

2 0 0 4 0 2 / 5 4 5 2

**DECLARATION OF CONDOMINIUM  
OF  
THE TRANSPORTATION BUILDING CONDOMINIUM**

UNOFFICIAL

This instrument prepared by:  
Carol H. Stewart  
Burr & Forman  
3100 SouthTrust Tower  
420 North 20th Street  
Birmingham, Alabama 35203

TABLE OF CONTENTS

DECLARATION OF CONDOMINIUM OF THE  
TRANSPORTATION BUILDING CONDOMINIUM

ARTICLE 1 DEFINITIONS ..... 2

    Section 1.01    Definitions..... 2

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION ..... 6

    Section 2.01    Description of Improvements and Identification of Units..... 6

    Section 2.02    Plan of Condominium Development..... 6

    Section 2.03    Reallocation of Limited Common Elements..... 6

    Section 2.04    Easements and Restrictions..... 7

    Section 2.05    Ownership of Common Elements..... 8

    Section 2.06    Ownership of Limited Common Elements..... 8

ARTICLE 3 ORGANIZATION AND MANAGEMENT ..... 9

    Section 3.01    Management of the Condominium Property..... 9

    Section 3.02    Members..... 9

    Section 3.03    By-Laws..... 9

ARTICLE 4 ASSESSMENTS..... 9

    Section 4.01    Liability, Lien and Enforcement..... 9

    Section 4.02    Assessments..... 10

    Section 4.03    Annual Budget..... 10

    Section 4.04    Omission of Assessment..... 11

    Section 4.05    Detailed Records..... 11

    Section 4.06    Payment of Common Expenses and Limited Common  
    Expenses by Unit Owners..... 11

    Section 4.07    Default in Payment of Assessments..... 12

    Section 4.08    Election of Remedies..... 12

ARTICLE 5 MAINTENANCE AND OPERATION OF THE CONDOMINIUM  
PROPERTY ..... 13

    Section 5.01    The Association's Obligation to Repair..... 13

    Section 5.02    Each Owner's Obligation to Repair..... 13

    Section 5.03    Alterations, Additions and Improvements by the Association..... 15

    Section 5.04    Utilities..... 16

ARTICLE 6 RESTRICTIONS ON USE OF UNITS, COMMON ELEMENTS AND  
LIMITED COMMON ELEMENTS ..... 16

    Section 6.01    Rules and Regulations of the Association..... 16

Section 6.02	Use of the Condominium Property.....	16
Section 6.03	Restrictions on Use.....	17
Section 6.04	Right of Access.....	17
Section 6.05	Limitation of Liability.....	18
Section 6.06	Abatement of Violations.....	18
Section 6.07	Failure of the Association to Insist on Strict Performance; No Waiver.....	18
Section 6.08	Use by Developer.....	19
ARTICLE 7 RIGHTS OF MORTGAGEES .....		19
Section 7.01	Notification of Mortgagees Required.....	19
Section 7.02	Right of Inspection.....	19
Section 7.03	Required Reserve Funds and Working Capital Fund.....	19
Section 7.04	Priority of Mortgagees.....	20
Section 7.05	Request for Protection by Mortgagees.....	20
ARTICLE 8 CASUALTY LOSS AND INSURANCE.....		21
Section 8.01	Responsibility of Owners; Separate Insurance Coverage.....	21
Section 8.02	Insurance to be Maintained by the Association.....	21
Section 8.03	Governing Provisions.....	22
Section 8.04	Premiums.....	23
Section 8.05	Insurance Trustee.....	23
Section 8.06	Loss to Common Elements Only.....	24
Section 8.07	Loss to Common Elements, Limited Common Elements and Private Elements.....	25
Section 8.08	Estimates of Repair; Plans and Specifications; Payment of Assessments.....	26
ARTICLE 9 CONDEMNATION.....		27
Section 9.01	Condemnation Considered a Casualty Loss.....	27
Section 9.02	Partial Condemnation.....	27
Section 9.03	Association Appointed As Attorney-In-Fact for Unit Owners.....	29
ARTICLE 10 TERMINATION.....		29
Section 10.01	Destruction of the Condominium Property.....	29
Section 10.02	Termination by Consent.....	30
Section 10.03	The Association Appointed as Attorney-In-Fact for Unit Owners.....	30
ARTICLE 11 AMENDMENT .....		30
Section 11.01	Amendments by Developer.....	30
Section 11.02	Amendments by Unit Owners.....	31
Section 11.03	Effectiveness of Amendments.....	31

ARTICLE 12 CONTROL OF THE ASSOCIATION..... 32

Section 12.01	Election of Board of Directors.....	32
Section 12.02	Notice of Meeting.....	32
Section 12.03	Status of Unsold Units.....	32
Section 12.04	Professional Management and Other Contracts.....	33

ARTICLE 13 MISCELLANEOUS ..... 33

Section 13.01	Rights and Powers of Successors and Assignees.....	33
Section 13.02	Headings.....	33
Section 13.03	Gender/Number.....	33
Section 13.04	Exhibits.....	33
Section 13.05	Invalidity and Severability.....	33
Section 13.06	Interpretation.....	33

EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	By-Laws of the Association
Exhibit "C"	Plan of the Condominium
Exhibit "D"	Percent Ownership of Common Elements
Exhibit "E"	Estimated Operating Budget
Exhibit "F"	Easements and Restrictions of Record

**DECLARATION OF CONDOMINIUM  
OF  
THE TRANSPORTATION BUILDING CONDOMINIUM**

THIS DECLARATION is made this 4<sup>th</sup> day of February, 2004, by H & H Real Estate Development, Inc., an Alabama corporation (the "Developer"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, Code of Alabama 1975 §§ 35-8A-101 et seq. (the "Act"), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land:

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property located in the City of Birmingham, Jefferson County, Alabama, more particularly described on Exhibit A attached hereto on which is located one building containing eight (8) residential stories, two (2) commercial or office stories and a basement, which building shall contain not more than thirty (30) residential, commercial or office units, and certain other improvements in accordance with the Plan of THE TRANSPORTATION BUILDING CONDOMINIUM prepared by Laurence D. Weygand and David A. Gillespie and recorded in Map Book 212, page 32 in the Office of the Judge of Probate of Jefferson County, Alabama, a copy of which is included in Exhibit C attached to this Declaration (the "Property" or "Condominium Property");

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

NOW, THEREFORE, Developer, upon recording hereof, does submit that certain real property situated in Jefferson County, Alabama, more particularly described on Exhibit A attached to this Declaration, together with the improvements thereon, and owned by the Developer in fee simple absolute to the provisions of the Alabama Uniform Condominium Act of 1991 to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and in any other manner utilized subject to the provisions of said Act and subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominium ownership and all of which shall run with the land and shall be binding on all parties (including Owners as hereinafter defined) having or acquiring any right, title or interest in said property or any part thereof, and shall be for the benefit of each Owner of any portion of said property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest to the Owners thereof.

## ARTICLE 1

### DEFINITIONS

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

(a) "Act" shall mean the Alabama Uniform Condominium Act of 1991, Code of Alabama §§ 35-8A-101 et seq., as the same may be amended from time to time.

(b) "Association" shall mean THE TRANSPORTATION BUILDING ASSOCIATION, INC., a nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, Code of Alabama §§ 10-3A-1 et seq., of which all Owners shall be members and which corporation shall administer the operation, management, maintenance, control and administration of the Condominium Property.

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

(d) "By-Laws" shall mean the set of By-Laws, a copy of which is attached hereto as Exhibit B, recorded simultaneously with this Declaration, providing for the self-government of the Condominium Property by the Association in accordance with § 35-8A-301 of the Act, and such amendments thereto as may be recorded from time to time pursuant to the provisions of the Act.

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

(i) The Land;

(ii) The foundation and footings, bearing walls, perimeter walls, structural slabs, columns, beams and supports;

(iii) The roof, lobbies, elevators, mechanical equipment and storage areas designated as common, stairways and entrances and exits or communication ways;

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

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

(vi) All common recreational facilities such as any game, entertainment, meeting or assembly rooms, exercise rooms, grounds, sun deck, yards and walkways, unless specifically assigned as a Limited Common Element to a particular Unit or to a group of Units;

(vii) Greens, gardens, roadways, walking trails, yards, landscaping, storage sheds, central mail boxes, service areas;

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

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

(f) "Common Expenses" shall mean the expenses arising out of the ownership of the Common Elements for which the Owners are liable to the Association and shall include, but not be limited to, expenses of administration of the Condominium Property; expenses of insurance; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and any portion of a Unit maintained by the Association; any valid charge against the Condominium Property as a whole; and expenses declared to be Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof. The Common Expenses shall also include costs of utility services, such as electricity, steam, water, cable, determined by the Board of Directors to be Common Expenses. Any cost of utility services not determined to be Common Expenses shall be paid by the Unit Owners. The Common Expenses shall not include charges imposed upon the Owners under the Condominium Documents for usage of various components of the Common Elements or Limited Common Elements.

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

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

(i) "Declaration of Condominium" or "Declaration" shall mean this instrument and all Exhibits attached hereto as it may from time to time be amended.

(j) "Developer" or "Declarant" shall mean H & H Real Estate Development, Inc., an Alabama corporation, its successors and assigns, other than an Owner, who shall receive by assignment from the said H & H Real Estate Development, Inc., all, or a portion of its rights hereunder as such Developer, by an instrument expressly assigning such rights as Developer to such assignee.

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

(l) "Limited Common Elements" shall mean and include any area designated as Limited Common Elements on the Plan and any amendment to the Plan and any areas defined in the Act as Limited Common Elements. The Limited Common Elements shall include any other property so designated, such as the parking spaces, storage areas, terraces, gardens, playgrounds, chutes, flues, wires, conduit, bearing walls; bearing columns or any other item serving only that Unit. Should any Limited Common Element ever be determined not to be a Limited Common Element under the Act, the same shall be part of the Common Elements with an exclusive easement of use appurtenant to the Private Elements to which it was originally assigned as a Limited Common Element.

(m) "Limited Common Expenses" shall mean the expenses arising out of the ownership of the Limited Common Elements for which the Owners of the Limited Common Elements are liable to the Association pro rata and shall include, but not be limited to, the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation, and betterment of the Limited Common Elements; and expenses declared to be Limited Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof. The Limited Common Expenses shall not include charges imposed upon the owners of the Limited Common Elements under the Condominium Documents for the usage of various components of the Limited Common Elements.

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

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

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

(q) "Plan" or "Plat" shall mean the as-built Plan showing the Private Elements, the Common Elements and the Limited Common Elements of the Condominium Property attached hereto as Exhibit C, and made a part hereof for all purposes, as such Plan may from time to time be amended.

(r) "Private Elements" shall mean the parts of the Condominium Property as set forth in the Plan intended for the exclusive ownership and possession by an Owner. Each Private Element is identified in a diagrammatic floor plan of the floor on which it is situated as shown on the Plan and shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

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



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

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

(ii) **Perimetrical Boundaries:** The perimetrical boundaries shall be the vertical planes of the exterior surfaces of the exterior windows, glass doors and entry doors, and the unfinished interior surfaces of the exterior walls, excluding paint, wallpaper and light coverings, extended to their planer intersections with each other and with the upper and lower boundaries.

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

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

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

(u) "Unit" or "Condominium Unit" shall mean the Private Elements as shown on the Plat, together with the undivided interest in the Common Elements and Limited Common Elements, if any, assigned to each Unit as herein provided.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01 Description of Improvements and Identification of Units. The Condominium Property shall consist of one (1) building containing ten (10) stories and a basement and certain other improvements. The Condominium Property shall contain not more than thirty (30) residential, commercial or office Units, Common Elements and Limited Common Elements. A plat of the Land and improvements thereon and a graphic description of the improvements in which the Units are located, identifying each Unit by a number and letter so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify the Common Elements, the Limited Common Elements and each Unit and their relative locations and approximate dimensions, are set forth in the Plan attached hereto as Exhibit C.

