shall be filed in writing with the American Arbitration Association at the office in the County where the Property is located with copies to all parties.

(d) Arbitration shall be conducted with a single arbitrator unless the claim, demand, or amount in controversy exceeds \$750,000, in which case a panel of three arbitrators shall be used. If the amount in controversy exceeds \$750,000 and the parties cannot mutually agree upon three panel members, the parties shall be required to obtain a list of proposed neutral parties through the American Arbitration Association office in the locality where the Property is located. The parties shall then proceed with the selection of panel members in accordance with the American Arbitration Association Construction Industry Arbitration Rules. Any arbitrator(s) utilized, whether appointed or agreed, must be (i) reputable person(s) actively engaged in the construction industry or as a lawyer experienced in the practice of construction law for a continuous period of not less than ten years and (ii) are in no way affiliated, or have or had material business dealings with any Owner, any member of the Association, or any other party involved in the arbitration.

The arbitrator shall establish reasonable procedures and requirements for the production of relevant documents and require the exchange of information concerning witnesses to be called. The parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration and the parties may use all methods of discovery available under the Alabama Rules of Civil Procedure and shall be governed thereby. There shall be a pre-hearing meeting between the parties at which the arbitrator shall make and set schedules for discovery and hearings consistent with their powers as set forth herein. The Alabama Rules of Evidence shall be applied by the arbitrator but liberally construed to allow for the admission of admissible evidence that is helpful in resolving the controversy. Rulings on the admission of evidence made by the arbitrator at the hearing shall be final and not subject to any appeal. At the time of the award, the arbitrator shall prepare and provide to the parties findings of fact and conclusions of law supporting the award.

(e) In no event shall a Construction Dispute be initiated after the date when institution of legal or equitable proceedings based on such Construction Dispute would be barred by the applicable statute of limitations. All demands and all answering statements thereto which include any monetary claim, counterclaim or cross-claim must state the monetary amount being sought. If the monetary amount is unliquidated or has not been fully determined, the demand or answering statement seeking such recovery shall state, in good faith, the minimum amount of such monetary claim, exclusive of interest and attorneys' fees. In any litigation or arbitration of a Construction Dispute, the Court or the arbitrator(s), as applicable, shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in connection with the mediation, arbitration, and/or litigation of such Construction Dispute.

(f) A Construction Dispute may be consolidated with similar proceedings and resolved pursuant to the dispute resolution procedures contained in this Article XI to include participation of the contractors, design professionals or any other person or entity if such proceedings involves common issues of law or fact. Consent to consolidate proceedings involving an additional person or entity shall not constitute consent to resolve any claim, dispute or other matter in question other than the Construction Dispute or with a Person not named or described therein. It is expressly understood and agreed that Declarant shall have the right, but not the obligation, to join in any such dispute resolution proceedings any other party whose work or services on or in connection with the Property may be at issue or whose claims(s) involve the design or construction of the Property.

Section 11.4 General. With respect to any Dispute or Construction Dispute it is agreed that the dispute resolution provisions of this Article XI shall be the sole remedy of the parties involved in such Dispute or Construction Dispute. Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties shall be specifically enforceable under prevailing arbitration law in any court having jurisdiction thereof. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute,

claim, controversy or matter that does not constitute a Dispute or Construction Dispute, as applicable. The foregoing agreement to arbitrate any Dispute or Construction Dispute shall not constitute any agreement or consent to arbitration with any Person not named or described in this Declaration; provided that any arbitration proceeding initiated under the terms of Section 11.2 may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Dispute or Construction Dispute, as applicable, and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrator shall be final and binding upon the parties involved in the Dispute or Construction Dispute and such Mortgagees and non-appealable judgment thereon may be entered by any court having jurisdiction.

ARTICLE XII

Miscellaneous

Section 12.1 Sound Transmission Disclaimer. EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF THEIR UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND AND IMPACT NOISE TRANSMISSION IN A HIGH-RISE BUILDING SUCH AS THE BUILDING IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY UNITS AND THE SURROUNDING DEVELOPMENT AND/OR MECHANICAL EQUIPMENT CAN AND WILL BE HEARD IN UNITS. DECLARANT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND OR IMPACT NOISE TRANSMISSION BETWEEN AND AMONG UNITS AND THE OTHER PORTIONS OF THE PROPERTY, AND EACH OWNER HEREBY WAIVES AND EXPRESSLY RELEASES, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW AS OF THE DATE OF THIS DECLARATION, ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND OR IMPACT NOISE TRANSMISSION.

Section 12.2 Revocation or Termination of Declaration. Except as otherwise provided in Article IX of this Declaration, this Declaration may be revoked or the Condominium established hereby may be terminated, but only by an instrument in writing, duly approved, executed and acknowledged by those Owners holding not less than 100% of the votes in the Association, with the written consent of not less than one hundred percent 100% of the Mortgagees. Any such instrument of revocation or termination shall be duly filed of record in the County. If the Property is to be sold upon termination, the agreement effecting such termination shall also set forth the terms of such sale and comply with the provisions of the Act.

Section 12.3 Amendment to Declaration. This Declaration may be amended at a meeting of the Owners at which the amendment is approved by those Owners holding not less than 67% of the votes in the Association with the written consent of not less than 51% of the Mortgagees. Such amendment shall be evidenced by a written instrument executed and acknowledged by an officer of the Association on behalf of the consenting Owners and by the consenting Mortgagees and filed of record in the County. Any such amendment so effected shall be binding upon all of the Owners; provided, however, that except as permitted or required by the Act, no such amendment shall (a) cause the alteration or destruction of all or part of any Unit unless such amendment has been consented to by the Owner and the Mortgagee of the Unit

which is to be altered or destroyed, (b) create or increase Special Declarant Rights, (c) increase the number of Units, (d) change the boundaries of a Unit, or (e) change the use restrictions on a Unit unless, with respect to the matters described in subsections (b), (c), (d) and (e) of this Section 12.3, such amendment has been consented to by 100% of the votes in the Association or is otherwise authorized by this Declaration. No such amendment shall become effective unless approved by Declarant if Declarant still owns one or more Units and the amendment would, in Declarant's reasonable determination: (i) increase or otherwise modify Declarant's obligations, (ii) reduce or modify any Special Declarant Rights, or (iii) materially inhibit or delay Declarant's ability to complete the Improvements or to convey any portion of the Property owned by Declarant. Declarant, if Declarant owns a Unit which has never been occupied, or the Association may, without a vote of the Owners or approval by the Mortgagees or the Association amend the Declaration or the Bylaws in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal National Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration.

Section 12.4 Partial Invalidity. If any provision of the Governing Documents shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall in no way impair or affect the validity or enforceability of the remainder of such instruments.

Section 12.5 Conflicts. If any of the provisions of the Governing Documents shall be in conflict with the provisions of the Act or the GCLD, the provisions of such statutes shall control. If a conflict exists between the provisions of the Governing Documents, the Governing Documents shall control in the following order:

- a. Restrictive Covenants;
- b. This Declaration;
- c. The Articles;
- d. The Bylaws; and
- e. The Regulations.

Each Owner acknowledges that it has been given the opportunity to review the documents listed above in this Section 12.5(a) through (e) and has had the opportunity to consult with counsel in connection with the purchase of a Unit. The provisions of the Governing Documents embody the entire final documentation to which the Units and any Owners will be subject in relation to the Condominium and supersede any and all agreements, representations, and understandings, whether written or oral, between the Declarant and the Owners.

Section 12.6 Captions and Exhibits. Captions used in the various articles and sections of this Declaration are for convenience only, and they are not intended to modify or affect the meaning of any of the substantive provisions hereof. All exhibits are incorporated in and made a part of this Declaration.

Section 12.7 Usury. It is expressly stipulated and agreed to be the intent of the Declarant that at all times the terms of this Declaration, the Bylaws and the Regulations shall comply strictly with the applicable Alabama law governing the maximum rate or amount of interest payable under any provision of this Declaration, the Bylaws, or the Regulations. If the

applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received pursuant to this Declaration, the Bylaws, the Regulations or any other communication or writing by or between the Declarant, the Association and the Owners related to the matters set forth in this Declaration, the Bylaws, or the Regulations, then it is the express intent of the Declarant that all amounts charged in excess of the maximum rate allowed by Alabama law shall be automatically canceled, *ab initio*, and all amounts in excess of the maximum rate allowed by Alabama law theretofore collected shall be refunded, and the provisions of this Declaration, the Bylaws, or the Regulations shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law. The Owners hereby agree that as a condition precedent to any claim seeking usury penalties against the Declarant or the Association, any Owner will provide written notice to the Declarant or the Association, advising the Declarant or the Association in reasonable detail of the nature and amount of the violation, and the Declarant or the Association shall have 60 days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to an Owner or crediting such excess interest against the obligation then owing by such Owner to the Declarant or the Association.

Section 12.8 Use of Number and Gender. Whenever used in this Declaration, and unless the context shall otherwise provide, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders.

Section 12.9 Governing Law. THIS DECLARATION AND THE BYLAWS, ARTICLES, AND REGULATIONS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ALABAMA. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THE CONDOMINIUM SHALL BE IN TUSCALOOSA COUNTY, ALABAMA.

