

*any conflict between Declaration
& Bylaws - Declaration governs*

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DECLARATION OF CONDOMINIUM
OF
ARBOR PLACE, A CONDOMINIUM

This Declaration made this 16th day of November, 1984, by The EnMark Corporation, ("Owner") for itself, and for its successors, grantees and assigns, pursuant to the Condominium Ownership Act of Alabama, §§ 35-8-1 et seq., Code of Alabama (1975), for the purpose of creating a condominium and establishing certain easements, covenants and restrictions to run with the land.

R E C I T A L S

WHEREAS, Owner owns in fee certain real estate in Jefferson County, Alabama, which is more particularly described on Exhibit A attached hereto, and is subject to those easements, rights of way and other restrictions set forth on Exhibit A; and

WHEREAS, such real property has been improved by the construction thereon of seven (7) apartment buildings consisting of seventy-seven (77) units, which improvements are fully and accurately depicted as to location, layout, unit numbers and dimensions, identifying the Common Elements and Private Elements of each unit as built, by a site plan, building plans, floor plans and sections prepared by Don Hadden & Associates, Inc. and Charles H. McCauley Associates, Inc. bearing required certification that said site plan, building plans, floor plans and sections depict the improvements as built; and

WHEREAS, the Owner desires to submit the real estate described in Exhibit "A" and all improvements thereon to a condominium form of ownership;

NOW, THEREFORE, Owner hereby makes the following declaration, and specifies that the provisions hereof shall constitute covenants running with said real estate and shall be binding upon Owner, and its successors, grantees and assigns, and all subsequent purchasers of any portion of said real estate and improvements, and their grantees, successors, heirs, executors, administrators, devisees or assigns.

1. Condominium Form of Ownership. The purpose of this Declaration is to submit the Land described in Exhibit A hereto and all improvements constructed or to be constructed thereon, and all easements, rights and interests appurtenant thereto, to the condominium form of ownership and use in the manner provided for in the Condominium Ownership Act of Alabama.

2. Name. The name by which this Condominium shall be known is: "Arbor Place, a Condominium," or by such other name as may from time to time be designed by the Board.

3. Address. The post office address of the sales office of the Condominium is 3417-B Sandner Court, Birmingham, Alabama 35209.

4. Definitions: The capitalized terms used herein shall have the meaning stated in the Condominium Ownership Act of Alabama, and as follows:

4.1 "Act" means the Condominium Ownership Act of Alabama, §§ 35-8-1, et seq., Code of Alabama (1975), as amended;

4.2. "Architect's Plans" means those renderings prepared by Don Hadden & Associates, Inc. and Charles H. McCauley Associates, Inc. dated April, 1984 and November 14, 1984 consisting of nine (9) sheets.

4.3 "Articles" means the articles of incorporation of the Association, recorded in the Office of the Judge of Probate of Jefferson County, Alabama;

4.4 "Assessment" means a proportionate share of the funds required for the payment of the Common Expenses and Limited Common Expenses which from time to time may be levied against each Unit Owner by the Board.

4.5 "Association" means The Arbor Place Condominium Association, Inc., an Alabama not-for-profit corporation and its successors, said Association being the legal entity responsible for the administration and management of the Condominium Property;

4.6 "Board" means the Board of Directors of the Association;

4.7 "Building" means any of the buildings of the Condominium;

4.8 "Bylaws" means the duly adopted Bylaws of the Association attached hereto as Exhibit "B";

4.9 "Common Elements" means the parts of the Condominium Property set forth and defined in Section 6 of this Declaration and the Plans in which all of the Unit Owners have an undivided interest.

4.10 "Common Expenses" means the expenses arising out of the ownership of the Common Elements, including expenses incurred in the maintenance, administration, improvement and repair of the Common Elements, whether incurred or estimated by the Board, for which the Unit Owners are liable to the Association in accordance with the terms of the Condominium Documents;

4.11 "Common Surplus" means the excess of all receipts of the Association over the amount of the Common Expenses;

4.12 "Condominium" means Arbor Place, a Condominium and consists of the Condominium Property submitted to the condominium form of ownership by this Declaration;

4.13 "Condominium Documents" means the Declaration, Bylaws, Articles, and all exhibits attached thereto as the same may be amended from time to time;

4.14 "Condominium Plans" or "Plans" means the plans of the Condominium showing each Unit, and any amendments thereto, annexed hereto as Exhibit "C".

4.15 "Condominium Plat" or "Plat" means one or more plats of survey of the Condominium, and any amendments thereto, annexed hereto as Exhibit "C".

4.16 "Condominium Property" or "Property" means all property covered by the Declaration, and includes the Land and all improvements now existing or hereafter placed thereon, all easements, rights, interests and appurtenances thereto, and all personal property now or hereafter used in connection therewith;

4.17 "Declaration" means this Declaration as it may be amended from time to time;

4.18 "Land" means the real estate described in Exhibit A to this Declaration, subject to all easements, rights of way and other restrictions set forth in Exhibit A or herein reserved;

4.19 "Limited Common Elements" means the part or parts of the Condominium Property, if any, in which more than one, but not all, of the Unit Owners have an undivided interest.

4.20 "Limited Common Expenses" means the expenses arising out of the ownership of the Limited Common Elements, if any, including expenses incurred in the maintenance, administration, improvement and repair of any limited common elements, whether incurred or estimated by the Board, for which the Unit Owners are liable to the Association in accordance with terms of the Condominium Documents.

4.21 "Limited Common Surplus" means the excess of all receipts of the Association arising out of ownership of the Limited Common Elements, if any, over the amount of any Limited Common Expenses.

4.22 "Member" means a member of the Association, membership in which is confined to persons holding fee ownership in a Unit;

4.23 "Owner" means The EnMark Corporation, and its respective successors and assigns, but the term shall not include persons who purchase individual Units from The EnMark Corporation.