Section 2.02 Plan of Condominium Development. The Condominium shall be a mixed use condominium project. The initial uses anticipated for the Units are as follows: Units 100 and 200, on floors 1 and 2 respectively, shall be restricted to commercial, retail or office use, initially a child care facility; Floors 3 through 8 shall be restricted to residential use in the form of no more than three residential apartments per Floor; Units 900 and 1000 shall be restricted to residential use and shall be initially in the form of one private residence. Developer reserves the right to change the use of the Units and to subdivide any floor or floors into no more than three Units per floor, the design and arrangement of such Units shall be left to the discretion of the Developer, so long as the Developer owns all the Units on that Floor. Any change in use of a Unit or subdivision of a Unit shall be evidenced by the filing of an amendment to the Plan and Declaration, which amendments need only be signed and acknowledged by the Developer and need not be approved by any other Owner. The approval of any Mortgagee for the Units to be altered should be obtained but need not be evidenced on the amendments. The subdivision of any Unit or Floor shall not affect the allocated interests of the other Units in the Condominium, but shall be merely a division of the allocated interest to that floor. The allocated interests in the newly created units shall be established by the Developer and set forth in the amendment to the Declaration.

Should any Unit Owner other than the Developer desire to change the use of or subdivide or combine one or more Units, such Owner shall make a written request to the Association, along with a plan showing any requested subdivision or change in use. After an affirmative vote of 75% of the members of the Association and 67% of the Mortgagees, the change in use or the subdivision or combination of one or more Units may be effected pursuant to § 35-8A-213 of the Act.

Section 2.03 Reallocation of Limited Common Elements. Any Limited Common Element assigned to a Unit may be reassigned or changed to Common Elements by the affirmative vote of 75% of the members of the Association and 67% of the Mortgagees, which affirmative vote must include the Unit Owners to which said Limited Common Elements are assigned. Such reallocation shall be evidenced by the recording of an amendment to the Plan and the Declaration in the Office of the Judge of Probate of Jefferson County signed by the President and Secretary of the Association.

Section 2.04 Easements and Restrictions. The Private Elements, Common Elements and Limited Common Elements shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established in the Condominium Documents governing the use of said Private Elements, Common Elements and Limited Common Elements in setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. Said Private Elements, Common Elements and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the Condominium Property, which easements and restrictions are described on Exhibit F attached hereto.

(a) Utility Easements. Utility easements are reserved throughout the whole of the Property, including Units, as may be required for utility services (including, without limitation, water, steam, sewer, gas, electricity, telephone and cable television) in order to adequately serve the Condominium Property.

(b) Utility Equipment. There may be utility equipment located on the Common Elements appurtenant to some Units. An easement is hereby reserved in favor of each Unit for the purpose of placement, maintenance, repair and replacement of said utility equipment by Developer and the Owners of the appurtenant Unit; provided that no utility equipment shall be placed in any part of the Common Elements or Limited Common Elements other than the present location unless the written approval of the Association shall have first been obtained.

(c) Easements for Ingress and Egress. The Common Elements and Limited Common Elements shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement of way over all roads, parking areas, walkways, halls, stairways, elevators, and other common areas in favor of all Owners for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners, subject to all restrictions in the Condominium Documents.

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

(e) Easements for Encroachments. To the extent that any Private Element or Common Element or Limited Common Element encroaches on any other Private Element, Common Element, or Limited Common Element, whether by reason of any deviation from the Plan in the original construction, repair, renovation, restoration or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement shall exist for the encroachment and/or the maintenance of the same, so long as the encroaching Private Element, Common Element or Limited Common Element stands. A valid easement shall not relieve an Owner of liability for his or his agent's negligence or intentional acts in cases of willful and intentional misconduct by him or his agents or employees. In the event any Unit, any adjoining Unit, or any adjoining Common Elements or Limited Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of

condemnation or eminent domain proceedings, and then constructed, reconstructed or repaired, encroachment of parts of the Common Elements or Limited Common Elements upon any Unit or of any Unit upon any other Private Elements, Common Elements or Limited Common Elements resulting from such construction, reconstruction or repair shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the encroaching improvements shall stand.

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

(g) Easement for Use of Limited Common Elements. Each Owner of the Limited Common Elements shall have an easement for the repair, maintenance and upkeep of the Limited Common Elements and for vehicular and pedestrian ingress and egress to and from the Limited Common Elements for so long as the Limited Common Elements exist. The aforesaid easement shall be for the benefit of each Owner of the Limited Common Elements and its lessees, licensees and invitees.

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

Section 2.05 Ownership of Common Elements. Each Owner shall own an undivided interest in the Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Unit. The extent or amount of such ownership shall be expressed by a percentage relating to each Unit and shall remain constant, unless changed in accordance with the provisions of Section 2.02 hereof or by the unanimous approval of all Owners and Mortgagees. The percentage ownership in the Common Elements relating to each Unit is as set forth on Exhibit D attached hereto.

Section 2.06 Ownership of Limited Common Elements. The ownership of the Limited Common Elements shall be as set forth on Exhibit C attached hereto. The extent or amount of such ownership shall be expressed by a designation or description of the Limited Common Elements which are appurtenant to a given Unit, and the Owners of such Units shall have the exclusive right to use such Limited Common Elements so designated or described unless changed by the Developer as permitted in Section 2.02 hereof or by the unanimous approval of the Owners of the Limited Common Elements and their respective Mortgagees. Each Owner of a Unit to which the Limited Common Element is attached shall have the right to use the Limited Common Element for all purposes incident to the use and occupancy of his Unit as herein provided without hindering or encroaching upon the lawful rights of the other Owners, which

rights shall be appurtenant to and run along with the Units to which the Limited Common Elements are attached.

### ARTICLE 3

#### ORGANIZATION AND MANAGEMENT

Section 3.01 Management of the Condominium Property. Operation and administration of the Condominium Property shall be performed by THE TRANSPORTATION BUILDING ASSOCIATION, INC., an Alabama nonprofit corporation. The powers and duties of the Association shall include those set forth in the Act, the Alabama Nonprofit Corporations Act, Code of Alabama 1975 §§ 10-3A-1 et seq., this Declaration, the Articles of Incorporation and the By-Laws.

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

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

### ARTICLE 4

#### ASSESSMENTS

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

Section 4.02 Assessments.

(a) All Assessments for the payment of Common Expenses shall be levied annually against the Owners of all Units, and unless specifically otherwise provided for in this Declaration, each Owner of a Unit and his Unit shall bear the same percentage share of such assessment as the percentage share of ownership for the undivided interest in the Common Elements appurtenant to said Unit. The assessments for Common Expenses shall be payable over the course of the year in advance monthly installments commencing on the date of purchase of a Unit or in such other installments and at such times as may be determined by the Board of Directors of the Association.

(b) Assessments for the payment of Limited Common Expenses may be levied against the Owners of those Units to which the Limited Common Elements are appurtenant, and unless the Declaration otherwise provides, each Owner of a Unit to which the Limited Common Elements are appurtenant, shall pay its equal pro rata share of said expenses. The assessments for Limited Common Expenses shall be payable in such installments and at such times as may be determined by the Board of Directors of the Association.

(c) The Association may assess the Owners of Units for the repair and maintenance of various components of the Common Elements and reserved therefor based on the usage of any component of the Common Elements. Such assessments shall not be included in the assessment for Common Expenses, but shall be payable in such manner and at such times as may be determined by the Board of Directors of the Association.

Section 4.03 Annual Budget. Within sixty (60) days prior to the beginning of each calendar year, the Board of Directors of the Association shall adopt a proposed annual budget for such calendar year, and such budget shall project the amount of funds for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium Property, including reasonable allowances for contingencies and reserves therefor, in accordance with the Act and this Declaration. Said budget shall take into account any projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. Within thirty (30) days after adoption of such annual budget by the Board of Directors of the Association, copies of said budget shall be made available to each Unit Owner and the Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after delivery of the budget to the Unit Owners. Unless at the meeting a majority of the Unit Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected the budget for the last year shall continue in effect until such time as a new budget is ratified. If the budget is ratified the assessment for said year shall be established based upon such budget.

Should the Board of Directors at any time determine in the sole discretion of said Board of Directors that the assessments levied are or may prove to be insufficient for any reason including emergencies and non-payment of any Owner's assessment, the Board of Directors shall have authority to levy such additional assessments as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents and the Act. The initial projected and

estimated annual maintenance budget for the Condominium Property is attached to the Declaration as Exhibit E.

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

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

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

Whenever any Unit is under contract is to be sold or mortgaged by the Owner thereof, which sale shall be concluded only upon compliance with the other provisions of this Declaration, the Association, upon written request of the Owner or purchaser of such Unit shall furnish to the Owner, the purchaser or any proposed Mortgagee (within the time period prescribed by the Act) a statement verifying the status of the payment of any assessment which shall be due and payable to the Association by the Owner of such Unit and the other information required by the Act. Any purchaser or proposed Mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction and the Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged when any assessment is outstanding against the Owner of such Unit and such assessment due the Association is in default, the purchase or mortgage proceeds shall first be applied by purchaser or Mortgagee to the payment of any delinquent assessment or installment due the Association before application of the payment to the selling Unit Owner.

Section 4.07 Default in Payment of Assessments.

(a) The payment of any assessment or installment thereof due the Association shall be in default if such assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the maximum legal rate or 12%, whichever is greater, until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall have a lien against Units for delinquent assessments. Said lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Owner of each Unit, and such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association. Said lien shall also secure all costs and expenses, including late penalties and reasonable attorneys' fees incurred by the Association in collecting delinquent assessments and enforcing the lien upon said Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Alabama but the Association shall give reasonable advance notice of its proposed action to the Unit Owner, the Mortgagee and all other lienholders of record of the Unit. The lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest at the maximum legal rate on judgments or 12%, whichever is greater, on any such advance made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Unit expressly subject to the lien.

(b) The lien herein granted to the Association shall be effective from and after the time of recording in the Probate Office of Jefferson County, Alabama, the Declaration of Condominium of The Transportation Building Condominium and no further recordation of any claim of lien for assessment under this section is required. Such lien shall include only assessments which are due and payable when the action to enforce the lien is commenced plus late penalties and penalties imposed by the Association for Rules and Regulations violations, interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided.

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



## ARTICLE 5

### MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY

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

- (a) The Common Elements which by definition excludes the surfaces of all interior walls, floors, ceilings, entrance doors, and windows of a Unit;
  - (b) Incidental damage caused to a Unit by any work done by the Association;
- and
- (c) Portions of the Units contributing to the support of the building, including outside walls and load bearing columns, excluding, however, interior wall and floor surfaces.

The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the Limited Common Elements, the cost of which shall be charged to all Unit Owners to which said Limited Common Elements being maintained repaired or replaced attach as a Limited Common Expense.

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

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

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

- (i) The fixtures and equipment in his Unit, including the refrigerator, stove and all other appliances within the Unit; drains, sinks, plumbing and plumbing fixtures and connections within the Unit; electrical panels, wiring, outlets and electric fixtures within the Unit; interior doors, window frames, screening and glass; all exterior doors, except the painting of the exterior faces of the exterior doors and windows which shall be the responsibility of the Association; all wall coverings including paint, wallpaper and light coverings; and all flooring including carpeting, vinyl and ceramic tile within a Unit; and

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

(b) Each Unit Owner agrees as follows:

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

(ii) To pay for any damage to any property, including, but without limitation, the Common Elements, Limited Common Elements or any property adjacent to the condominium for which the Association may be held responsible, caused by the Unit Owner, his family members, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such persons.

(iii) To pay any cost of utilities that are not Common Expenses and all taxes levied against his Unit;

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

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

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

by the Association and the Unit Owner shall be liable for all damages to another Unit or to the Common Elements or Limited Common Elements caused by any contractor employed by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and

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

(c) The Association shall be obligated to answer any request by a Unit Owner for any required approval of a proposed addition, alteration or improvement (by painting or otherwise) within forty-five (45) days after such request, but its failure to do so within the stipulated time shall not constitute a consent of the Association to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be signed by the Association, without, however, it incurring any liability on the part of the Board of Directors or any of them or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim of injury to a person or damage to property arising therefrom. The review by the Association under this Section 5.02 shall in no way make the Association liable for any alterations, additions, or improvements by any Unit Owner. Rather, such review is for purposes of aesthetics and control only. The provisions of this section shall not apply to Units owned by the Developer until a deed for such Unit has been delivered to a purchaser other than Developer.