Section 12.10 Notice. All notices or other communications required or permitted to be given pursuant to this Declaration shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee; or (iv) by prepaid telegram, telex, or telefacsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of the Declarant and the Association shall be as set forth below, the address of each Owner shall be the address of the Unit owned by such Owner and the address of each Mortgagee shall be the address provided to the Association; provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 30 days' notice to the Association in the manner set forth herein:

Declarant: Carlyle-Cypress Tuscaloosa I, LLC
15601 Dallas Parkway, Suite 400

Dallas, Texas 75001

With a copy, which shall not constitute notice, to:

C. Barton Adcox
Adcox, Lewis, Smyth & Winter, P.C.
611 Helen Keller Blvd
Tuscaloosa, AL 35404

Association: Midtown Village Condominium Association, Inc.
15601 Dallas Parkway, Suite 400
Dallas, Texas 75001

Section 12.11 Estoppel Certificates. Each Owner, from time to time but no more often than twice each calendar year, shall have the right to require the Association to deliver to the requesting Owner a written statement addressed to the requesting Owner and its Mortgagee or purchaser of its Unit, as applicable, without payment of any fee or cost certifying: (a) this Declaration is unmodified and in full force and effect (or if modified that this Declaration as so modified is in full force and effect); (b) the Declaration attached to the certificate is a true and correct copy of this Declaration and all amendments hereto; (c) the date through which all Assessments have been paid by the Owner requesting the certificate; (d) to the knowledge of the Association, the requesting Owner is not in default of any of its obligations under the Declaration (or if this Association knows the requesting Owner to be in default, specifying the defaults and the remaining cure period, if any); (e) the Association holds no existing liens against the requesting Owner's Unit; and (f) such other matters as are reasonably requested by the requesting Owner.

ARTICLE XIII

Provisions Applicable to Mortgagees

Section 13.1 Notice To Mortgagees. All Mortgagees shall be entitled to receive the following notices in writing from the Association exercising rights affecting that Mortgagee's borrower's rights under this Declaration or affecting such Mortgagee's rights, which notices shall be sent promptly following the occurrence of the applicable event:

(a) notice of any proposed action which requires the consent of Mortgagees, which notice shall be given not less than 30 days prior to the desired effective date of such action;

(b) notice of default by an Owner (the beneficial interest in which Unit is held by that Mortgagee) in the performance of such Owner's obligations or delinquency in the payment of Assessments or Governmental Impositions, which remains uncured for a period of 60 days after notice thereof;

(c) notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond required to be maintained hereunder by the Association or by any Owner;

(d) notice of any damage or destruction to or Taking of any portion of the Condominium that affects either a material portion of the Property or any Unit, the beneficial interest in which is held by that Mortgagee, which notice shall be given promptly upon the Association's obtaining knowledge of such damage or destruction;

(e) notice of any proposed payment to be made by any Person on behalf of an Owner which pursuant to the terms of this Declaration may result in a lien on such Owner's Unit;

(f) 60 days notice prior to the Association instituting any foreclosure action on a Unit (the beneficial interest of which is held by that Mortgagee);

(g) 30 days notice prior to the effective date of (1) any proposed material amendment to this Declaration or the Plats and Plans; (2) any termination of an agreement for professional management of the Property following any decision of the Owners to assume self-management of the Property; and (3) any proposed termination of the Condominium; and

(h) notice of all meetings of the members of the Association.

Section 13.2 Cure Rights. Any Mortgagee shall have the right, but not the obligation, at any time prior to the termination of this Declaration, and without payment of any penalty, to do any act or thing required of such Mortgagee's borrower hereunder; and to do any act or thing which may be necessary or proper to be done in the performance and observance of the agreements, covenants and conditions of such Owner hereof. All payments so made and all things so done and performed by any Mortgagee shall be effective to prevent a default under this Declaration as the same would have been if made, done and performed by an Owner instead of its Mortgagee. Any event of default under this Declaration which in the nature thereof cannot be remedied by a Mortgagee shall be deemed to be remedied if: within 30 days after receiving written notice from the non-defaulting party setting forth the nature of such event of default, or prior thereto, the Mortgagee shall have: (a) acquired the property owned by the defaulting party (the "Acquired Property") or commenced foreclosure or other appropriate proceedings in the nature thereof and shall thereafter diligently prosecute any such proceedings; (b) fully cured any default in the payment of any monetary obligations owed the non-defaulting party hereunder within such 30 day period and shall thereafter continue to perform faithfully all such non-monetary obligations which do not require possession of the Acquired Property; and (c) after gaining possession of the Acquired Property following a foreclosure or deed in lieu thereof, the Mortgagee performs all future obligations of the defaulting party hereunder as and when the same are due.

Section 13.3 No Invalidity of Mortgage Lien. No violation of this Declaration by, or enforcement of this Declaration against, any party shall affect, impair, defeat or render invalid the lien of any mortgage that secures Priority Lien Indebtedness.

Section 13.4 Mortgagee Requirements. The Association agrees to cooperate reasonably with any requesting party in regard to the satisfaction of requests or requirements by a Mortgagee; provided, however, such cooperation shall be at the sole cost and expense of the requesting party, and provided, further, that no party shall be deemed obligated to accede to any request or requirement that materially and adversely affects its rights under this Declaration.

Section 13.5 Unpaid Assessments. Each Person holding a mortgage secured by any Priority Lien Indebtedness encumbering any Unit, which Person obtains title to such Unit pursuant to judicial foreclosure, or the powers provided in such mortgage, or a deed in lieu of foreclosure, shall take title to such Unit free and clear of any claims for unpaid Assessments against such Unit which accrued prior to the time such Person acquires title to such Unit, except as otherwise set forth in Article VII of this Declaration.

Section 13.6 Books and Records. All Mortgagees, upon written request, shall have the right to (a) examine the books and records of the Association, including current copies of the Governing Documents, and financial statements, during normal business hours; (b) require the Association to submit an annual audited financial statement for the preceding fiscal year within 120 days of the end of the Association's fiscal year, if one is available or have one prepared at the expense of such requesting party if such statement is not otherwise prepared by the Association; (c) receive written notice of all meetings of the Owners; and (d) designate in writing a representative to attend all such meetings.

Section 13.7 Priority of Rights. No provision of the Declaration shall be construed or applied to give any Owner priority over any rights of any Mortgagee in the case proceeds or awards are not applied to restoration but are distributed to Owners in the case of a casualty loss or Taking of, a Unit and/or Common Element.

Section 13.8 Required Percentage. Any required percentage of Mortgagees in this Declaration shall mean and refer to such percentage of the face amount of the indebtedness held by such Mortgagees and not the number of such Mortgagees.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Declarant has duly executed this Declaration on the day and year first above written.

DECLARANT:

CARLYLE-CYPRESS TUSCALOOSA I, LLC,
a Delaware limited liability company

By: Carlyle/Cypress Retail I, L.P.,
a Delaware limited partnership, manager

By: Cypress Equities, LLC,
a Texas limited liability company,
its general partner

By: [Signature]
Name: Brian Parro
Title: Vice President - CFO

STATE OF TEXAS

§
§
§

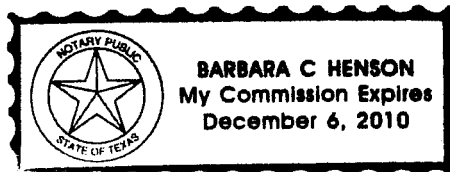
COUNTY OF DALLAS

This instrument was acknowledged before me on the 25th day of July, 2007, by Brian Parro, the VP/CFO of Cypress Equities, LLC, a Texas limited liability company, general partner of Carlyle/Cypress Retail I, L.P., a Delaware limited partnership, the manager of Carlyle-Cypress Tuscaloosa I, LLC, a Delaware limited liability company on behalf of said limited partnership and limited liability companies.

[Signature: Barbara C Henson]
Notary Public - State of Texas

My Commission Expires:

12-6-2010



List of Exhibits:

Exhibit "A" – Legal Description of the Land
Exhibit "B" – Description of Plats and Plans
Exhibit "C" – Allocation of Ownership Interests
Exhibit "D" – Certificate of Incorporation
Exhibit "E" – Bylaws

EXHIBIT "A"

Legal Description

Lot 2, Midtown Village as recorded in the Probate Office of Tuscaloosa County, Alabama in Plat Book 2006 at Page 169

2007 1686:4
Recorded in the Above
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07-30-2007 11:29:23 AM

EXHIBIT "B"

Description of Plats and Plans

That certain Condominium Plats and Plans of Midtown Village Condominiums, located in Tuscaloosa County, Alabama, recorded on July 27th, 2007, in Plat Book 2007, Page 145-166 of the Probate Office of Tuscaloosa County, Alabama.