Section 5.03 Alterations, Additions and Improvements by the Association. Except in the case of loss or damage to the Common Elements or Limited Common Elements as contemplated by Article VIII of the Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements or Limited Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements or Limited Common Elements which is in accordance with the Declaration and which does not require expenditures of more than \$10,000, exclusive of any funds applied from the reserves maintained hereunder) unless the same is authorized by the Board of Directors of the Association. Should such expenditures exceed \$10,000, the action of the Board of Directors must be ratified by the affirmative vote of the voting members casting not less than 75% of the total votes of the members of the Association present at any regular or special meeting of the Unit Owners called for that purpose at which a quorum is present and approved by a majority of the Mortgagees eligible to vote therefor. The cost of the foregoing shall be assessed against the Owners of Units as provided in Article IV hereof except as otherwise provided in this Section 5.03. Where any alterations or additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners exclusively, or substantially exclusively, benefitting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors of the Association. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alterations and additions shall be made only when authorized by the Board of Directors and ratified by not less than 75% of the total votes of the Unit Owners exclusively, or substantially exclusively, benefitting

therefrom. Alterations, improvements or repairs of an emergency nature may be made upon authorization by a vote of the majority of the Directors available for consultation if the same is necessary and in the best interest of the Unit Owners.

Section 5.04 Utilities. Each Unit Owner shall be required to pay all charges for utilities, including electricity, gas, cable television, and telephone service, used or consumed in his Unit. The utilities that have a common meter will be paid in accordance with the percentage of Common Element ownership. to the extent economically feasible, the utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association shall have authority to pay the cost of the utilities used or consumed in the Units and have the costs thereof apportioned among the Units based upon use of the utility or any other formula the Association may deem appropriate.

## ARTICLE 6

### RESTRICTIONS ON USE OF UNITS,

#### COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

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

Section 6.02 Use of the Condominium Property. The Condominium is a mixed-use condominium. Floors 3 through 10 are restricted to residential use, subject to the Developer's right to change the use of any Unit on such floors pursuant to Section 2.02 hereof. "Residential" use shall include apartment use or ownership of the Unit as a private residence. It is the expressed intent of Developer to develop Floors 3 through 8, Units 300 to 800, into as many as eighteen (18) apartments or Units, subject to becoming privately owned residences in the future. Units 900 and 1000 will be developed as two Units combined to be a single private residence. Floors 1 and 2 are hereby restricted to commercial or office use, but Developer reserves the right to change such use pursuant to Section 2.02 hereof.

Section 6.03 Restrictions on Use. The use of the Condominium Property is further subject to the following restrictions:

(a) There shall be no obstruction of the Common Elements or Limited Common Elements, nor shall anything be kept or stored in the Common Elements or Limited Common Elements. Further, nothing shall be constructed on or planted in or removed from the Common Elements or Limited Common Elements, nor shall the Common Elements, or Limited Common Elements in any other way be altered without the prior written consent of the Association.

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

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

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

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

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

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

Section 6.04 Right of Access. Each Unit Owner grants a right of access to his Unit to the Association, and any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in his Unit and threatening other Units, Common Elements or Limited Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within his Unit, if any, or to correct any condition which violates the provisions of any Mortgage covering another Unit, or to enforce any provision of the

Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not. Each Unit Owner further grants a right of access to his Unit to the Developer or his agent, or other authorized representative who is not Developer's agent, for the purpose of making all repairs required by any warranty delivered to the Unit Owner at the closing of his Unit. To the extent that damages are inflicted on the Common Elements, Limited Common Elements or any Unit through which access is taken, the Unit Owner or the Association, if it caused the same, shall be liable for the prompt repair thereof.

Section 6.05 Limitation of Liability. The Association shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service to be obtained by the Association or paid for out of the Common Expense funds; for problems resulting from the operation or lack of operation of sewer lines servicing the Condominium Property, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements, Limited Common Elements or from any wire, pipe, drain, conduit, appliance or equipment, unless such damage is based on the failure of the Association to repair the Common Elements or Limited Common Elements. The Association shall not be liable to the Owner of any Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements or Limited Common Elements. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, Limited Common Elements or to any Unit, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental or judicial authority or for the dispossession of the Unit Owner by reason of fire or other casualty, except to the extent covered by insurance.

Section 6.06 Abatement of Violations. The violation of any Rule or Regulation adopted by the Board of Directors of the Association or breach of the provisions of the Condominium Documents, shall give the Developer, the Association or any Unit Owner the right, in addition to any other right or remedy elsewhere available, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting Unit Owner, including court costs, attorneys fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting Owner, and the Association shall have a lien for all of the same upon the Unit of such defaulting Owner, upon all of his additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon all of his personal property in his Unit or located elsewhere on the Condominium Property. Nothing herein contained shall prevent an Owner from maintaining such an action or proceeding against the Association and the expense of any action to remedy a default of the Association shall be a Common Expense if a court of competent jurisdiction finds the Association to be in default as alleged in such action or proceeding.

Section 6.07 Failure of the Association to Insist on Strict Performance; No Waiver. Failure of the Association to insist in any one or more instances upon the strict performance of

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

Section 6.08 Use by Developer. Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board of Directors of the Association nor their use of the Condominium Property or application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the Condominium until Developer has completed all of Developer's contemplated improvements and closed the sales of all of such Units. Subject to the rights of the Mortgagees hereunder, the Developer may make such use of the unsold Units and of the Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office and model units, the showing of the Condominium Property and the Units therein, the display of signs thereon and therein. Further, Developer reserves the right to designate a portion of the Condominium Property as a management office for the management of any business that may be conducted on the Condominium Property. These Special Declarant Rights exist so long as Developer owns any Unit in the Condominium. The Developer, and any successor in interest, expressly reserves the right to lease any Unit it owns in the Condominium Property on such terms as it may deem proper and desirable and may transfer Units subject to such lease.

## ARTICLE 7

### RIGHTS OF MORTGAGEES

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

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

Section 7.03 Required Reserve Funds and Working Capital Fund. Assessments levied by the Board of Directors of the Association shall include an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common

Elements that must be replaced or repaired on a periodic basis, and shall be payable in regular installments rather than by special assessments. A working capital fund shall be established and each Unit Owner purchasing a Unit from the Developer shall pay a one-time assessment equal to two months' assessment at the time of closing of the purchase by him of his Unit to be used by the Association as working capital.

Section 7.04 Priority of Mortgagees.

(a) Any lien which is or may be created hereunder upon any Unit, including, but not limited to, the lien created for assessments under Section 4.07 hereof and the right to foreclose the same is and shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Section 4.07 hereof on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein. Notwithstanding the above, the lien created pursuant to Section 4.07 hereof is prior to any Mortgage to the extent of the Common Expense assessments based on the annual budget which would have become due in absence of acceleration during the six months immediately preceding institution of an action to enforce the lien.

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

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

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

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



## ARTICLE 8

### CASUALTY LOSS AND INSURANCE

#### Section 8.01 Responsibility of Owners; Separate Insurance Coverage.

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

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

#### Section 8.02 Insurance to be Maintained by the Association.

(a) Hazard Insurance. The Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use, insuring the Condominium Property against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements, and if the Condominium Property is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Board shall, to the extent obtainable, insure the insurable property included in the Condominium Property against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The amount of insurance coverage

shall be determined on a replacement cost basis in an amount not less than 100% of the then current replacement cost of the improvements, including fixtures, equipment and other portions of the Unit that constitutes part of the real property in the Private Elements of the Condominium Property (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association or the Insurance Trustee (hereinafter defined), as trustee for the use and benefit of the individual Owners (without naming them) in the proportionate shares equal to their respective percentage ownership of the Common Elements and Limited Common Elements. Periodically, prior to the renewal of any such policy or policies of insurance, the Association shall obtain an opinion or an appraisal from a qualified appraiser for the purpose of determining the full replacement cost of the Common Elements, the Limited Common Elements and the Units for the amount of insurance to be obtained pursuant hereto. The cost of any such opinion or appraisal shall be a Common Expense. All such policies of insurance shall comply with the provisions of Section 8.03 hereof and shall (i) contain standard mortgagee clause endorsements in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interest may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner.

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

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

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

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

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

(a) All policies shall (i) comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association as they shall apply to condominium loans; and (ii) be written with a

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

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

(c) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with the insurance purchased by the individual Owners or their Mortgagees.

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

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

(ii) An agreement by the insurer that the insurance coverage cannot be terminated or materially changed without thirty (30) days prior written notice to the Association and the Mortgagee of each Unit;

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

(iv) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

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

**Section 8.05 Insurance Trustee.** The Association may engage the services of a bank or trust company authorized to do trust business in the State of Alabama and having a capital and surplus of not less than \$50,000,000 to act on its behalf as an insurance trustee ("Insurance Trustee") and to receive and disburse the insurance proceeds in accordance with the provisions of this Declaration. In the event the lowest of two bids from reputable contractors for making all repairs required by any such loss shall exceed \$20,000, the Association upon written demand of the Mortgagee of any Unit shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The Association, as a Common Expense, shall pay a reasonable

fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Whenever the Insurance Trustee may be required to make distribution of insurance proceeds to Owners of Units and their Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee the name of the Owner of each Unit, the name of the Mortgagee who may hold a Mortgage encumbering each Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any Unit, and his respective Mortgagee, as their respective interests may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Condominium Property. The rights of the Mortgagee of any Unit under any standard mortgage clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property; provided, however, that if the Association or the Insurance Trustee fails to perform all the conditions precedent required by the policy or policies of insurance, and fails to collect the amount of the loss within the time required by law, and the Mortgagee or Mortgagees are required to avail themselves of their rights under the standard mortgage clause to collect the proceeds of the policy or policies of insurance, any amount so collected through the efforts of said Mortgagee or Mortgagees shall be applied as directed by said Mortgagee or Mortgagees. No provision hereof shall entitle an Owner or any other party to any priority over a Mortgagee with respect to the distribution of any insurance proceeds with respect to such Unit.

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

may be. The monies to be so paid, or deposited by the Association with the Insurance Trustee, may be paid by the Association out of its reserve for replacement fund and if the amount in such reserve for replacement fund is not sufficient, or if the Board of Directors determines not to use such fund for said purpose, then the Association shall levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

Section 8.07 Loss to Common Elements, Limited Common Elements and Private Elements. In the event of loss of or damage to Common Elements, Limited Common Elements and any Private Element of any Unit by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or Insurance Trustee, as the case may be, to cover such loss or damage, shall be first applied to the repair, replacement or reconstruction of the Common Elements, then to the repair, replacement or reconstruction of the Limited Common Elements and any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of the Private Elements of any Unit which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the Common Elements, the Limited Common Elements and the Private Elements of Units sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed by the Insurance Trustee to the Owners of all Units, and to their Mortgagees, as their respective interests may appear or may be applied to past due assessments or future assessments at the discretion of the Board of Directors of the Association. Any distributions are to be made in the manner and in the proportions as are provided for the distribution of insurance proceeds under Section 8.06 above.

If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee, as the case may be, are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Board of Directors of the Association shall, based on reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the Common Elements, the Limited Common Elements and the Private Elements of Units sustaining any loss or damage.

If the proceeds of said fire and casualty insurance, if any, are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to the Common Elements, but are not sufficient to repair, replace or reconstruct any loss of or damage to the Limited Common Elements or the Private Elements of Units sustaining damage, then the Association shall levy and collect an assessment from the respective Owners of the Limited Common Elements and Private Element sustaining any loss or damage, and the assessment so collected from said Owner shall be deposited with the Insurance Trustee, if any, so that the sum on deposit with said Insurance Trustee shall be sufficient to completely pay for the repair, replacement or reconstruction of all Common Elements, Limited Common Elements, if any, and Private Elements of Units. In said latter event, the assessment to be levied and collected from the Owners of the Limited Common Elements shall be in proportion to this undivided interest in the Limited Common Elements and the assessment to be levied and collected from the Owner of each Private Element sustaining loss or damage shall be apportioned between such Owners in such manner that the assessment levied against each Owner of a Private Element and his Unit shall bear the same proportion to the total

assessment levied against all of said Owners of Units sustaining loss or damage as the cost of repair, replacement or reconstruction of each Owner's Private Element bears to the cost applicable to all of said Private Elements sustaining loss or damage.

If the fire and casualty insurance proceeds payable to the Association or the Insurance Trustee in the event of the loss of or damage to Common Elements, the Limited Common Elements and the Private Elements of Units are not an amount which will pay for the complete repair, replacement or reconstruction of the Common Elements, it being recognized that such insurance proceeds are to be first applied to the payment for repair, replacement or reconstruction of said Common Elements before being applied to the repair, replacement or reconstruction of any Limited Common Elements or Private Element of a Unit sustaining loss or damage, then the cost to repair, replace, or reconstruct said Common Elements in excess of available fire and casualty insurance proceeds shall be levied and collected as an assessment from the Owners of all Units in the same manner as would be levied and collected had the loss or damage sustained been solely to the Common Elements and the fire and casualty insurance proceeds been not sufficient to cover the cost of repair, replacement or reconstruction. The cost of repair, replacement or reconstruction of the Limited Common Elements and the Private Element of each Unit sustaining loss or damage shall then be levied and collected by assessment of the Owners of the Limited Common Elements and the Owners of the Private Elements sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of Limited Common Elements and Private Elements sustaining loss or damage.

Section 8.08 Estimates of Repair; Plans and Specifications; Payment of Assessments. In the event of loss or damage to Condominium Property, the Association shall, within sixty (60) days after any such occurrence, obtain reliable and detailed estimates of the cost of restoring damaged property to a condition as good as that which prevailed before such loss or damage. The estimate of repair shall be based upon the plans and specifications of the original building, portions of which are attached as Exhibit C to this Declaration as the same may from time to time be amended, or such other plans and specifications as may be approved by the Board of Directors of the Association, by all of the Owners of the damaged Units, and by not less than seventy-five percent (75%) of the Owners of all Units including the Owners of damaged Units. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Condominium Property. Such estimates are to contain and include the cost of any professional fees and premiums for such bonds as the Board of Directors of the Association may deem to be in the best interest of the membership of said Association. Whenever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of repair, replacement or reconstruction thereof, the additional money required to completely pay for such repair, replacement or reconstruction of said loss or damage whether to be paid by all of the Owners of Units or only by the Owners of Units sustaining loss or damage, or both, as herein provided, shall be paid to the Association and deposited with the Insurance Trustee, if any, not later than thirty (30) days from the date on which the Association or the Insurance Trustee, as the case may be, shall receive the monies payable from the policies of fire and casualty insurance.

## ARTICLE 9

### CONDEMNATION

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

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

(a) If the taking reduces the size of a Unit and the remaining portion of that Unit can be made tenantable, the award for the taking for a portion of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

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

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

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

(b) If the taking destroys or so reduces the size of a Unit so that it may not be made tenantable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

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

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

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

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

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

(d) Changes in the Units, in the Common Elements and/or Limited Common Elements, in the ownership of the Common Elements and/or Limited Common Elements and in the shares of liability for Common Expenses and/or Limited Common Expenses which are



affected by eminent domain, shall be evidenced by an amendment of this Declaration which need be approved only by a majority of the Board of Directors of the Association.

Section 9.03 Association Appointed As Attorney-In-Fact for Unit Owners. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the condemnation or taking by eminent domain of the Condominium Property or any portion thereof.

## ARTICLE 10

### TERMINATION

#### Section 10.01 Destruction of the Condominium Property.

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

(i) Two-thirds (2/3) or more of the Units in the Condominium Property shall have been destroyed or substantially damaged by fire or other casualty (including condemnation); or

(ii) The Condominium Property has been in existence in excess of forty (40) years and substantially all of the Units in the structure have substantially deteriorated and have been rendered substantially obsolete;

then the Board of Directors may call a meeting of the members of the Association to consider and vote upon whether to restore, repair and/or rebuild the Condominium Property, and if not, whether to terminate the Declaration and remove the Condominium Property from the provisions of the Act. If the termination of the Declaration and the removal of the Condominium Property from the provisions of the Act is approved by the affirmative vote of at least eighty percent (80%) of the votes of the Owners of all Units and by at least sixty-seven percent (67%) of all Mortgagees (based upon one vote for each Mortgage owned) after notice given as provided in Section 7.01 hereof, the Declaration and plan of condominium ownership established herein shall be subject to termination as provided in the Act and the Association shall be authorized to file on behalf of and in the name of the Unit Owners and shall file a petition for such termination and removal with the Circuit Court of Jefferson County, Alabama. If less than eighty percent (80%) of the Owners of all Units and/or less than sixty-seven percent (67%) of the Mortgagees vote in favor of terminating the Condominium Property as herein required, the Condominium Property shall be restored, repaired and/or rebuilt in accordance with the provisions of Sections 8.06, 8.07 and 8.08 above.

(b) In the event that the Circuit Court of Jefferson County shall grant the petition for termination of this Declaration and the plan of condominium ownership as provided in subparagraph (a) above, all of the Owners of Units shall be and become tenants in common as to ownership of the Land and any then remaining improvements thereon. The undivided interest in the Land and remaining improvements shall be the same as the undivided interest in the

Common Elements which were formerly appurtenant to such Unit, and the lien of any Mortgage or other encumbrance upon each Unit shall attach to the percentage of undivided interest of the Owner of a Unit in the Land and then remaining improvements as above provided. Upon termination of this Declaration and the plan of condominium ownership established herein, the Owners of all Units still inhabitable shall within sixty (60) days from the date of grant of the petition, deliver possession of their respective Units to the Association. Upon such delivery of possession, the Owners of inhabitable Units and their respective Mortgagees, as their interests may appear, shall become entitled to participate proportionately together with all Owners of uninhabitable Units in the distribution of proceeds in the possession of the Association or the Insurance Trustee. Upon such termination of this Declaration and the plan of condominium ownership established herein, the Association or the Insurance Trustee, as the case may be, shall distribute any insurance indemnity which may be due under any policy of casualty insurance to the Owners of the Units and their Mortgagees as their respective interests may appear, such distribution to be made to the Owner of each Unit in accordance with his then undivided interest in the Land and remaining improvements as herein provided. The Land and any remaining improvements thereon shall be subject to all easements of record, except the easements created in the Condominium Documents. The assets of the Association upon termination of the plan of condominium ownership created by this Declaration shall then be distributed to the Owner of each Unit and his Mortgagee, as their respective interests may appear, in the same manner as is above provided for the distribution of any final insurance indemnity.

Section 10.02 Termination by Consent. Except in the event of this Declaration and plan of condominium ownership established herein being terminated as provided above, this Declaration and said plan of condominium ownership may only be otherwise terminated by the consent of ninety percent (90%) of the votes of the Owners of all Units and all parties holding Mortgages, liens or other encumbrances, against any of said Units, in which event the termination of the Condominium shall be by such plans as may be then unanimously adopted by said Owners and parties holding any Mortgages, liens, or other encumbrances. Such election to terminate this Declaration and the plan of condominium ownership established herein shall be evidenced by a termination agreement executed in writing by all of the aforesaid parties in recordable form, and such instrument shall be recorded in the Probate Office of Jefferson County, Alabama.

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

## ARTICLE 11

### AMENDMENT

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

(a) The Developer reserves the right to amend the By-Laws of the Association until such time as Developer relinquishes control of the Association as provided in Section 12.01 below.

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

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

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

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

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

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

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

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

## ARTICLE 12

### CONTROL OF THE ASSOCIATION

Section 12.01 Election of Board of Directors. Developer, its successors or assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill the vacancies, until no later than the earlier of either (a) sixty (60) days after 75% of the total number of Units have been conveyed to purchasers of Units, or (b) three (3) years have elapsed from the conveyance of the first Unit to a purchaser thereof; provided that the Developer may, at its option, terminate its control of the Association at an earlier date. Notwithstanding the foregoing, within ninety (90) days after conveyance of 25% of the Units, the Unit Owners other than Developer shall be entitled to elect 25% of the members of the Board of Directors. Not later than ninety (90) days after conveyance of 50% of the Units to Unit Owners other than Developer, not less than 33 1/3% of the members of the Board shall be elected by the Unit Owners. The Developer shall be entitled to elect at least one member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least 5% of the total number of Units within the Condominium.

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

#### Section 12.03 Status of Unsold Units.

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

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

(c) Notwithstanding the provisions of Sections 4.02 and 12.03 (a) above, no assessments shall be imposed by the Association against the Developer as the Owner of unsold Units until such time as sixty (60) days after the conveyance of the first Unit. During such period, Developer shall be responsible for the Common Expenses and Limited Common Expenses of the Condominium Property, except that the Developer shall be entitled to use and apply to the payment of such Common Expenses and Limited Common Expenses any and all assessments made against the Unit Owners other than Developer and collected by the Association for Common Expenses and Limited Common Expenses, including the two months'

assessment paid by each Owner as working capital. The Developer shall be solely responsible for the maintenance, repair and operation of the Private Elements of the unsold Units.

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

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

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

## ARTICLE 13

### MISCELLANEOUS

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

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

Section 13.03 Gender/Number. Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

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

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

Section 13.06 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

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

**H & H REAL ESTATE DEVELOPMENT, INC.,**  
an Alabama corporation

By: [Signature]  
Its: President

Attest:

[Signature]

STATE OF ALABAMA )  
JEFFERSON COUNTY X

I, [Signature], a Notary Public in and for said County in said State, hereby certify that Elias Hendricks, Jr., whose name as President of H & H Real Estate Development, Inc., an Alabama corporation, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, he as such officer and with full authority, executed the same voluntarily on the date the same bears date.

Given under my hand and official seal of office this 13<sup>th</sup> day of January, 2007

[Signature]  
Notary Public

My Commission Expires: 8-26-05

The undersigned, as Mortgagee under the Mortgage encumbering the real property identified in the foregoing Declaration of Condominium of The Transportation Building Condominium, joins in the execution of the foregoing Declaration of Condominium of The Transportation Building Condominium for the sole purpose of establishing the validity of the Declaration of Condominium of The Transportation Building Condominium as required by §§ 35-8A-1, *et seq.* of the Code of Alabama. The undersigned is not the Developer, and does not assume any obligation whatsoever under the terms, covenants and conditions of the foregoing Declaration of Condominium, and the execution hereof does not in any way subordinate or make the said Mortgage inferior to the said Declaration of Condominium.

MORTGAGEE:

CS Assets, LLC

By: John Mosher  
Its Manager

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John Mosher, whose name as Manager of CS Assets, LLC is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration of Condominium, he as such officer, and with full authority, executed the same voluntarily for and as the act of said Mortgagee on the day the same bears date.

Given under my hand and seal of office this 13<sup>th</sup> day of January 2007.

Coral H. Stewart  
Notary Public

[NOTARIAL SEAL]

My commission expires: 8-26-05

**EXHIBIT A**

Lots 13, 14, 15 and 16, Block 107B according to the present plan and survey of the City of Birmingham, as made by the Elyton Land Company, situated in Jefferson County, Alabama.

UNOFFICIAL



**EXHIBIT B**  
**BY-LAWS**  
**OF**  
**THE TRANSPORTATION BUILDING ASSOCIATION, INC.**

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

Section 1. Identity. These are the By-Laws of THE TRANSPORTATION BUILDING ASSOCIATION, INC., a not for profit corporation (the "Association"), which was formed under the Alabama Nonprofit Corporation Act [Code of Alabama 1975 §§10-3A-1 et seq.] by filing the Articles of Incorporation of the Association (the "Articles") with the Office of the Judge of Probate of Jefferson County, Alabama on February 5, 2004. The Association has been organized for the purpose of providing for the operation, management, maintenance, control and administration of THE TRANSPORTATION BUILDING CONDOMINIUM, (the "Condominium"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991 [Code of Alabama §§ 35-8A-101 et seq.] and the Declaration of Condominium of The Transportation Building Condominium (the "Declaration") as filed with the Office of the Judge of Probate of Jefferson County, Alabama in accordance with the provisions of said Act.