2007 16865
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EXHIBIT "C"

Allocation of Ownership Interests

Unit Number	Square Feet of Unit	Percentage of Allocated Interests
1101	1,044	0.4108%
1102	1,336	0.5257%
1103	1,044	0.4108%
1104	1,044	0.4108%
1105	1,044	0.4108%
1106	1,112	0.4376%
1107	1,044	0.4108%
1108	1,112	0.4376%
1109	1,336	0.5257%
1110	733	0.2885%
1111	1,493	0.5875%
1112	804	0.3164%
1113	1,044	0.4108%
1114	1,044	0.4108%
1115	1,044	0.4108%
1116	1,044	0.4108%
1117	1,112	0.4376%
1118	1,112	0.4376%
1119	1,276	0.5021%
1120	1,044	0.4108%
1121	1,044	0.4108%
1122	1,044	0.4108%
1123	1,044	0.4108%
1124	1,336	0.5257%
1125	1,114	0.4384%
1201	1,044	0.4108%
1202	1,336	0.5257%
1203	1,336	0.5257%
1204	1,336	0.5257%
1205	1,044	0.4108%
1206	1,112	0.4376%
1207	1,336	0.5257%
1208	1,112	0.4376%
1209	1,336	0.5257%
1210	733	0.2885%

1211	1,493	0.5875%
1212	804	0.3164%
1213	1,336	0.5257%
1214	1,336	0.5257%
1215	1,044	0.4108%
1216	1,044	0.4108%
1217	1,112	0.4376%
1218	1,112	0.4376%
1219	1,276	0.5021%
1220	1,336	0.5257%
1221	1,044	0.4108%
1222	1,336	0.5257%
1223	1,336	0.5257%
1224	1,336	0.5257%
1225	1,114	0.4384%
1301	1,044	0.4108%
1302	1,336	0.5257%
1303	1,336	0.5257%
1304	1,336	0.5257%
1305	1,044	0.4108%
1306	1,112	0.4376%
1307	1,336	0.5257%
1308	1,112	0.4376%
1309	1,336	0.5257%
1310	733	0.2885%
1311	1,493	0.5875%
1312	804	0.3164%
1313	1,336	0.5257%
1314	1,336	0.5257%
1315	1,044	0.4108%
1316	1,044	0.4108%
1317	1,112	0.4376%
1318	1,112	0.4376%
1319	1,276	0.5021%
1320	1,336	0.5257%
1321	1,044	0.4108%
1322	1,336	0.5257%
1323	1,336	0.5257%
1324	1,336	0.5257%
1325	1,114	0.4384%
2101	1,044	0.4108%
2102	1,336	0.5257%
2103	1,044	0.4108%

2104	1,044	0.4108%
2105	1,044	0.4108%
2106	1,112	0.4376%
2107	1,114	0.4384%
2108	1,044	0.4108%
2109	1,044	0.4108%
2110	1,044	0.4108%
2111	1,044	0.4108%
2112	1,112	0.4376%
2113	1,044	0.4108%
2114	1,044	0.4108%
2115	1,114	0.4384%
2116	1,044	0.4108%
2117	1,044	0.4108%
2118	1,336	0.5257%
2119	1,044	0.4108%
2120	733	0.2885%
2121	733	0.2885%
2122	733	0.2885%
2123	1,114	0.4384%
2201	1,044	0.4108%
2202	1,336	0.5257%
2203	1,336	0.5257%
2204	1,336	0.5257%
2205	1,044	0.4108%
2206	1,112	0.4376%
2207	1,114	0.4384%
2208	1,336	0.5257%
2209	1,044	0.4108%
2210	1,044	0.4108%
2211	1,336	0.5257%
2212	1,112	0.4376%
2213	1,044	0.4108%
2214	1,044	0.4108%
2215	1,114	0.4384%
2216	1,336	0.5257%
2217	1,044	0.4108%
2218	1,336	0.5257%
2219	1,336	0.5257%
2220	733	0.2885%
2221	733	0.2885%
2222	733	0.2885%
2223	1,114	0.4384%

2301	1,044	0.4108%
2302	1,336	0.5257%
2303	1,336	0.5257%
2304	1,336	0.5257%
2305	1,044	0.4108%
2306	1,112	0.4376%
2307	1,114	0.4384%
2308	1,336	0.5257%
2309	1,044	0.4108%
2310	1,044	0.4108%
2311	1,336	0.5257%
2312	1,112	0.4376%
2313	1,044	0.4108%
2314	1,044	0.4108%
2315	1,114	0.4384%
2316	1,336	0.5257%
2317	1,044	0.4108%
2318	1,336	0.5257%
2319	1,336	0.5257%
2320	733	0.2885%
2321	733	0.2885%
2322	733	0.2885%
2323	1,114	0.4384%
3101	1,336	0.5257%
3102	733	0.2885%
3103	1,336	0.5257%
3104	733	0.2885%
3105	1,044	0.4108%
3106	1,112	0.4376%
3107	1,044	0.4108%
3108	1,112	0.4376%
3109	1,044	0.4108%
3110	1,044	0.4108%
3111	1,336	0.5257%
3112	1,336	0.5257%
3113	1,044	0.4108%
3114	1,044	0.4108%
3115	1,044	0.4108%
3116	1,044	0.4108%
3117	1,112	0.4376%
3118	1,112	0.4376%
3119	1,114	0.4384%
3120	1,044	0.4108%

3121	1,044	0.4108%
3122	1,044	0.4108%
3123	1,044	0.4108%
3124	1,044	0.4108%
3125	1,114	0.4384%
3126	1,114	0.4384%
3127	1,336	0.5257%
3128	1,044	0.4108%
3201	1,336	0.5257%
3202	733	0.2885%
3203	1,336	0.5257%
3204	733	0.2885%
3205	1,336	0.5257%
3206	1,112	0.4376%
3207	1,044	0.4108%
3208	1,112	0.4376%
3209	1,336	0.5257%
3210	1,336	0.5257%
3211	1,336	0.5257%
3212	1,336	0.5257%
3213	1,336	0.5257%
3214	1,336	0.5257%
3215	1,044	0.4108%
3216	1,044	0.4108%
3217	1,112	0.4376%
3218	1,112	0.4376%
3219	1,114	0.4384%
3220	1,336	0.5257%
3221	1,044	0.4108%
3222	1,336	0.5257%
3223	1,336	0.5257%
3224	1,044	0.4108%
3225	1,114	0.4384%
3226	1,114	0.4384%
3227	1,336	0.5257%
3228	1,044	0.4108%
3301	1,336	0.5257%
3302	733	0.2885%
3303	1,336	0.5257%
3304	733	0.2885%
3305	1,336	0.5257%
3306	1,112	0.4376%
3307	1,044	0.4108%

3308	1,112	0.4376%
3309	1,336	0.5257%
3310	1,336	0.5257%
3311	1,336	0.5257%
3312	1,336	0.5257%
3317	1,112	0.4376%
3318	1,112	0.4376%
3319	1,114	0.4384%
3320	1,336	0.5257%
3321	1,044	0.4108%
3322	1,336	0.5257%
3323	1,336	0.5257%
3324	1,044	0.4108%
3325	1,114	0.4384%
3326	1,114	0.4384%
3327	1,336	0.5257%
3328	1,044	0.4108%
224	254,115	100.0000%

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EXHIBIT "D"

Certificate of Incorporation

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "MIDTOWN VILLAGE CONDOMINIUM ASSOCIATION, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF OCTOBER, A.D. 2006, AT 10:19 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF INCORPORATION IS THE TENTH DAY OF OCTOBER, A.D. 2006.

4231935 8100
060924977



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5108696

DATE: 10-12-06

CERTIFICATE OF INCORPORATION

OF

MIDTOWN VILLAGE CONDOMINIUM ASSOCIATION, INC.

The undersigned natural person of the age of 18 years or more, acting as an incorporator of a corporation under the General Corporation Law of the State of Delaware (the "GCLD"), hereby adopts the following Certificate of Incorporation (this "Certificate of Incorporation") for such corporation:

ARTICLE I

NAME

The name of the corporation is Midtown Village Condominium Association, Inc. (the "Association").

ARTICLE II

NONPROFIT CORPORATION

The Association is a nonprofit corporation.

ARTICLE III

PURPOSES AND POWERS

The Association is organized to act as the Association of owners of each unit (a "Unit") in Midtown Village, a Condominium, in Tuscaloosa, Tuscaloosa County, Alabama, in accordance with the Condominium Declaration for Midtown Village recorded in the Real Property Records of Tuscaloosa County, Alabama (the "Declaration"), the Bylaws of the Association (the "Bylaws"), the laws of the State of Delaware ("Delaware Law") and the laws of the State of Alabama ("Alabama Law"), including the Alabama Uniform Condominium Act of 1991, Section 35-8A-10, et seq. of the Alabama Property Code (the "Act"), as each may be amended from time to time.

In furtherance of its purposes, the Association shall have the following powers which, unless indicated otherwise by this Certificate of Incorporation, the Declaration, the Bylaws, Delaware Law or Alabama Law, may be exercised by the Board of Directors of the Association (the "Board of Directors"):

(a) all rights and powers conferred upon nonprofit corporations by Delaware Law in effect from time to time;

(b) all rights and powers conferred upon condominium associations by Alabama Law, including the Act, in effect from time to time, provided, however, that the Association shall not have the power to initiate, defend, or intervene in any litigation or administrative proceedings in the name of any Owner (as defined in the Declaration) as provided in Section 35-8A-302(a)(4) of the Act; and

CERTIFICATE OF INCORPORATION - Page 1

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(c) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in this Certificate of Incorporation, the Bylaws, the Declaration, Delaware Law or Alabama Law.

ARTICLE IV MEMBERSHIP

The Association shall not have any capital stock. The Declaration and Bylaws shall determine the number and qualifications of Members of the Association; the classes of membership, the voting rights and other privileges of membership and the obligations and liabilities of members. Cumulative voting is not allowed.

A member of the Association ("Member") shall be considered to be a "Member in Good Standing" and eligible to vote if such Member:

- (a) has, at least 24 hours prior to the taking of any vote by Association, fully paid all assessments (as defined in the Declaration) or other charges levied by the Association ("~~Assessments~~") that are due and payable, as such Assessments are provided for under the Declaration;
- (b) does not have any notice of unpaid Assessments that has been filed by the Association against the Unit owned by such Member; and
- (c) has discharged all other obligations to the Association as may be required of a Member, as an owner of a Unit under the Declaration, Bylaws or Regulations (as defined in the Declaration).