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

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

**ARTICLE II**  
**MEMBERSHIP**

Section 1. Annual Meeting. The annual meeting of the Membership shall be held on the third Tuesday in the month of October in each year, beginning with the year 2004 at the hour of 6:00 P.M., or at such other time on such other day within such month as shall be fixed by the Board of Directors, for the purpose of electing directors, if the period of Developer control has ended, and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Alabama, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the Membership, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Membership as soon thereafter as conveniently may be.

Section 2. Special Meetings. Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by a

majority of the Board of Directors and shall be called by the President or the Secretary at the request of holders of not less than thirty percent (30%) of all the outstanding votes of the Membership.

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

Section 4. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of an annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall, unless otherwise prescribed by statute, be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 5. Fixing of Record Date. The Board of Directors may fix in advance a date as the record date for the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or for any other proper purpose, such date in any case to be not more than thirty (30) days and, in case of a meeting of the Membership, not less than ten (10) days prior to the date on which the particular action, requiring such determination of members, is to be taken. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of the Membership, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination of members entitled to vote at any meeting of the Membership has been made as provided in this section, such determination shall apply to any adjournment thereof.

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

Section 7. Quorum. The presence at any meeting of the Membership of the members entitled to cast twenty percent of the votes in the Association, represented in person or by proxy, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be

transacted which might have been transacted at the meeting as originally notified. The members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

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

Section 9. Proxies. At all meetings of the Membership, a member may vote in person or by proxy executed in writing by the member or by his duly authorized attorney in fact. A proxy is void if it is not dated or purports to be revocable without notice. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after one year from the date of its execution, unless a shorter term is provided in the proxy.

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

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

### ARTICLE III BOARD OF DIRECTORS

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

Section 2. Number, Tenure and Qualifications. The number of directors of the Association shall consist of not less than three (3) nor more than seven (7) directors with the exact number to be fixed from time to time by the members holding a majority of the votes of the Association. The initial Board of Directors shall consist of three (3) directors.

Section 3. Election of Directors.

(a) Election of directors shall be held at the annual meeting of the Membership. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. The owner of each whole Unit shall be entitled to

cast his votes for each of as many nominees as there are vacancies to be filled at the time of the election. There shall be no cumulative voting.

(b) Notwithstanding the provisions of subparagraph (a) above, the Developer (as defined in the Declaration), its successors and assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill vacancies, until such time as either (a) sixty (60) days have elapsed since 75% of the Units have been conveyed to purchasers of Units other than Developer, or (b) three years have elapsed from the conveyance of the first Unit to a person other than the Developer, or (c) the Developer elects, at its option, to terminate control of the Association, whichever first occurs. Not later than ninety (90) days after conveyance of 25% of the Units, the Unit Owners other than Developer shall be entitled to elect 25% of the members of the Board. Not later than ninety (90) days after conveyance of 50% of the Units to Unit Owners other than Developer, not less than 33 1/3% of the members of the Board may be elected by the Unit Owners. The Developer shall be entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least 5% of the Units. Within sixty (60) days before the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the Membership for the purpose of electing the members of the Board of Directors.

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

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

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

Section 7. Quorum. A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board

of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

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

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

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

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

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

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

Section 13. Resignations. Any director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice

thereof to the Secretary of the Association. Such resignation shall take effect at the time specified therefor; and the acceptance of such resignation shall not be necessary to make it effective.

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

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

#### ARTICLE IV OFFICERS

Section 1. Number. The officers of the Association shall be a President, one or more Vice President(s) (the number thereof to be determined by the Board of Directors), a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the President and Secretary. The failure of the Board of Directors to elect any officers other than a President and a Secretary shall not constitute a violation of these By-Laws.

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

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

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

Section 5. President. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and

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

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

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

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

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

Section 10. Salaries. No officer or director shall receive a salary for his or her service, but may be reimbursed for any expenses incurred on behalf of the Association.

ARTICLE V  
CONTRACTS, LOANS, CHECKS AND DEPOSITS

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

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

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

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

Section 5. Proxies. Unless otherwise provided by resolution of the Board of Directors, the President may from time to time appoint an attorney or agent of the Association, in the name and on behalf of the Association, to cast the votes which the Association may be entitled to cast as the holder of stock or other securities in any other corporation any of whose stock or other securities may be held by the Association, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name and on behalf of the Association, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Association and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

ARTICLE VI  
BOOKS AND RECORDS

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

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



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

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

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

Section 2. Budget. Within sixty (60) days prior to the beginning of each calendar year the Board of Directors shall adopt a proposed budget for each calendar year that shall include the estimated funds required to defray the Common Expenses and Limited Common Expenses and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Within thirty (30) days of adoption of the proposed budget copies of the budget and proposed assessments shall be transmitted to each member of the Association and a date set for a meeting of the Unit Owners to consider ratification of the budget, not less than fourteen (14) days nor more than thirty (30) days after delivery of the budget to the Unit Owners. Unless at the meeting a majority of all Unit Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time a new budget is ratified.

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

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

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

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

#### ARTICLE VII WAIVER OF NOTICE

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

#### ARTICLE VIII FISCAL YEAR

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

#### ARTICLE IX INDEMNIFICATION

Section 1. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

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

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

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

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

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

ARTICLE X  
AMENDMENT

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

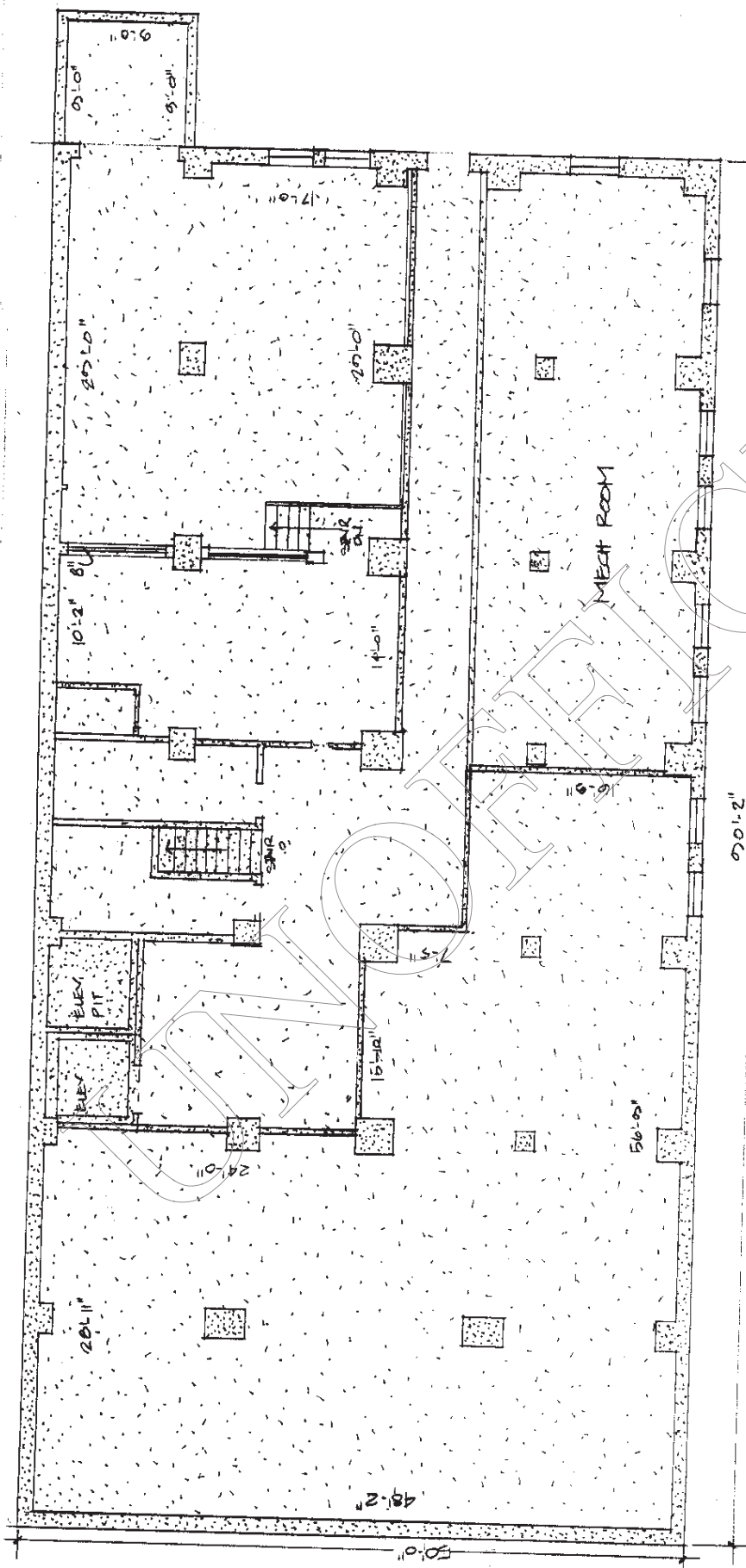
(a) By the Developer until such time as Developer relinquishes its control of the Association; or

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

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







**BASEMENT FLOOR**  
SCALE: 1/8" = 1'-0"

NOTE:  
 THE COMMON AREAS INCLUDE THE SHADED AREAS SHOWN HEREON AND AS DESCRIBED IN THE DECLARATION OF CONDOMINIUM. THE REMAINDER OF THE BUILDING IS COMPOSED OF INDIVIDUAL UNITS AS SHOWN HEREON.  
 [Pattern] DENOTES COMMON AREA  
 [Pattern] DENOTES LIMITED COMMON ELEMENTS

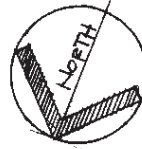
The undersigned David A. Gillespie, Registered Architect, Alabama Reg. Number 3611, hereby certifies that the drawings consisting of pages 1 through 12, attached to and made a part of this contract, fully and accurately depict the layout (except that the interior wall thickness vary, therefore, all dimensions and square footages calculations are based on average wall widths and accuracy is within 10%), location, construction and number and dimensions, in sufficient detail to identify the common elements and private elements comprising such units as built through 10/20 as built.