The Board of Directors shall have sole authority for determining the good standing status of any Member and shall make such determination prior to a vote being taken by the Association on any matter. The Board of Directors shall have the right and authority, in its sole discretion, to waive the requirements set forth in Article IV(a), (b) and (c) of this Certificate of Incorporation, and as to Article IV(a) of this Certificate of Incorporation require only that such payment be made at any time before such vote is taken if the Board of Directors shall determine, in the Board of Directors' judgment that extenuating circumstances exist which have prevented prior payment. Any Member not conforming with the provisions of this Article IV shall be declared by the Board of Directors not to be a Member in Good Standing and shall not be entitled to vote on matters before the Association until such time as a Member in Good Standing status is attained and so declared by the Board of Directors.

Members in Good Standing holding 20% of the aggregate votes entitled to be cast by all Members represented at a meeting of the Members in person or by a legitimate proxy in a form approved by the Board of Directors, shall constitute a quorum for voting on matters brought before the Members (a "Quorum"). The Members present at a duly constituted meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a Quorum. Except as otherwise provided by Alabama Law, Delaware Law, the Declaration, this Certificate of Incorporation or the Bylaws, the vote of Members in Good Standing holding, in the aggregate, a majority of the votes entitled to be cast by the Members in Good Standing present or voting by legitimate proxy at a called meeting at

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which a Quorum is present (the "Majority Vote of the Members") shall be the act of the Members. Notice requirements for all actions proposed to be taken by the Association which require an approval by a vote of the Members shall be given as set forth in the Bylaws, as such may be amended from time to time.

ARTICLE V
MANAGEMENT OF THE ASSOCIATION

The management and affairs of the Association shall be vested in the Board of Directors, except for those matters expressly reserved to others in the Declaration and Bylaws. The Bylaws shall determine the number and qualification of directors; the term of office of directors; the methods of electing, removing, and replacing directors; and the methods of holding a meeting of the Board of Directors and obtaining consents.

ARTICLE VI
WINDING UP AND TERMINATION

Winding up of the Association may be accomplished only by resolution adopted by the Board of Directors which is approved at a called meeting by the Members in Good Standing holding in the aggregate 51% of the votes eligible to be cast. Upon a termination of the Association, all assets, both real and personal, of the Association shall be applied and distributed in accordance with the provisions of Section 281 of the OCLD, as amended.

ARTICLE VII
REGISTERED OFFICE AND AGENT

The street address of the Association's initial registered office is 615 S. DuPont Highway, Dover, Delaware 19901, Kent County, and the name of its initial registered agent at such address is Capitol Services, Inc.

ARTICLE VIII
INITIAL DIRECTORS

The number of directors constituting the initial Board of Directors is three (3), and the names and addresses of the persons who are to serve as directors are:

Chris McGuire
c/o Cypress Equities
15601 Dallas Parkway, Suite 400
Dallas, Texas 75001

Brian Ferra
c/o Cypress Equities
15601 Dallas Parkway, Suite 400
Dallas, Texas 75001

Jeff Coker
c/o Cypress Equities
15401 Dallas Parkway, Suite 400
Dallas, Texas 75061

ARTICLE IX
ACTION WITHOUT MEETING OF DIRECTORS

An action approved by unanimous written consent of the Board of Directors has the effect of an approval by a unanimous vote of the directors at a meeting.

ARTICLE X
INCORPORATOR

The name and address of the incorporator is:

Louis Williams Combs
Winwood Securities & Minick P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

IN WITNESS WHEREOF, I have hereunto set my hand this the 9th day of October,
2006


Louis Williams Combs, Incorporator

4164714v4 20040707

EXHIBIT "E"

Bylaws of Corporation

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**BYLAWS
OF
MIDTOWN VILLAGE CONDOMINIUM ASSOCIATION, INC.**

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MIDTOWN VILLAGE CONDOMINIUM ASSOCIATION, INC.

BYLAWS

ARTICLE I

Name and Address

Section 1.1 Name. The name of this Association shall be MIDTOWN VILLAGE CONDOMINIUM ASSOCIATION, INC.

Section 1.2 Address. The office of the Association shall be at the place to be designated by the Board of Directors, subject to change upon notice to the Members.

Section 1.3 Registered Agent. The Association shall have and continuously maintain in the State of Delaware a registered agent whose office is identical with such registered office, as required by the GCLD. The registered office may be changed from time to time by the Board of Directors.

ARTICLE II

Applicability

These Bylaws shall be applicable to the Association. In accordance with the terms of the Declaration, all Members and any other Persons permitted to use the Common Elements shall be subject to these Bylaws and to any Regulations adopted from time to time by the Board of Directors. Ownership of any Unit, or rental or occupancy of any Unit shall be conclusively deemed to mean that the Owner, Tenant or occupant has accepted, ratified and will comply with the Governing Documents.

ARTICLE III

Purpose

The purpose of the Association is to protect and enhance the value of the Property, including, without limitation, providing for the management, maintenance, repair and replacement of the Common Elements. The Association does not contemplate pecuniary gain or profit to its Members as a result of membership in the Association.

ARTICLE IV

Definitions and Interpretation

Section 4.1 Definitions. The following terms shall have the meanings set forth below:

"Act." The Alabama Uniform Condominium Act of 1991, Alabama Property Code, Chapter 35, Section 35-8A-101 et seq., as amended from time to time

"Association." Middtown Village Condominium Association, Inc., a Delaware corporation and for the purposes of Section 9.1 of these Bylaws also includes any domestic or foreign successor entity of the Association in a merger, consolidation, or other transaction in

which the liabilities of the predecessor are transferred to the Association by operation of law and in any other transaction in which the Association assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of Article X of these Bylaws.

"Board of Directors." Those individuals serving as Directors pursuant to Article VII of these Bylaws and their successors as duly elected and qualified from time to time.

"Code." The Internal Revenue Code of 1986, as amended.

"Declaration." The Condominium Declaration for Midtown Village, a Condominium, and all amendments thereto, which shall be recorded in the Condominium Records.

"Director." A member of the Board of Directors, and for the purposes of Article X of these Bylaws, any individual who is or was a director of the Association and any individual who, while a director of the Association, is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

"GAAP." Generally accepted accounting principles, as promulgated by the Financial Accounting Standards Board.

"GCLD." The General Corporation Law of the State of Delaware, as amended from time to time.

"Majority Vote of the Members." Has the meaning set forth in the Articles.

"Manager." Any professional manager or management company with whom the Association contracts for the day-to-day management of either or both of the Property or the administration of the Association and the Condominium.

"Member in Good Standing." Has the meaning set forth in the Articles.

"Members." All present and future Owners of any Unit in the Condominium.

"Minute Book." The minute book of the Association, which shall contain the minutes of all annual and special meetings of the Members of the Association and the Board of Directors and all resolutions of the Board of Directors.

"Mortgage." Any Person, including Declarant's Mortgagee, that is the holder, insurer or guarantor of any bona fide indebtedness which is the result of an arm's length negotiation, that is secured by a first lien or encumbrance upon the Property and/or a Unit and which has provided the Association with written notice of its name, address and description of the Unit encumbered thereby

"Official Capacity." (a) when used with respect to a Director, the office of director in the Association; and (b) when used with respect to an individual other than a Director, the elective or appointive office in the Association held by the officer or the employment or agency relationship

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undertaken by the employee or agent on behalf of the Association; but (c) both (a) and (b) above do not include service for any other foreign or domestic association or any partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

"Owner." Any Person (including Declarant) owning fee title to a Unit, but excluding any Person having an interest in a Unit solely as security for an obligation.

"Person." Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other legal entity, including any Governmental Authority and any fiduciary acting in such capacity on behalf of any of the foregoing.

"President." The officer of the Association having the duties described in Section 8.4 of these Bylaws.

"Priority Lien Indebtedness." Any bona fide indebtedness, which is the result of an arm's length negotiation, that is secured by a first lien or encumbrance upon the Property and/or a Unit and which shall also include subordinate financing in connection with a purchase or refinancing of a Unit or home equity loan or reverse mortgage loan secured by a Unit, and such other indebtedness as is approved by the Association on a case by case basis as Priority Lien Indebtedness.

"Proceeding." Any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, any appeal in such an action, suit, or proceeding and any inquiry or investigation that could lead to such an action, suit or proceeding.

"Property." The Units and the Common Elements.

"Quorum." Has the meaning set forth in the Articles.

"Regulations." The rules and regulations of the Association initially adopted by the Board of Directors and as amended from time to time, relating to the appearance, use and occupancy of the Property, including the exterior appearance, use and occupancy of the Units, and certain construction on the Property.

"Reserve Fund." A fund to be maintained by the Association for purposes including to meet unforeseen expenditures of the Association or to purchase any additional equipment or services deemed necessary by the Association for operation of the Condominium subject to the provisions of the Declaration.

"Secretary." The officer of the Association having the duties described in Section 8.6 of these Bylaws.

"Treasurer." The officer of the Association having the duties described in Section 8.7 of these Bylaws.

"Vice President." The officer of the Association having the duties described in Section 8.5 of these Bylaws.

Any capitalized term that is not defined in this Section shall have the meaning set forth in the Declaration.

Section 4.2 Interpretation. In the event of a conflict of interpretation between the provisions set forth in these Bylaws and the Declaration, the Declaration shall govern. If the Code is hereafter amended or changed, both the Declaration and these Bylaws shall be interpreted in a manner which conforms to the provisions of the Code with respect to nonprofit entities, it being the intention to preserve the status of the Association as a *bona fide* nonprofit entity.

ARTICLE V Members

Section 5.1 Membership.

(a) Each Owner shall automatically be a Member of the Association. The number of votes which each Member shall be entitled to cast with respect to any matter on which Members shall be entitled to vote shall be as set forth in the Declaration.

(b) In cases where more than one (1) Person owns a fee interest in a Unit, all such Persons shall arrange among themselves for one (1) of their number to exercise the voting rights attributable to such Unit. If only one (1) of the Persons which is a fee owner of such Unit is present at a meeting of the Members of the Association, that Person may cast that Unit's votes. If more than one (1) of the Persons which is a fee owner of such Unit is present and after one (1) such Person casts such Unit's vote, another Person which is a fee owner of such Unit which is present makes prompt protest to the Person presiding over the meeting, such vote shall not be counted unless all such Persons can unanimously agree on such vote by the end of the meeting. Each Person owning a portion of the fee interest in a Unit may vote or register protest to the casting of votes by the other Persons owning portions of the fee interest in the same Unit through a proxy duly executed by such Member.

(c) Membership of a Member in the Association shall automatically terminate when such Member ceases to be an Owner; provided, however, that such termination shall not release or relieve such Member from any liability or obligation under the Declaration that was incurred during such Member's period of ownership of a Unit.

Section 5.2 Quorum; Act of Members. Quorum requirements with respect to any matter on which Members are entitled to vote and affirmative votes required for Member acts are set forth in the Articles.

Section 5.3 Membership List. The Secretary shall be responsible for maintaining, at the principal office of the Association, an updated list of Members and their last known addresses as provided by each Member in such form and containing such other information as required by the GCLD. The list shall also show opposite each Member's name the address of the Unit owned. The list shall be revised by the Secretary to reflect changes in the ownership of the Units occurring prior to the date of the annual or special meeting. The list shall be open to inspection by all Members and other Persons lawfully entitled to inspect the list during regular

business hours up to the date of the annual or special meeting. The Secretary shall also keep current and retain custody of the Minute Book.

Section 5.4 Proxies. (a) Each Member entitled to vote at a meeting of Members or to express consent or dissent to corporate action in writing without a meeting may authorize another Person or Persons to act for such Member by proxy, but no such proxy shall be voted or acted upon after the earlier of the termination date set forth in such proxy or one (1) year from its date. Each proxy shall be filed with the Secretary of the Association prior to or at the time of the meeting.

(b) Without limiting the manner in which a Member may authorize another Person or Persons to act for such Member as proxy pursuant to subsection (a) of this section, the following shall constitute a valid means by which a Member may grant such authority:

(i) A Member may execute a writing authorizing another Person or Persons to act for such Member as proxy. Execution may be accomplished by the Member or by an authorized officer, director, employee or agent of the Member signing such writing or causing such Member's signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(ii) A Member may authorize another Person or Persons to act for such Member as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the Person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the Person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the Member. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other Persons making that determination shall specify the information upon which they relied.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (b) of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

ARTICLE VI

Meetings of the Members of the Association

Section 6.1 Place of Annual and Special Meetings. All annual and special meetings of the Members of the Association shall be held at such time and place, either within or without the State of Delaware, as designated by the Board of Directors and as shall be stated in the notice of the meeting, or in a duly executed waiver of notice thereof. The Board of Directors may, in its sole discretion, determine that a meeting of Members shall not be held at any place, but may

instead be held solely by means of remote communication as authorized by Section 211 of the GC1.D.

Section 6.2 Date of Annual Meetings. The first annual meeting of the Members of the Association shall be held within one (1) year of its formation. Thereafter, annual meetings of the Members of the Association shall be held in October each year on a date as shall be fixed by the Board of Directors by written notice to the Members. The Members may transact any business that may properly come before the meeting.

Section 6.3 Special Meeting. A special meeting of the Members of the Association may be called by the President, a majority of the Directors, or by Members in Good Standing having not less than 20% of the aggregate votes in the Association.

Section 6.4 Notice of Meetings. The Secretary shall cause notices of annual and special meetings to each Member to be hand-delivered or sent prepaid by United States mail to the mailing address provided to the Association by such Member, as shown on the records of the Association. This notice shall be mailed not less than ten (10) or more than sixty (60) days before the date of the meeting and shall state the date, time and place of the meeting, the means of remote communications, if any, by which Members may be deemed to be present in person and vote at such meeting, the purpose or purposes thereof and the items on the agenda, including the general nature of any proposed amendment or change to the Governing Documents, any budget changes and any proposal to remove an officer or Director. If such notice is sent by mail, notice is given when deposited in the United States mail, postage prepaid, directed to the Member at the Member's address as it appears on the records of the Association. An affidavit of the Secretary or of the transfer agent or other agent of the Association that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. Notice of any meeting of Members shall not be required to be given to any Member who shall attend such meeting in person or by proxy and shall not, at the beginning of such meeting, object to the transaction of any business because the meeting is not lawfully called or convened, or who shall, either before or after the meeting, submit a signed waiver of notice, in person or by proxy.

Section 6.5 Adjourned Meeting. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which Members and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At any adjourned meeting at which a Quorum shall be present, any business may be transacted which might have been transacted at the original meeting had a Quorum been present. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.

Section 6.6 Agenda. The agenda at all meetings of the Members of the Association shall include: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) approval of the minutes of the preceding meeting; (d) reports of officers and committees; (e) election of Directors, if applicable; (f) unfinished business; (g) new business; and (h) adjournment.

Section 6.7 Action By Remote Communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, Members and proxy holders not physically present at a meeting of Members may, by means of remote communication: (a) participate in a meeting of Members and (b) be deemed present in person and vote at a meeting of Members, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Association shall implement reasonable measures to verify that each Person deemed present and permitted to vote at the meeting by means of remote communication is a Member or proxy holder, (ii) the Association shall implement reasonable measures to provide such Members and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any Member or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Association.

Section 6.8 Action without Meeting by Written Ballot. (a) Unless otherwise provided in the Articles, any action required or permitted to be taken at a meeting of the Members of the Association may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Such consent or consents shall be delivered to the Association at its principal place of business, or to an officer or agent of the Association having custody of the book in which proceedings of meetings of Members are recorded. Delivery made to the Association's principal place of business shall be by hand or by certified or registered mail, return receipt requested.

(b) Every written consent shall bear the date of signature of each Member who signs the written consent, and no consent shall be effective to take the action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by Section 6.8(g) to the Association, written consents signed by a sufficient number of Members to take action are delivered to the Association in the manner required by Section 6.8(a).

(c) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a Member or proxy holder, or by a Person or Persons authorized to act for a Member, shall be deemed to be written, signed and dated for the purposes of this Section 6.8, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Association can determine: (i) that the telegram, cablegram or other electronic transmission was transmitted by the Member or proxy holder or by a Person or Persons authorized to act for the Member and (ii) the date on which such Member or proxy holder or authorized Person or Persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Association in the manner required by Section 6.8(a). Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic

transmission, may be otherwise delivered to the principal place of business of the Association or to an officer or agent of the Association having custody of the book in which proceedings of meetings of Members are recorded if, to the extent and in the manner provided by resolution of the Board of Directors of the Association.

(d) Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

(e) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given by the Association to those Members who have not consented to the action in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the date for such meeting had been the date that written consents signed by a sufficient number of Members to take the action were delivered to the Association as provided in Section 6.8(c).

Section 6.9 Administration of Affairs. Subject to the provisions of the Governing Documents, the Board of Directors shall govern the Association.

ARTICLE VII

The Board of Directors

Section 7.1 Authority; Number of Directors; Period of Declarant Control.

(a) The affairs of the Association shall be governed by the Board of Directors. The initial Directors shall be three (3) in number and shall be those Directors named in the Articles. Except as provided in Section 10.2(h),(c) and (d) of the Declaration, Declarant shall have the right to appoint and remove members of the Board of Directors until the termination of the period of Declarant Control. If Declarant voluntarily surrenders the right to appoint and remove members of the Board of Directors prior to the termination of the period of Declarant Control, Declarant may require that specified actions of the Board of Directors be subject to Declarant approval until the expiration of the period of Declarant Control.

(b) Each Director shall be a Member (except during the period of Declarant Control, during which time a Director appointed by the Declarant need not be a Member or a duly authorized agent or representative of the entity Owner), or in the case of an entity ownership of a Unit, a duly authorized agent or representative of the entity Owner. The entity Owner shall be designated, in its official capacity on behalf of the Owner, as the Director in all correspondence or other documentation setting forth the names of the Directors.

Section 7.2 Term of Directors and Compensation. Except as otherwise set forth herein and in the Declaration, each Director will serve a term of two (2) years and may serve an unlimited number of consecutive terms. The number of Directors may be changed by amendment of these Bylaws, but may not be less than three (3). A Director takes office upon his election or appointment and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed. The Directors shall serve without compensation for such service.

Section 7.3 Nominations to Board of Directors. Persons may be nominated for election to the Board of Directors in either of the following ways:

(a) a Member who is not a Director and who desires to run for election to that position shall be deemed to have been nominated for election upon his filing with the Board of Directors of a written petition of nomination bearing the genuine signatures of at least five (5) other Members; or

(b) a Director shall be deemed to have been nominated for re-election to the position he holds by signifying his intention to seek re-election in a writing addressed to the Board of Directors.