*D. A. Gillespie*  
 David A. Gillespie, Reg. Architect, A.L. Number: 3611

Sworn and subscribed to before me, this 9th day of March, 1995.  
*Charles H. Bennett*  
 Notary Public  
 My Commission expires 3-11-95

THE TRANSPORTATION BUILDING  
 a condominium

PREPARED BY:  
 David A. Gillespie, AIA  
 AL Architectural Registration: 3611  
 2829 2nd Avenue South, 310-B  
 Birmingham, AL 35233

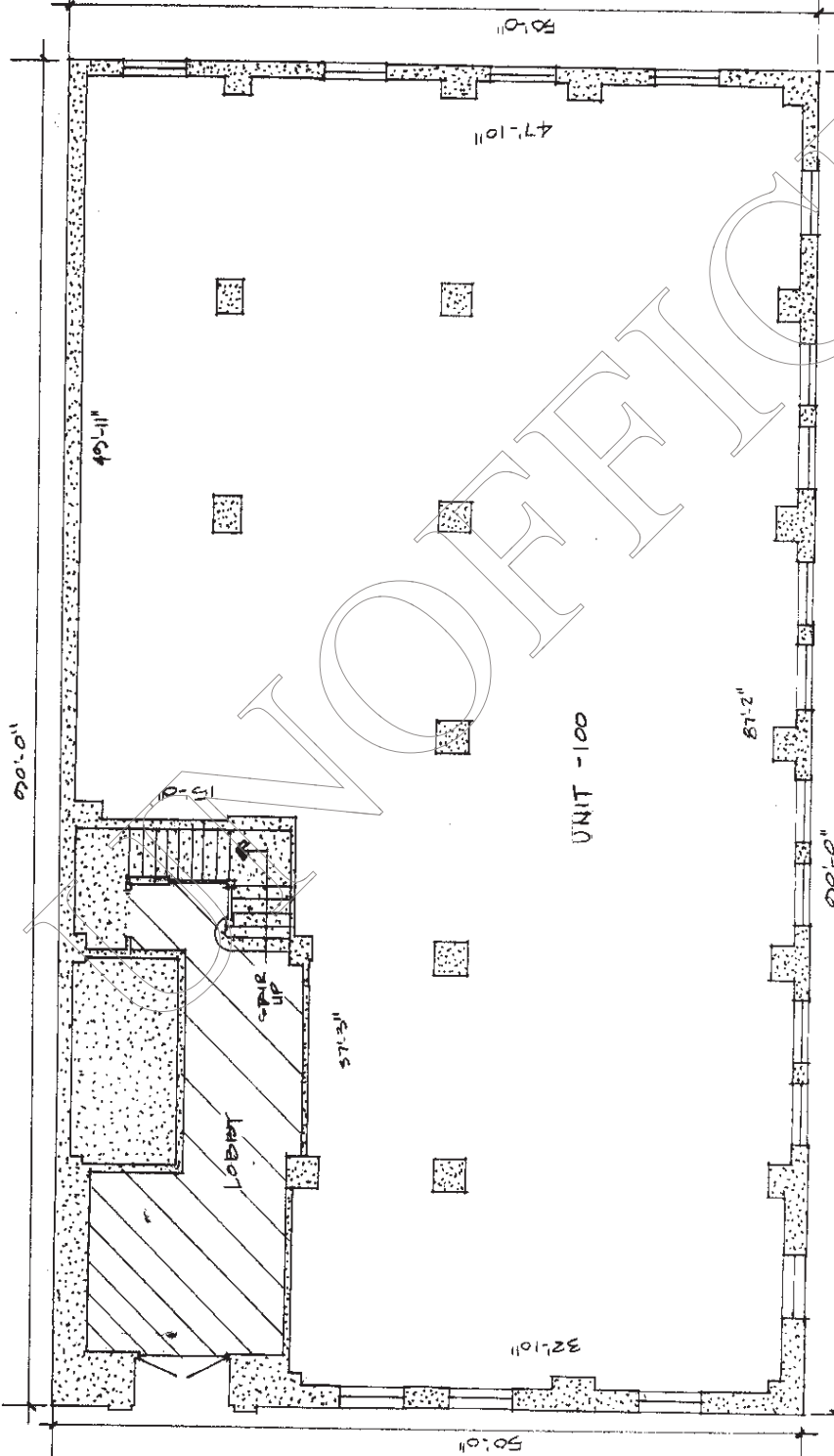


THE TRANSPORTATION BUILDING  
a condominium

PREPARED BY:

David A. Gillespie, AIA  
AL Architectural Registration: 3611  
2829 2nd Avenue South, 310-B  
Birmingham, AL 35233

Sheet 2 of 12



The undersigned David A. Gillespie, Registered Architect, Alabama Reg. Number 3611, hereby certifies that the drawings consisting of pages 1 through 12, attached to and forming a part of this certificate, fully and accurately depict the layout (except that the interior wall thickness vary, therefore, all dimensions and square footages calculations are based on average wall width) and accuracy is within 10%, location, construction and dimensions, insufficient detail to identify the common elements and private elements comprising such units B-100 through 7, also, as built.

*David A. Gillespie*  
David A. Gillespie, Reg. Architect-AL, Number: 3611

Sworn and subscribed to before me this 8th day of March 1995.  
*Carol A. [Signature]*  
Notary Public  
My Commission expires 8-11-95

GROUND FLOOR  
SCALE: 1/8" = 1'-0"

NOTE:  
THE COMMON AREAS INCLUDE THE SHADED AREAS SHOWN HEREON AND AS DESCRIBED IN THE DECLARATION OF CONDOMINIUM. THE REMAINDER OF THE BUILDING IS COMPOSED OF INDIVIDUAL UNITS AS SHOWN HEREON.  
[Stippled pattern] DENOTES COMMON AREA  
[Hatched pattern] DENOTES LIMITED COMMON ELEMENTS



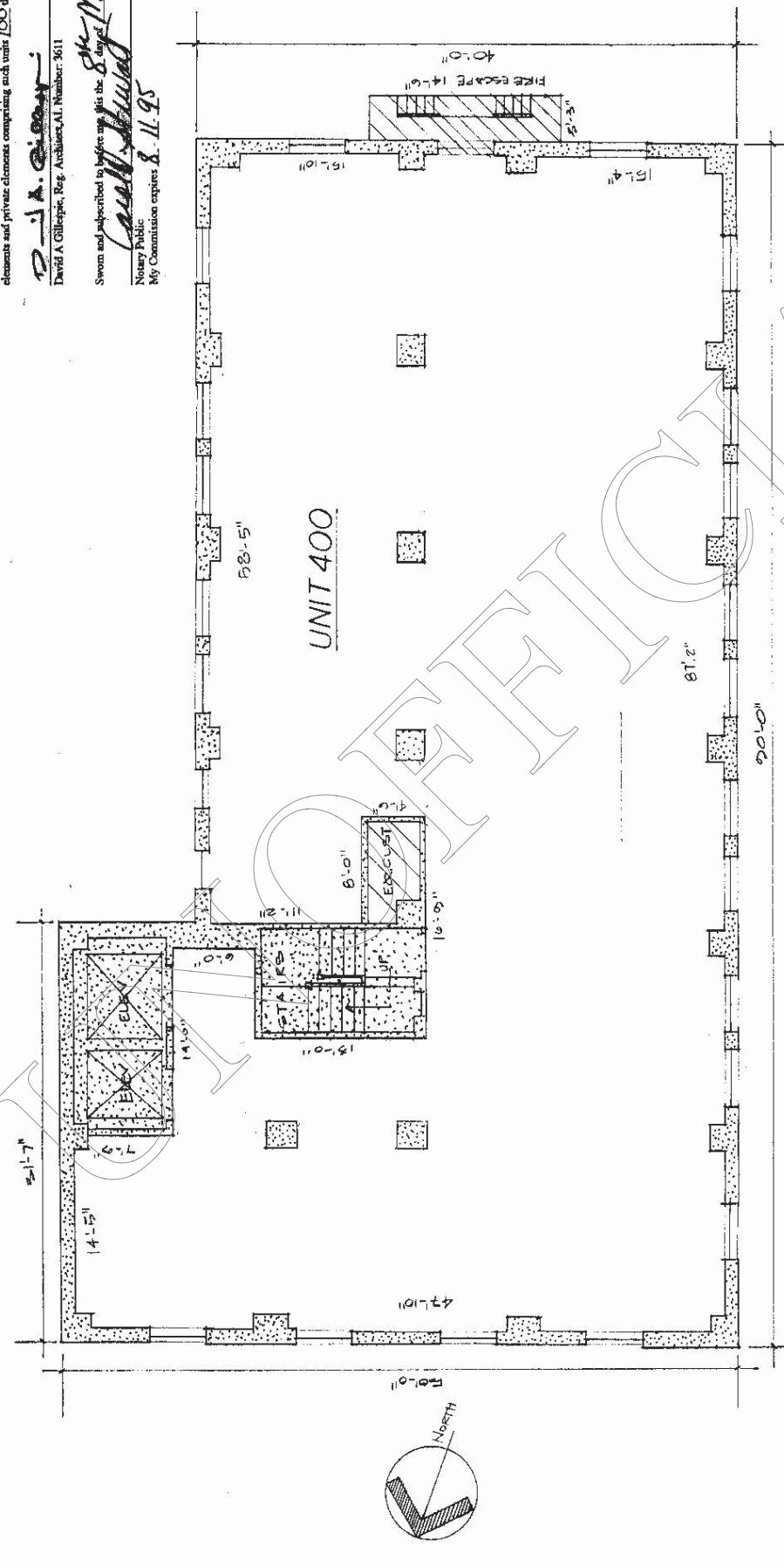




The undersigned David A. Gillette, Registered Architect, Alabama Reg. Number 3611, hereby certifies that the drawings consisting of pages 1 through 12 attached to and made a part of this certificate, fully and accurately depict the layout (except that the interior and exterior wall thickness vary, therefore, all dimensions and square footages calculations are based on average wall widths and accuracy is within 10%), location, condominium unit numbers and dimensions, insufficient detail to identify the common elements and private elements comprising each unit 100 through 1000 as built.

*D. A. Gillette*  
 David A. Gillette, Reg. Architect, AL. Number: 3611

Sworn and subscribed to before me this 8th day of March, 2011.  
*Carol J. Stull*  
 Notary Public  
 My Commission expires 8-11-15



4th FLOOR  
 SCALE: 1/8" = 1'-0"

NOTE:  
 THE COMMON AREAS INCLUDE THE SHADED AREAS SHOWN HEREON AND AS DESCRIBED IN THE DECLARATION OF CONDOMINIUM. THE REMAINDER OF THE BUILDING IS COMPOSED OF INDIVIDUAL UNITS AS SHOWN HEREON.  
 ■■■■■ DENOTES COMMON AREA  
 □□□□□ DENOTES LIMITED COMMON ELEMENTS

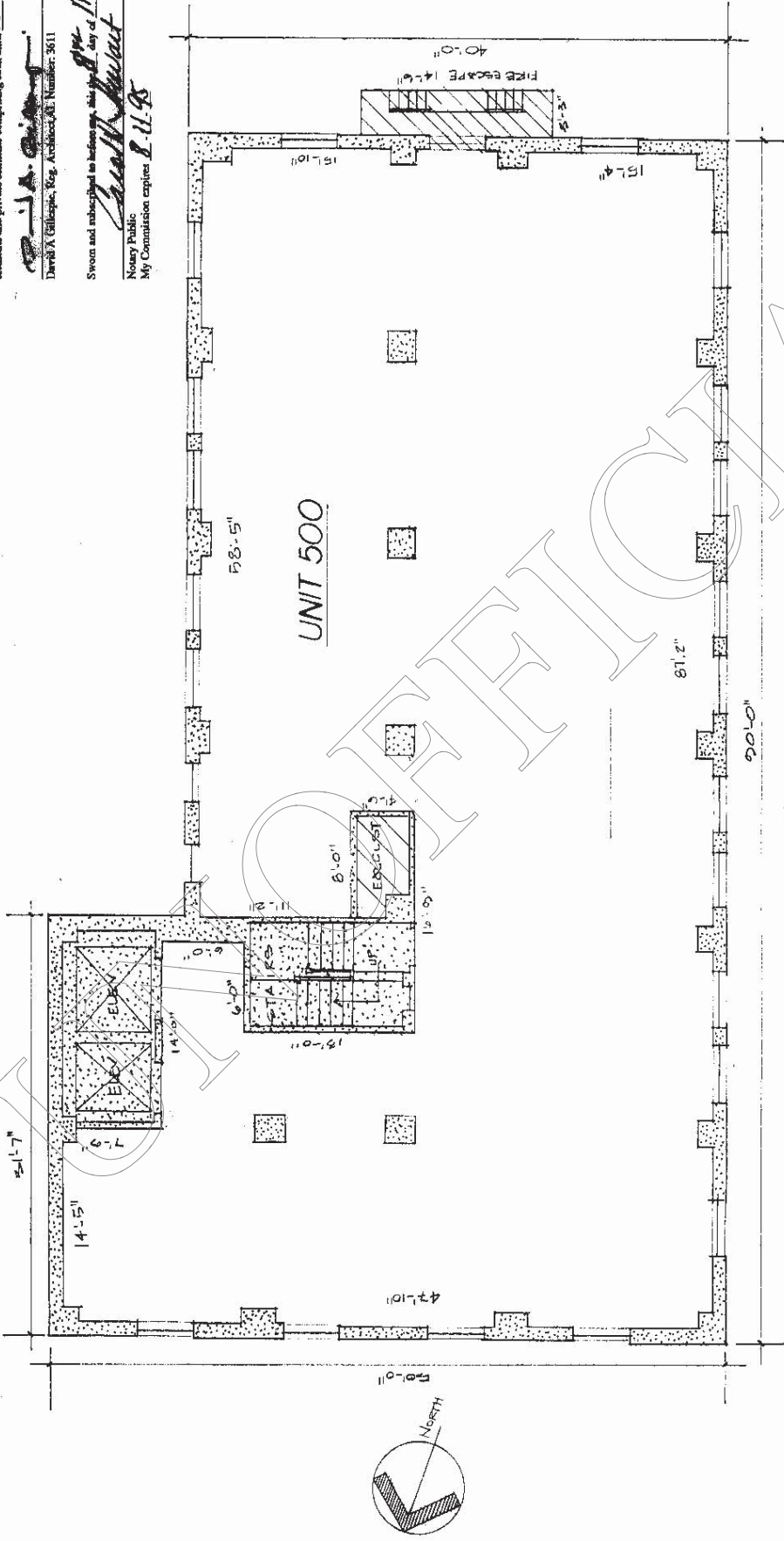
THE TRANSPORTATION BUILDING  
 a condominium  
 PREPARED BY:  
 David A. Gillette, ALA  
 AL Architectural Registration: 3611  
 2829 2nd Avenue South, 310-B  
 Birmingham, AL 35233

The undersigned David A. Gillespie, Registered Architect, Alabama Reg. Number 3611, hereby certifies that the drawings containing of pages, including the sheets attached hereto, are the original drawings of this project, and that the same are true and correct, except that the interior and exterior wall thicknesses may vary therefrom. All dimensions and square footages calculations are based on average wall widths and accuracy is within 1/8". Location, condominium unit numbers and dimensions, in sufficient detail to identify the common elements and private elements comprising such units, from 100 through 1000 as built.