Section 7.4 Election of Directors. The nominee, or nominees, as the case may be, receiving the highest number of votes from the Members in Good Standing present or voting by legitimate proxy shall be elected to the Board of Directors. All elections of Directors shall be by written ballot unless otherwise provided in the Articles. If authorized by the Board of Directors, a ballot may be submitted by electronic transmission, provided that any such electronic transmission must either set forth, or be submitted with, information from which it can be determined that the electronic transmission was authorized by the Member or proxy holder.

Section 7.5 Vacancies on the Board of Directors. Except with respect to Directors appointed by Declarant during the period of Declarant Control (which vacancies shall be filled by Declarant), if the office of any Director shall become vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise (including vacancies resulting from newly created directorships), the remaining Directors (although less than a quorum, or the sole remaining Director), at a special meeting duly called for this purpose, shall, by a majority vote, choose a successor who shall fill the unexpired term of the directorship being vacated. At the expiration of the term of a Director's position on the Board of Directors, such Director shall be re-elected or such Director's successor shall be elected in accordance with these Bylaws.

Section 7.6 Removal of Directors by Members. Except with respect to Directors appointed by Declarant during the period of Declarant Control (the removal of which shall only be caused by Declarant), Directors may be removed, with or without cause, by a Majority Vote of the Members at a special meeting of the Members duly called for this purpose, notice of which meeting shall be given to all Directors.

Section 7.7 Organizational Meetings of the Board of Directors. No later than twenty (20) days following each of (a) the filing of the Articles; (b) the termination of the period of Declarant Control; and (c) each annual meeting of the Members of the Association, the Board of Directors shall hold a regular meeting for the purposes of organization, election of officers and transaction of other business. Notice of this meeting shall be given to all Directors in accordance with Section 7.9 of these Bylaws, except for the initial meeting, which shall be called by Declarant.

Section 7.8 Place of Meetings; Telephone Meetings. All meetings of the Board of Directors shall be held at the principal office of the Association or at any other place or places designated at any time by resolution of the Board of Directors or by written consent of all of the

Directors. Subject to applicable notice provisions and unless otherwise restricted by the Articles, members of the Board of Directors may participate in and hold a meeting by means of conference telephone or other communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in such meeting shall constitute presence in person at such meeting, and any such meeting may involve consideration of any action, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue.

Section 7.9 Regular Board of Directors Meetings. Regular meetings of the Board of Directors may be held at any time and place permitted by law as from time to time may be determined by the Board of Directors. Notice of regular meetings of the Board of Directors shall be given to each Director personally, by telegram, telephone, electronic mail, facsimile or by United States mail, with postage prepaid, directed to the Director at such Director's last known post office address, phone number, facsimile number or electronic mail address, as the same appears on the records of the Association, at least ten (10) but not more than forty (40) days before the date of the meeting. This notice shall state the date, time, place and purpose of the meeting.

Section 7.10 Special Meetings of the Board of Directors. Special meetings of the Board of Directors may be called by the President on his own accord or by the President or the Secretary upon the request of any two (2) Directors on three (3) days' prior notice to each Director personally, by telegram, telephone, electronic mail, facsimile or by United States mail, with postage prepaid, directed to the Director at such Director's last known post office address, phone number, facsimile number or electronic mail address, as the same appears on the records of the Association. Except as may be otherwise expressly provided by law or the Articles, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in a notice or waiver of notice.

Section 7.11 Directors Quorum. At all duly convened meetings of the Board of Directors, at least 51% of the Directors must be present to constitute a quorum for the transaction of business, except as otherwise expressly provided in these Bylaws. The vote of a majority of the Directors present at the meeting at which a quorum is present shall be the act of the Board of Directors.

Section 7.12 Consent in Writing. Any action required or permitted to be taken at a meeting of the Board of Directors, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue, may be taken without a meeting if all of the Directors shall unanimously consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions shall be filed in the Minute Book. Any such action taken shall have the same force and effect as a unanimous vote of the Directors.

Section 7.13 Records. The Board of Directors shall cause a complete record of all of its acts and the corporate affairs of the Association to be kept.

Section 7.14 Powers and Duties. Subject to the Governing Documents, the Board of Directors shall have and exercise all powers and duties necessary for the proper administration of the affairs of the Association. In the performance of its duties as the governing body of the Association, subject to limitations set forth in the Declaration, the Board of Directors shall have all powers enumerated in Section 35-8A-302 of the Act (except as otherwise provided in the Governing Documents), and in addition to those powers and duties set forth in the Act, the Articles and the Declaration, the Board of Directors shall have the powers and duties enumerated below. Each Director individually and the Board of Directors collectively shall perform the duties and powers of the Board of Directors in good faith as a fiduciary of the Association, in a manner which the Director believes to be in the best interest of the Association and with the care of a Person of ordinary prudence under similar circumstances, including reasonable inquiry, skill and diligence.

(a) Duties:

(i) provide for the operation, maintenance, management, insurance, cleaning, sanitation, renewal, replacement, care and upkeep of the Common Elements and all property, real or personal, of the Association;

(ii) determine the Common Expenses and any other charges comprising the operating expenses of the Association, establish the amount of Monthly Assessments, as the same may increase or decrease, and assess the same against the Members in accordance with the provisions of the Declaration and these Bylaws;

(iii) levy and collect, in addition to Monthly Assessments, Special Assessments in amounts which the Board of Directors deems proper, whenever the Board of Directors is of the opinion it is necessary to do so in order to meet increased operating or maintenance costs or additional capital expenses or because of emergencies subject to the limitations specified in the Declaration;

(iv) use and expend any sums collected from Monthly Assessments and Special Assessments for the operation, maintenance, renewal, care and upkeep of the Common Elements;

(v) maintain the Common Elements;

(vi) maintain the Reserve Fund out of Monthly Assessments;

(vii) pay all taxes and assessments levied or assessed against any property that may be owned by the Association, exclusive of any taxes or assessments levied against any Member or otherwise properly chargeable to the Member;

(viii) collect delinquent Assessments against any Unit and the Owner thereof, whether by suit or otherwise and to abate any nuisance and enforce the terms of the Declaration and the observance of the Regulations by injunction or other legal action or means which the Board of Directors may deem necessary or appropriate;

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(ix) establish operating, escrow and other accounts in the name of the Association as the Board of Directors may deem appropriate from time to time and as may be consistent with GAAP;

(x) adopt a Budget for each fiscal year which shall contain estimates of the Common Expenses and the proposed Monthly Assessments;

(xi) cause a complete review of the books and accounts of the Association to be made by a competent independent public accountant at the end of each fiscal year and at any other time or times deemed necessary;

(xii) maintain accounting records in accordance with GAAP; and

(xiii) make and enforce compliance with the Regulations relative to the operation, use and occupancy of the Property, including, but not limited to, penalties to be levied for violations of these Bylaws, the Declaration and the Regulations which the Board of Directors shall adopt, and to amend the same from time to time as and when approved by appropriate resolutions which shall be binding on the Owners, Tenants and occupants of the Units, their successors in title and assigns. A copy of the Regulations and copies of any amendments thereto shall be delivered or mailed to each Owner and any Tenant or occupant of a Unit promptly upon the adoption thereof.

(b) Powers:

(i) employ and dismiss personnel of the Association, and purchase or arrange for those services, machinery, equipment, tools, materials and supplies as, in the opinion of the Board of Directors, may from time to time be necessary for the proper operation and maintenance of the Common Elements;

(ii) subject to Section 7.17 of these Bylaws, enter into contracts for professional management of the Property and the Association, at such prices and upon such terms as may be determined by the Board of Directors, to perform those duties and services which the Board of Directors may lawfully delegate;

(iii) employ or retain and receive advice from professional counsel and consultants, including, but not limited to, landscape architects, architects, engineers, planners, biologists, lawyers and accountants, which the Board of Directors may deem necessary for any proper purposes of the Association, and fix the compensation for professional advice or services, including, but not limited to, those hereinbefore or hereinafter referred to in these Bylaws. Each Director shall, in the performance of such Director's duties, be fully protected in relying in good faith upon the records of the Association and upon such information, opinions, reports or statements presented to the Association by any of the Association's officers or employees, or by any other Person as to matters such Director reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Association.

(iv) name as a trustee, on behalf of the Association, the Association's authorized representative, including any trustee with which the Association may enter into any insurance trust agreement or any successor to this trustee (each of which shall be referred to herein as the "Insurance Trustee"), to be given exclusive authority to negotiate losses under any policy providing property insurance coverage. The Association or any Insurance Trustee or substitute Insurance Trustee designated by the Association shall have the exclusive power to act as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses, execution of releases of liability and the execution of all documents and the performance of all other acts necessary to accomplish these purposes;

(v) establish depositories for the funds of the Association with the bank or banks as shall be designated from time to time by the Board of Directors and in which monies of the Association shall be deposited. Withdrawal of monies shall be only by check signed by those Persons who are authorized by the Board of Directors to sign checks on behalf of the Association;

(vi) invest monies of the Association in any investments which the Board of Directors deems to be reasonably prudent;

(vii) borrow and repay monies and give notes, mortgages or other security upon the terms which are deemed reasonable by the Board of Directors;

(viii) acquire by purchase, gift, annexation or lease, real or personal property, if, at any time in the future, the Board of Directors deems it to be proper and not inconsistent with the terms hereof to do so;

(ix) grant and reserve easements, leases, licenses or concessions where necessary or desirable for utilities, routes of ingress and egress, or any other purpose, over the Common Elements and to amend the Map to show such interests;

(x) establish a form of estoppel certificate acceptable to the Association for delivery to prospective purchasers and lenders and an appropriate charge for furnishing such certificate; and

(xi) do all things incidental and necessary to the accomplishment of the foregoing.

The duties imposed on and powers granted to the Board of Directors by this Section shall not be amended so as to reduce, eliminate or expand any duties or powers of the Board of Directors without the affirmative vote of 67% of the votes of the Members voting at the meeting called to consider such amendment.

Section 7.15 Liability; Conduct of Directors and Officers. No Member, Director, officer or representative of the Association shall be personally liable for debts or liabilities of the Association.

Section 7.16 Annual Budget and Assessments. Copies of the proposed Budget setting forth the proposed annual Common Expenses, proposed reserves and proposed Assessments for the next fiscal year of the Association shall be prepared by the Board of Directors and distributed to all Members at least thirty (30) days prior to the beginning of each fiscal year of the Association and the Board of Directors shall cause a copy of such Budget to be provided to all Members, and shall set a date for a meeting of the Members to consider ratification of the Budget not less than fourteen (14) nor more than thirty (30) days after delivery or mailing of the Budget to the Members. Unless at that meeting, 51% or more of all of the Members present in person or by proxy reject the Budget, the Budget shall be ratified, whether or not a Quorum is present. In the event the proposed Budget is rejected, the periodic Budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent Budget proposed by the Board of Directors. Reserve Funds shall include reasonable amounts to be credited, allocated or accumulated for replacement of those Common Elements that require replacement, renovation or rehabilitation periodically. Subject to the provisions of the Declaration, nothing herein contained shall be construed as restricting the right of the Board of Directors, at any time and in its sole discretion, to levy a Special Assessment in the event that the Budget as originally adopted shall appear to be insufficient to pay the cost of the operation or management of the Property or in the event of emergencies.

Section 7.17 Manager. If the Board of Directors determines that it is in the best interest of the Association to hire a Manager for the Property to facilitate management of the Property and/or the administration of the Association, the Board of Directors may delegate to a Manager responsibility for matters of a routine nature, renewable by agreement of the parties thereto for successive one (1) year periods only, and shall be subject to termination by either party with or without cause and without payment of a termination fee upon not more than thirty (30) days' prior written notice. After a Manager has been appointed, no decision by the Association to manage its own affairs without a Manager shall be effective unless and until approved by the affirmative vote of 67% of the votes of the Members voting at the meeting called to consider such matter with the written consent of not less than 51% of the Mortgagees.

Section 7.18 Open Meeting. Meetings of the Members of the Association and the Board of Directors shall be open to all Members. Subject to applicable law, the Board of Directors shall have the right to adjourn a meeting and reconvene in private, closed executive session to consider any actions involving personnel, pending litigation, contract negotiations, or enforcement actions, or upon the request of an affected party, or to consider matters that are confidential in the opinion of the Board of Directors; provided, however, the Board of Directors shall announce the general nature of the business to be considered in such executive session prior to adjourning the meeting.

ARTICLE VIII Officers

Section 8.1 Officers. The officers of the Association shall be a President, one (1) or more Vice Presidents, a Secretary and Treasurer. The same individual may not hold the offices of President and Secretary. The Secretary may be eligible to hold the office of Treasurer. The President and Treasurer must also be Directors. The Secretary need not be a Director.

Section 8.2 Election. Except as set forth herein, the officers of the Association shall be elected annually by the Board of Directors at the organizational meeting held pursuant to Section 7.7 of these Bylaws and shall hold office until their successors are elected or appointed by the Board of Directors, provided that each officer may be removed, either with or without cause, whenever in the best interest of the Association, and his successor elected by the affirmative vote of a majority of the Directors at any annual or special meeting of the Board of Directors called for that purpose. The President and Secretary shall each serve for a term of two (2) years and the remaining officers shall serve for a term of one (1) year. The Board of Directors may, from time to time, appoint other officers who, in its judgment, are necessary. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Association. Any resignation shall take effect as of the date of the receipt of such notice or any later time specified therein; unless specified therein, the acceptance of a written resignation shall not be necessary to make it effective.

Section 8.3 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled by election by the affirmative vote of a majority of the Directors at any annual or special meeting of the Board of Directors called for that purpose and at which a quorum is represented.

Section 8.4 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members of the Association and the Board of Directors. The President shall have the general powers and duties usually vested in the office of the president of a community association, including, but not limited to, the power to appoint committees from time to time as he may deem appropriate to assist in the conduct of the affairs of the Association; provided, however, no such committee shall have the right to exercise the full authority of the Board of Directors. The President shall be an ex-officio member of all standing committees, if any. The President shall execute deeds, contracts and other instruments and may, in accordance with the Declaration and these Bylaws, prepare (or have prepared), certify and record amendments to the Declaration, in the name and on behalf of the Association and under its corporate seal when a seal is required, except when these documents are required or permitted by law to be otherwise executed, and except when the signing and execution thereof shall be delegated by the Board of Directors to another officer or agent of the Association.

Section 8.5 Vice President. In the absence of the President or in the event of the President's inability or refusal to act, a Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all of the restrictions upon the President. Each Vice President shall have only such powers and perform only such duties as the Board of Directors may from time to time prescribe or as the officers may from time to time delegate.

Section 8.6 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the Members of the Association and record all votes and the minutes of all meetings and proceedings, including resolutions, in the Minute Book. The Secretary shall perform the same duties for any committees when required. The Secretary shall have charge of the Minute Book, the records of the Association and any papers which the Board of Directors shall direct the Secretary to keep, shall perform all duties incident to the office of Secretary, including, but not limited to, the sending of notice of meetings to the Members, the

Directors and members of any committees, and shall perform any other duties which may be prescribed by these Bylaws or by the Board of Directors or the President. The Secretary shall also have custody of the corporate seal and shall affix the same to any instrument requiring it when authorized by the Board of Directors and shall attest or certify the same when appropriate. The Secretary shall keep, or cause to be kept, at the principal office of the Association, a membership register showing the following: (a) the names and addresses of all Directors; (b) the names and addresses of all Members as provided by the Members; (c) the Unit that is owned by each Member, and (d) the vote of each Member. The Secretary shall prepare, execute and cause the recordation of amendments to the Declaration on behalf of the Association except when the preparation, execution and recordation thereof shall be delegated by the Board of Directors to another officer or agent of the Association. Nothing shall prohibit the functions of the Secretary to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties of the Secretary shall not relieve the Secretary from any responsibility related to overseeing and reviewing any duties performed by the agent.

Section 8.7 Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies, checks and other valuable effects in the name of and to the credit of the Association in those depositories which may be designated from time to time by the Board of Directors. The Treasurer shall disburse the funds of the Association, as the Treasurer may be ordered to do from time to time by the Board of Directors or by the President, and shall render to the President and the Directors at the regular meetings of the Board of Directors, or whenever they or either of them shall require, an account of Treasurer's transactions as Treasurer and of the financial condition of the Association. Nothing shall prohibit the functions of the Treasurer to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties of the Treasurer shall not relieve the Treasurer from any responsibility related to overseeing and reviewing any duties performed by the agent.

Section 8.8 Compensation. The officers of the Association shall serve without compensation except that they shall be entitled to reimbursement for all expenses reasonably incurred in the discharge of their duties.

ARTICLE IX Notices

Section 9.1 Method. (a) Whenever by applicable law, the Articles, or these Bylaws, notice is required to be given to any Member or Director, and no provision is made as to how such notice shall be given, personal notice shall not be required, and any such notice may be given (i) in writing, by mail, postage prepaid, addressed to such Director or Member at such Director or Member's address as it appears on the books of the Association, or (ii) by any other method permitted by law (including, but not limited to, overnight courier service, facsimile telecommunication, electronic mail, telegram, telex, or telefax). Any notice required or permitted to be given by mail shall be deemed to be given when deposited in the United States mail as aforesaid. Any notice required or permitted to be given by overnight courier service

shall be deemed to be given at the time delivered to such service with all charges prepaid and addressed as aforesaid.

(b) An affidavit of the Secretary or of the transfer agent or other agent of the Association that the notice has been given, including by a form of electronic transmission, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 9.2 Waiver. Whenever any notice is required to be given to any Member or Director by law, the Articles or these Bylaws, a written waiver thereof, signed by the Person or Persons entitled to such notice, or a waiver by electronic transmission by the Person or Persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to notice. Attendance of a Member or Director at a meeting shall constitute a waiver of notice of such meeting, except when the Person attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 9.3 Exception to Notice Requirement. The giving of any notice required under any provision of the GCUB, the Articles or these Bylaws shall not be required to be given to any Member to whom notice of two (2) consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such Member during the period between such two (2) consecutive annual meetings have been mailed addressed to such Person at such Person's address as shown on the records of the Association and have been returned undeliverable. If any such Member shall deliver to the Association a written notice setting forth such Member's then current address, the requirement that notice be given to such Member shall be reinstated.

ARTICLE X

Indemnification of Directors,

Officers and Other Authorized Representatives

Section 10.1 Actions, Suits or Proceedings Other Than by or in the Right of the Association. 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 such Person is or was or has agreed to become a Director, officer, employee or agent of the Association, or is or was serving or has agreed to serve at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against costs, charges, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person or on such Person's behalf in connection with such action, suit or proceeding and any appeal therefrom, if such Person acted in good faith and in a manner such Person 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 such Person's 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 meet the standards of conduct set forth in this Section 10.1.