*D.A. Gillespie*  
 David A. Gillespie, Reg. Architect, A.L. Number: 3611

Sworn and subscribed to before me this 1st day of March 1995.

*Shirley H. Stewart*  
 Notary Public  
 My Commission expires 8-11-95



5th FLOOR  
 SCALE 1/8" = 1'-0"

NOTE:  
 THE COMMON AREAS INCLUDE THE SHADED AREAS SHOWN HEREON AND AS DESCRIBED IN THE DECLARATION OF CONDOMINIUM. THE REMAINDER OF THE BUILDING IS COMPOSED OF INDIVIDUAL UNITS AS SHOWN HEREON.

██████████ DENOTES COMMON AREA  
 ▤▤▤▤▤▤▤ DENOTES LIMITED COMMON ELEMENTS

THE TRANSPORTATION BUILDING  
 a condominium

PREPARED BY:  
 David A. Gillespie, AIA  
 A.I. Architectural Registration: 3611  
 2859 2nd Avenue South, 310-B  
 Birmingham, AL 35233

Sheet 6 of 12





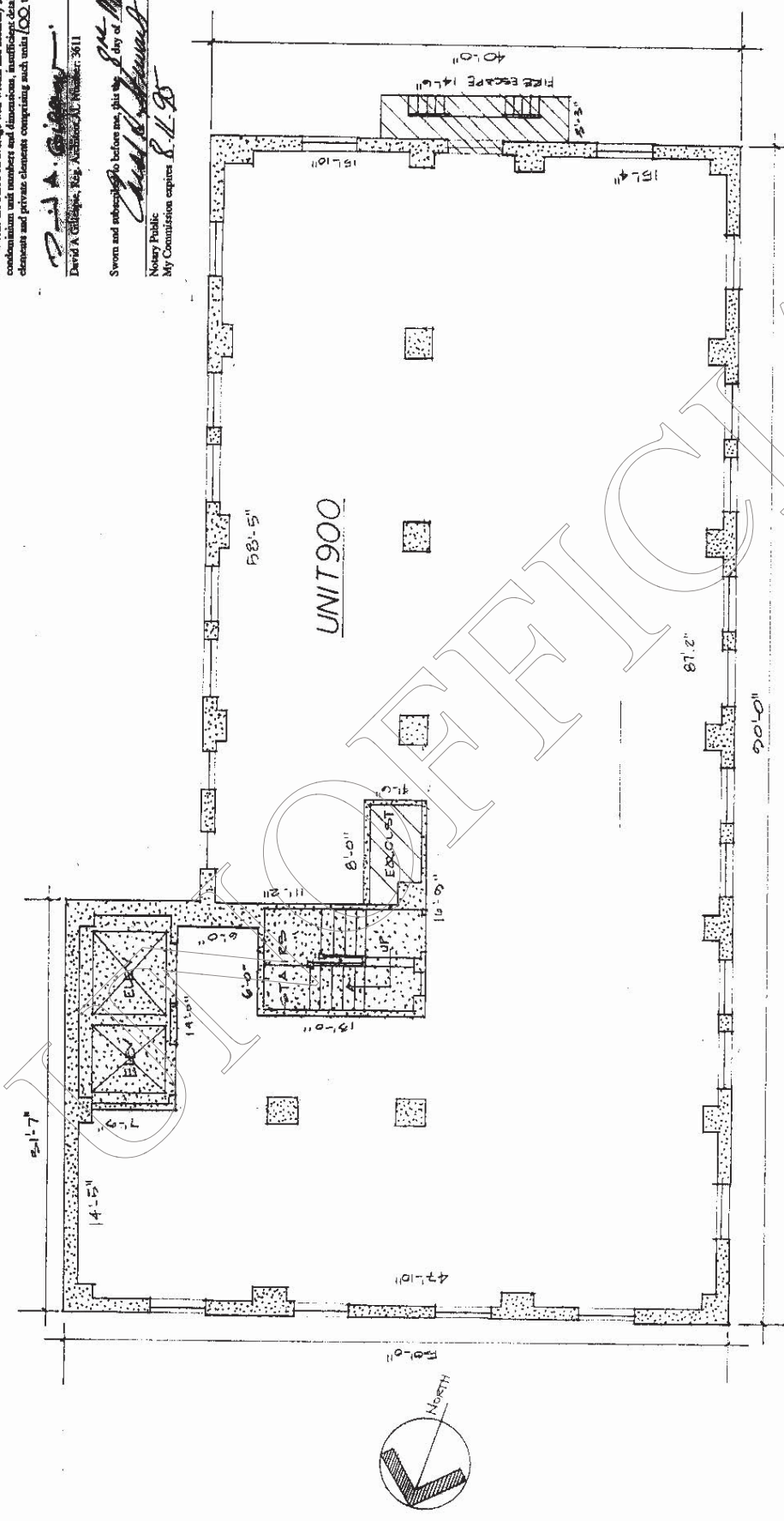


The undersigned David A. Gillespie, Registered Architect, Alabama Reg. Number 3611, hereby certifies that the drawings consisting of pages 1 through 12, attached to and made part of this document, fully and accurately depict the layout (except that the interior and exterior elevations, all dimensions, and square footage calculations are based on average wall thicknesses) of the units and common elements and private elements comprising such units 900 through 909 as built.

*David A. Gillespie*  
 David A. Gillespie, Reg. Architect, A.L. Number: 3611

Sworn and subscribed to before me, this 15th day of May, 1995.

*Carol K. Stewart*  
 Notary Public  
 My Commission expires 8-1-98



9<sup>th</sup> FLOOR  
 SCALE: 3/8" = 1'-0"

NOTE:  
 THE COMMON AREAS INCLUDE THE SHADED AREAS SHOWN HEREON AND AS DESCRIBED IN THE DECLARATION OF CONDOMINIUM. THE REMAINDER OF THE BUILDING IS COMPOSED OF INDIVIDUAL UNITS AS SHOWN HEREON.  
 [Stippled pattern] DENOTES COMMON AREA  
 [Hatched pattern] DENOTES LIMITED COMMON ELEMENTS

THE TRANSPORTATION BUILDING  
 a condominium  
 PREPARED BY:  
 David A. Gillespie, AIA  
 AL Architectural Registration: 3611  
 2829 2nd Avenue South, 310-B  
 Birmingham, AL 35233  
 Sheet 12 of 12

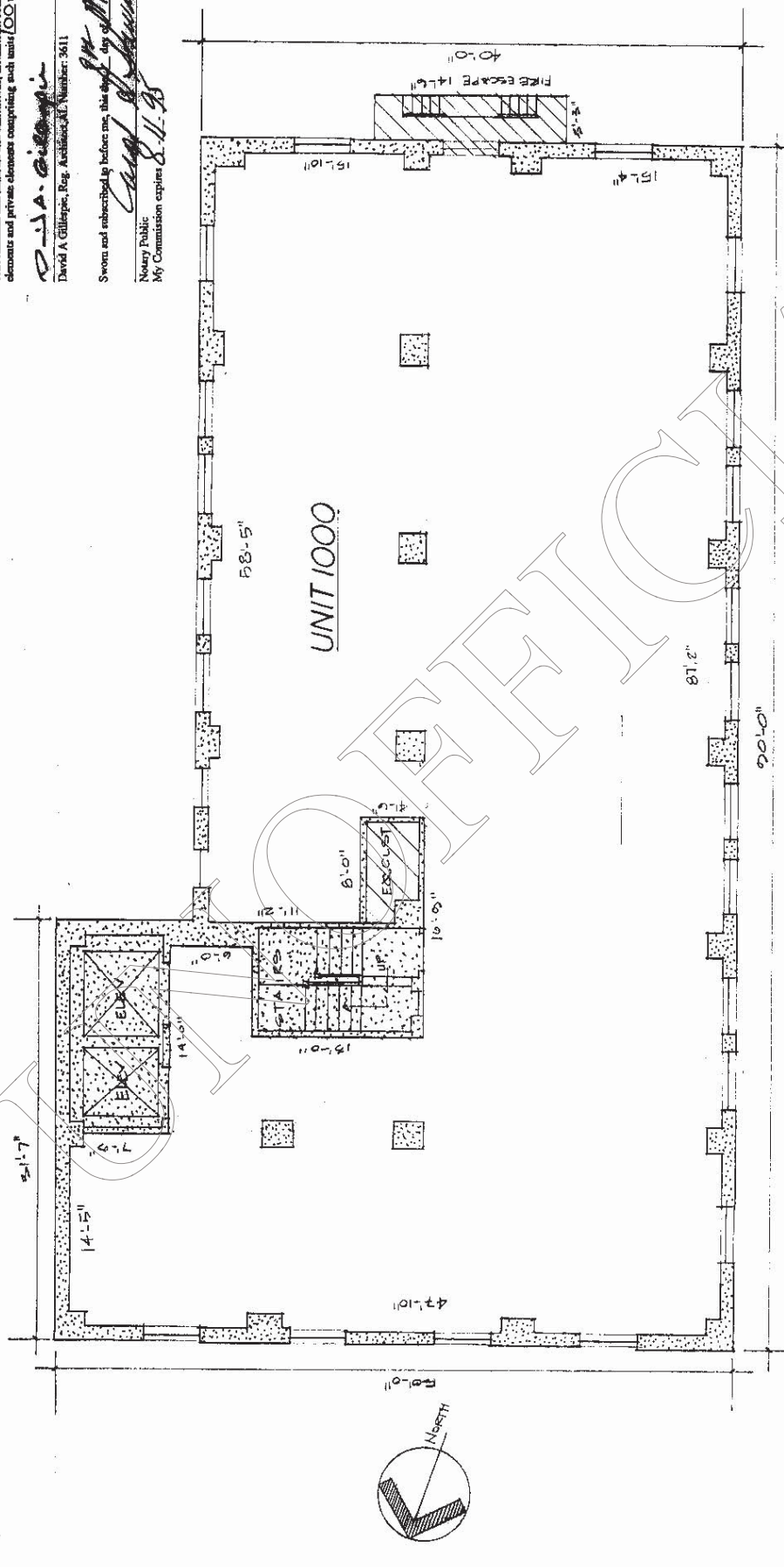


The undersigned David A. Gillespie, Registered Architect, Alabama Reg. Number 3611, hereby certifies that the drawings consisting of pages 1 through 12, attached to and identified as such, are true and accurate, fully and correctly depict the layout (except that the interior wall locations, fully and accurately, all dimensions and locations of footings, calculations are based on average wall widths and average slab thickness) of the common elements and private elements comprising such units 1000 through 1000 as built.