Section 10.2 Actions or Suits by or in the Right of the Association. 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 such Person is or was or has agreed to become a Director, officer, employee or agent of the Association, or is or was serving or has agreed to serve at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against costs, charges and expenses (including attorneys' fees) actually and reasonably incurred by such Person or on such Person's behalf in connection with the defense or settlement of such action or suit and any appeal therefrom, if such Person acted in good faith and in a manner such Person 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 gross negligence or misconduct in the performance of such Person's duty to the Association unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such costs, charges and expenses which the Court of Chancery or such other court shall deem proper.

Section 10.3 Indemnification for Costs, Charges and Expenses of Successful Party. Notwithstanding the other provisions of this Article X, to the extent that a Director, officer, employee or agent of the Association has been successful on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, in defense of any action, suit or proceeding referred to in Section 10.1 and Section 10.2 of this Article X, or in the defense of any claim, issue or matter therein, such Person shall be indemnified against all costs, charges and expenses (including attorneys' fees) actually and reasonably incurred by such Person or on such Person's behalf in connection therewith.

Section 10.4 Determination of Right to Indemnification. Any indemnification under Section 10.1 and Section 10.2 of this Article X (unless ordered by a court) shall be paid by the Association only as authorized in the specific case upon a determination that indemnification of the present or former Director, officer, employee or agent is proper in the circumstances because the Person has met the applicable standard of conduct set forth in Section 10.1 and Section 10.2. Such determination shall be made (a) by a majority vote of Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (b) by a committee of such Directors designated by majority vote of such Directors, even though less than a quorum, or (c) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or (d) by the Members.

Section 10.5 Advance of Costs, Charges and Expenses. Costs, charges and expenses (including attorneys' fees) incurred by an Officer or Director in defending a civil or criminal action, suit or proceeding (including investigations by any government agency and all costs, charges and expenses incurred in preparing for any threatened action, suit or proceeding) shall be paid by the Association in advance of the final disposition of such action, suit or proceeding; provided, however, that the payment of such costs, charges and expenses incurred by a Director or officer in such Person's capacity as a Director or officer (and not in any other capacity in

which service was or is rendered by such Person while a Director or officer) in advance of the final disposition of such action, suit or proceeding shall be made only upon receipt of an undertaking by or on behalf of the Director or officer to repay all amounts so advanced in the event that it shall ultimately be determined that such Director or officer is not entitled to be indemnified by the Association as authorized in this Article X. No security shall be required for such undertaking and such undertaking shall be accepted without reference to the recipient's financial ability to make repayment. The repayment of such charges and expenses incurred by other employees and agents of the Association which are paid by the Association in advance of the final disposition of such action, suit or proceeding as permitted by this Section 10.5 may be required upon such terms and conditions, if any, as the Board of Directors deems appropriate. The Board of Directors may, in the manner set forth above, and subject to the approval of such Director, officer, employee or agent of the Association, authorize the Association's counsel to represent such Person, in any action, suit or proceeding, whether or not the Association is a party to such action, suit or proceeding.

Section 10.6 Procedure for Indemnification. Any indemnification under Sections Section 10.1, Section 10.2 or Section 10.3 or advance of costs, charges and expenses under Section 10.5 of this Article X shall be made promptly, and in any event within thirty (30) days, upon the written request of the Director, officer, employee or agent directed to the Secretary of the Association. The right to indemnification or advances as granted by this Article X shall be enforceable by the Director, officer, employee or agent in any court of competent jurisdiction if the Association denies such request, in whole or in part, or if no disposition thereof is made within thirty (30) days. Such Person's costs and expenses incurred in connection with successfully establishing such Person's right to indemnification or advances, in whole or in part, in any such action shall also be indemnified by the Association. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of costs, charges and expenses under Section 10.5 of this Article X where the required undertaking, if any, has been received by the Association) that the claimant has not met the standard of conduct set forth in Section 10.1 and Section 10.2 of this Article X, but the burden of proving that such standard of conduct has not been met shall be on the Association. Neither the failure of the Association (including its Board of Directors, its independent legal counsel, and its Members) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because such Person has met the applicable standard of conduct set forth in Section 10.1 and Section 10.2 of this Article X, nor the fact that there has been an actual determination by the Association (including its Board of Directors, its independent legal counsel, and its Members) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 10.7 Other Rights; Continuation of Right to Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by this Article X shall not be deemed exclusive of any other rights to which a Person seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement, vote of Members or disinterested Directors or otherwise, both as to action in such Person's official capacity and as to action in another capacity while holding office or while employed by or acting as agent for the Association, 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 estate,

heirs, executors and administrators of such Person. All rights to indemnification under this Article X shall be deemed to be a contract between the Association and each Director, officer, employee or agent of the Association who serves or served in such capacity at any time while this Article X is in effect. No amendment or repeal of this Article X or of any relevant provisions of the ECLD or any other applicable laws shall adversely affect or deny to any Director, officer, employee or agent any rights to indemnification which such Person may have, or change or release any obligations of the Association, under this Article X with respect to any costs, charges, expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement which arise out of an action, suit or proceeding based in whole or substantial part on any act or failure to act, actual or alleged, which takes place before or while this Article X is in effect. The provisions of this Section 10.7 shall apply to any such action, suit or proceeding whenever commenced, including any such action, suit or proceeding commenced after any amendment or repeal of this Article X.

Section 10.8 Construction For purposes of this Article X:

(a) "the Association" shall include any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its Directors, officers, and employees or agents, so that any Person who is or was a Director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article X with respect to the resulting or surviving corporation as such Person would have with respect to such constituent corporation if its separate existence had continued;

(b) "other enterprises" shall include employee benefit plans, including, but not limited to, any employee benefit plan of the Association;

(c) "serving at the request of the Association" shall include any service which imposes duties on, or involves services by, a Director, officer, employee, or agent of the Association with respect to an employee benefit plan, its participants, or beneficiaries, including acting as a fiduciary thereof;

(d) "fines" shall include any penalties and any excise or similar taxes assessed on a Person with respect to an employee benefit plan; and

(e) a Person who acted in good faith and in a manner such Person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Association" as referred to in this Article X;

Section 10.9 Savings Clause. If this Article X or any portion hereof shall be invalidated on any ground by a court of competent jurisdiction, then the Association shall nevertheless indemnify each Director, officer, employee and agent of the Association as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative

or investigative, including an action by or in the right of the Association, to the full extent permitted by any applicable portion of this Article X that shall not have been invalidated and to the full extent permitted by applicable law.

Section 10.10 Insurance. The Association shall purchase and maintain insurance on behalf of any Person who is or was or has agreed to become 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 any liability asserted against such Person and incurred by such Person or on such Person's behalf in any such capacity, or arising out of such Person's status as such, whether or not the Association would have the power to indemnify such Person against such liability under the provisions of this Article X. Notwithstanding the provisions of this Section 10.10 in the event of any conflict between the provisions of this Section 10.10 and the provisions of the Declaration, the provisions of the Declaration shall control.

Section 10.11 Indemnification Prohibited. Notwithstanding any provision of this Article X to the contrary, no indemnification shall be authorized by or provided under this Article X for any act in violation of any Legal Requirements.

ARTICLE XI **Association Books and Records**

The Association shall keep or cause to be kept (a) detailed financial records of the Association in sufficient detail to enable the Association to prepare a resale certificate in accordance with the provisions of Section 25-8A-409 of the Act; and (b) the minutes of all meetings of the Members of the Association and the Board of Directors. All books and records of the Association shall be available for inspection by the Owners, Mortgagees, and their respective agents and representatives, during normal business hours. All books and records of the Association shall be kept in accordance with GAAP, consistently applied. The Board of Directors shall further make available for the inspection by Members, Mortgagees, and their respective agents and representatives, during normal business hours, the current version of the Governing Documents and all other documents affecting the Association, the Owners, or the Property, as well as all amendments thereto and revisions thereof. For purposes of this paragraph, "available" shall mean available for inspection, upon reasonable advance request of not less than 24 hours, during regular business hours at the office of the Association in the County or the office of a Manager of the Association in the County.

ARTICLE XII **Miscellaneous**

Section 12.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board of Directors shall determine otherwise.

Section 12.2 Amendments to Bylaws. These Bylaws may be amended from time to time by the affirmative vote of 67% of the votes of the Members voting at the meeting called to consider such matter. Members must be given notice of any meeting of the Directors for the purpose of amending the Bylaws not less than ten (10) or more than twenty (20) days preceding

the date of the meeting. Any such notice shall include the specific amendment or other change proposed to be made to these Bylaws.

Section 12.3 Construction. Number and gender as used in these Bylaws shall extend to and include both singular and plural and all genders as the context and construction require.

Section 12.4 Headings. The headings used in these Bylaws have been inserted for convenience only and do not constitute matters to be construed in interpretation.

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Adopted as of October 12, 2006.

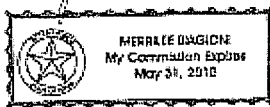
Brian Parro
Brian Parro, Secretary of the Association

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 12th day of October, 2006, by Brian Parro, Secretary of MIDTOWN VILLAGE CONDOMINIUM ASSOCIATION, INC., a Delaware corporation, on behalf of said corporation.

My Commission Expires:

May 31, 2010



Merrale Dungan
Notary Public - State of Texas

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Source Of Title: 2005 / 21165

W. Hardy McCollum - Probate Judge

Tuscaloosa County, Alabama

07-30-2007 11:29:23 AM

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Book/Pg: 2007/16822

Term/Cashier: SCAN1 / klatner

Tran: 7612.499426.611293

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PJF Probate Judge Fee

2.00

REC Recording Fee

198.50

SOT Source of Title

1.50

Total Fees: \$ 202.00