*D.A. Gillespie*  
 David A. Gillespie, Reg. Architect, A.L. Number: 3611

Sworn and subscribed to before me, this day of *March*, 1995.

Notary Public  
*[Signature]*  
 My Commission expires *8-1-98*



10<sup>th</sup> FLOOR  
 SCALE: 1/8" = 1'-0"

NOTE:  
 THE COMMON AREAS INCLUDE THE SHADED AREAS SHOWN HEREON AND AS DESCRIBED IN THE DECLARATION OF CONDOMINIUM. THE REMAINDER OF THE BUILDING IS COMPOSED OF INDIVIDUAL UNITS AS SHOWN HEREON.  
 [Stippled pattern] DENOTES COMMON AREA  
 [Hatched pattern] DENOTES LIMITED COMMON ELEMENTS

THE TRANSPORTATION BUILDING  
 a condominium

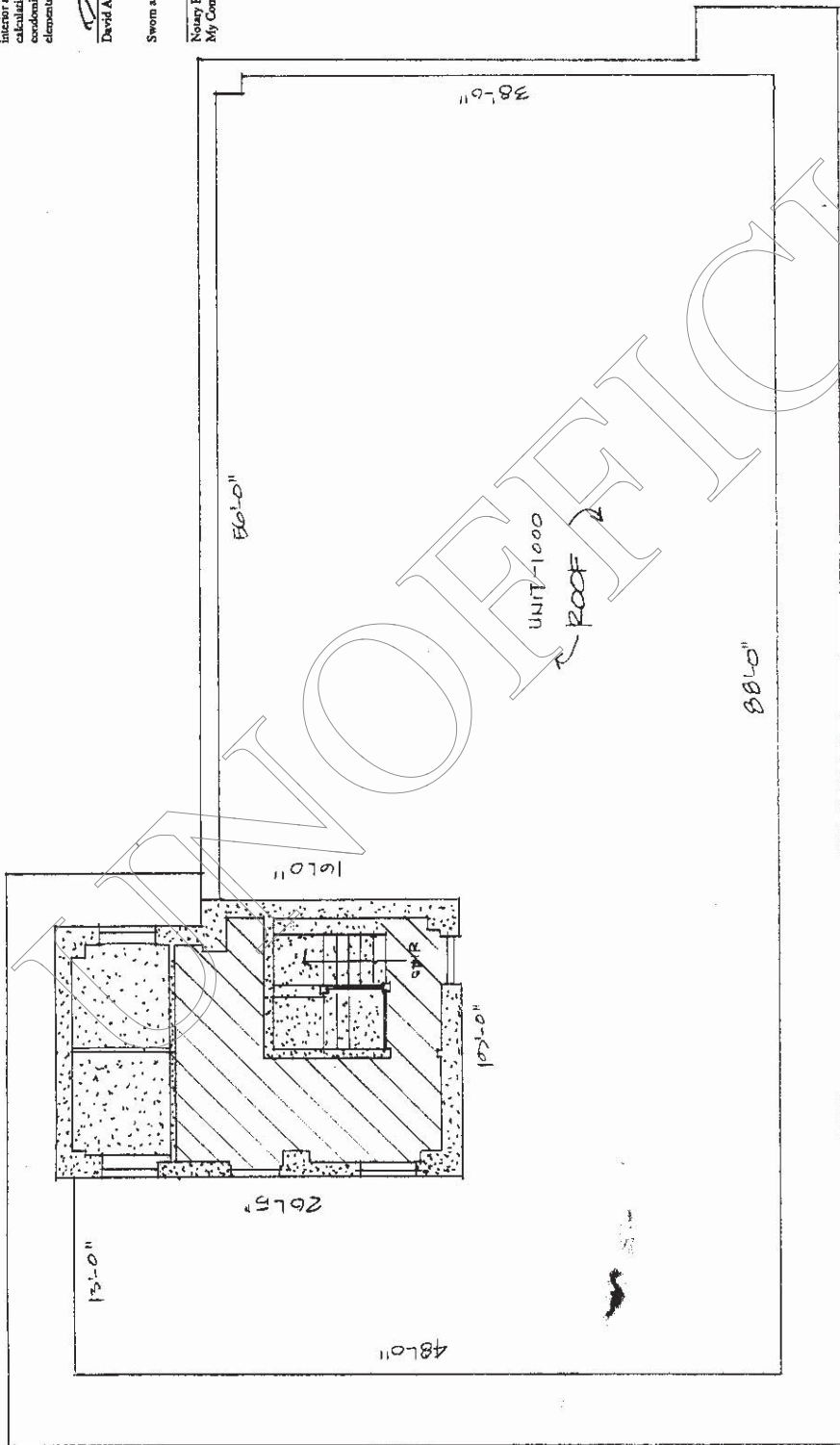
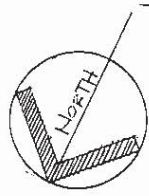
PREPARED BY:  
 David A. Gillespie, AIA  
 AL Architectural Registration: 3611  
 2829 2nd Avenue South, 310-B  
 Birmingham, AL 35233

Sheet 11 of 12

The undersigned David A. Gillespie, Registered Architect, Alabama Reg. Number 3611, hereby certifies that the drawings comprising of pages 1 through 2, attached to this contract of this certificate, fully and accurately depict the layout (except that the interior and exterior wall thickness vary, therefore, all dimensions and square footage calculations are based on average wall widths and accuracy is within 10%), location, condominium unit numbers and dimensions, insufficient detail to identify the common elements and private elements comprising such unit 1000 through 1000, as built.

*David A. Gillespie*  
 David A. Gillespie, Reg. Architect, A.L. Number: 3611

Sworn and subscribed to before me, this the 15th day of May, 1995.  
*David A. Gillespie*  
 Notary Public  
 My Commission expires 8-1-95



Unit Number	Floor	Calling	Approx Sq. Ft.	Floor	Address
Basement	608.6	617.55	3,222 +/-	Basement	Suite 100
100	618.69	631.43	3,268 +/-	1	2201 1st Avenue N., Birmingham, AL 35203
200	632.38	642.28	2,835 +/-	2	2201 1st Avenue N., Birmingham, AL 35203
300	643.32	653.22	3,214 +/-	3	2201 1st Avenue N., Birmingham, AL 35203
400	654.14	664.04	3,214 +/-	4	2201 1st Avenue N., Birmingham, AL 35203
500	664.98	674.88	3,214 +/-	5	2201 1st Avenue N., Birmingham, AL 35203
600	675.82	685.72	3,214 +/-	6	2201 1st Avenue N., Birmingham, AL 35203
700	686.65	696.55	3,214 +/-	7	2201 1st Avenue N., Birmingham, AL 35203
800	697.49	707.39	3,214 +/-	8	2201 1st Avenue N., Birmingham, AL 35203
900	708.32	718.22	3,214 +/-	9	2201 1st Avenue N., Birmingham, AL 35203
1000	719.15	729.05	3,214 +/-	10	2201 1st Avenue N., Birmingham, AL 35203
Roof	729.99		3,160 +/-	Roof	

NOTE:  
 THE COMMON AREAS INCLUDE THE SHALLOO AREAS SHOWN HEREON AND AS DESCRIBED IN THE DECLARATION OF CONDOMINIUM. THE REMAINDER OF THE BUILDING IS COMPOSED OF INDIVIDUAL UNITS AS SHOWN HEREON

----- DENOTES COMMON AREA  
 \*\*\*\*\* DENOTES UNITED COMMON ELEMENTS

THE TRANSPORTATION BUILDING  
 a condominium

PREPARED BY:  
 David A. Gillespie, AIA  
 AL Architectural Registration: 3611  
 2829 2nd Avenue South, 310-B  
 Birmingham, AL 35223

**EXHIBIT D**

**PERCENT OWNERSHIP OF COMMON ELEMENTS AND VOTES**

<u>UNIT #</u>	<u>APPROX. SQ. FEET</u>	<u>% OWNERSHIP OF COMMON ELEMENTS AND COMMON EXPENSE LIABILITY</u>	<u># VOTES</u>
100		10	3
200		10	3
300		10	3
400		10	3
500		10	3
600		10	3
700		10	3
800		10	3
900		10	3
1000		10	3

**EXHIBIT E**

**ESTIMATED OPERATING BUDGET FOR THE  
TRANSPORTATION BUILDING CONDOMINIUM**

<b>INCOME</b>	<b>MONTH</b>	<b>YEAR</b>
Maintenance Fees	\$8,658.00	\$103,440.00
Per Floor	866.00	10,344.00
<b>EXPENSES</b>	<b>MONTH</b>	<b>YEAR</b>
Maintenance Super. 1/2	\$ 800.00	\$ 9,600.00
Grounds Maintenance (9 Mos.)	200.00	1,800.00
<b>Total Maintenance Expenses</b>	1,000.00 (9 Mos.) 800.00 (3 Mos.)	11,400.00
<b>SECURITY SERVICES</b>	<b>MONTH</b>	<b>YEAR</b>
Security Cameras	\$ 16.66	\$ 200.00
Burglary System/Main. & Monitoring	Prewired Tenant Provided	
Emer. Elev. Phones	60.00	720.00
Fire System Monitor	150.00	1,800.00
Phone Access System	60.00	720.00
Fire System Inspection	208.00	2,500.00
Parking Security Access	25.00	300.00
<b>Total Security Services</b>	520.00	6,240.00
<b>REPAIRS &amp; MATERIALS</b>	<b>MONTH</b>	<b>YEAR</b>
Elevators	400.00	4,800.00
Gen. Repairs/Materials	100.00	1,200.00
General Supplies	60.00	720.00
HVAC (Maint. & Repair)	100.00	1,200.00

Plumbing	50.00	600.00
Miscellaneous		
<b>Total Repairs &amp; Materials</b>	710.00	8,520.00
<b>UTILITIES &amp; SERVICES</b>	<b>MONTH</b>	<b>YEAR</b>
Water & Sewer	1,100.00	13,200.00
Electricity	3,500.00	42,000.00
Termite Bond (Exterminator)	150.00	1,800.00
<b>Total Utilities/Services</b>	4,750.00	57,000.00
<b>PROFESSIONAL FEES</b>	<b>MONTH</b>	<b>YEAR</b>
Accounting/Audit	50.00	600.00
<b>Total Professional Fees</b>	50.00	600.00
<b>TAXES &amp; INSURANCE</b>	<b>MONTH</b>	<b>YEAR</b>
Income Taxes		1,200.00
Insurance		17,000.00
<b>Total Taxes &amp; Insurance</b>	1,516.00	18,200.00
<b>Total Operating Expenses</b>	8,496.00	101,960.00
<b>Replacement Reserve</b>	<b>MONTH</b>	<b>YEAR</b>
Roof/30yr/life		1,330.00
Exterior Painting/Common Stairs/handrails		250.00
Parking Lot Restripping (10 yr.)		60.00
Parking Lot Asphalt (10 yr.)		300.00
<b>Total Replacement Reserve</b>	162.00	1,940.00
<b>Total Expenses</b>	8,660.00	103,900.00
Per Month (Per Floor)	\$866.00	

**EXHIBIT F**

**EASEMENTS AND RESTRICTIONS OF RECORD**

A 7.5 foot easement along the northwesterly, westerly and southwesterly sides of subject property as shown by record plat.

A 5 foot easement along the northeasterly side of subject property as shown by record plat.

Right-of-way in favor of Alabama Power Company and Southern Bell Telephone and Telegraph Company in Real Volume 370, page 436.

Restrictions, conditions, limitations and easements as shown in Real Volume 931, page 281.

Right-of-way in favor of Birmingham Water Works Board in Real Volume 217, page 34.

Agreement for sanitary sewers in Real Volume 921, page 749.

UNOFFICIAL

State of Alabama - Jefferson County

I certify this instrument filed on:

2004 FEB 05 A.M. 09:14

Recorded and \$

Mtg. Tax

and \$

Deed Tax and Fee Amt.

\$ 177.00 Total \$ 177.00

MICHAEL F. BOLIN, Judge of Probate



200402/5452