4.24 "Plans" means the site plan, building plans, floor plans and sections prepared by Don Hadden & Associates, Inc. and Charles H. McCauley Associates, Inc. which depict the location, layout, unit numbers and dimensions of the Units and the Common Elements, dated April, 1984 and November 14, 1984 consisting of nine (9) pages of plans bearing required certification that said plans

certification that said plans substantially depict the improvements, which plans have been filed in the Office of the Judge of Probate of Jefferson County, Alabama, at Map Book /22/ Page / et seq. A copy of the Plans is attached hereto as Exhibit C, which is hereby made a part hereof;

4.25 "Private Elements" means a part or parts of the Condominium Property intended for the exclusive ownership and possession by a Unit Owner;

4.26 "Rules and Regulations" mean the Rules and Regulations of the Association adopted in accordance with the terms of the Condominium Documents;

4.27 "Unit" means the Private Elements of the Condominium Property together with the undivided interest in the Common Elements which are assigned thereto in this Declaration and with interests, other easements and other rights appurtenant to a Unit as provided for under § 35-8-5 of the Act;

4.28 "Unit Owner" means the owner of record title to a fee interest in a Unit, and shall include Owner so long as Owner is the Unit Owner of any Unit unless otherwise herein specified.

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

5. Description of Improvements and Identification of Units.

5.1 Description of Improvements. The Owner has submitted to the Condominium for ownership seven (7) Buildings all constructed primarily of brick exterior walls, on concrete footings, all as more particularly described in the Architect's Plans and attached Condominium Plans and Plats.

5.2 Identification of Units. Each Unit is assigned a number or letter or a combination thereof which is indicated on the Plans and which is set forth on attached Exhibit "C". No Unit bears the same designation as any other Unit. The Plans set forth the number, building location, dimensions and other data necessary for the proper identification of each Unit. The Plans have been prepared in such a manner as to also permit the identification and location of the Common Elements and Private Elements appurtenant to the Units.

5.3 Dimension of Units. Each Unit shall include as Private Elements the part of each Building which lies within the boundaries set forth below: The boundaries of the Unit are described as follows:

1. Horizontal Boundaries: The upper and lower boundaries of each Unit shall be the following boundaries extended to intersection with the perimeter boundaries:

(a) The upper boundary shall be the horizontal plane of the interior surface of the ceiling of each room of the Unit.

(b) The lower boundary shall be the horizontal plane of the upper surface of the floor surface on which the Unit is constructed.

2. Perimeter Boundaries: The parametrical boundary of each Unit shall be the vertical planes of the interior walls which serve as the perimeter walls of the Unit extended to their planar intersections with the upper and lower horizontal boundaries.

5.4. Items Included in the Private Elements of a Unit. Each Unit includes: (i) all non-structural interior partition walls located within the boundaries of the Unit excepting such part as may compose part of the Common Elements; (ii) the decorated surfaces of all walls within the Unit (including load bearing walls and walls enclosing the common pipe chases), ceilings and floors, including wallpaper, paint, interior brick surface, lath, wallboard, plaster, carpeting, floor, and other finishing materials; (iii) all fixtures, appliances, mechanical, plumbing and electrical systems serving only the Unit; and (iv) water and sewage pipes serving only the Unit.

5.5. Items Excluded from the Private Elements of a Unit. A Unit shall be deemed not to include: (i) pipes, wires, conduits and public utility lines serving more than one Unit; (ii) the yard, walkways and parking areas not included within the Units; (iii) all outdoor lighting; (iv) the land described in Exhibit "A"; (v) bearing walls and structural portions of a Building running through a Unit which are utilized for or serve more than one Unit; and (vi) all easements, rights or appurtenances affecting or relating to the use of the Property unless specifically included in any Unit.

5.6. Common Elements Located Inside of Unit Boundaries. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Unit Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and Common Elements serving such other

Units and located in such Unit. The Board of Directors and its designees shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain repair or replace the Common Elements contained therein or elsewhere in the Building.

5.7 Limited Common Elements. There are no limited common elements or limited common expenses.

6. Ownership, Composition and Use of the Common Elements.

6.1. Items Included Within Common Elements. The Common Elements shall include the common areas and facilities located substantially as shown on the Plans and, in addition, those items listed hereinbelow. The common areas shall include the following unless specifically included within a Unit:

(a) The Land described in Exhibit "A"; and

(b) The foundations and floorings, exterior walls, load bearing interior walls, walls serving more than one Unit (excluding wall coverings which are included within the private elements), roofs, girders, beams, supports, stairs and stairways, entry walls, attic space, porches and landings of any Building; and

(c) The mechanical, plumbing and electrical systems providing service to more than one Unit, including all lines, pipes, ducts, flues, chutes, conduits, cables, wires and other apparatus and installations; and

(d) All maintenance, laundry and storage facilities, water storage tanks, pumps, outdoor lighting and the like; and

(e) All improvements to the Property not included in any Unit including, but not limited to, the swimming pool, pump house, patio areas, playground equipment, landscaping, trees, shrubbery, balconies and sidewalks; and

(f) Parking facilities; and

(g) All other elements of the Buildings not included in any Unit and all easements, rights or appurtenances affecting or relating to the use of the Condominium Property unless specifically included in any Unit.

6.2. Allocation of Percentage Interest.
Each Unit Owner shall have an undivided interest in the Common Elements as set forth

on Exhibit "D" attached hereto and the terms of which are incorporated herein by reference. The percentage interest shall not be separated from the Unit and shall be deemed to be conveyed or encumbered with the Unit even though such undivided interest is not expressly mentioned or described in the document of conveyance of encumbrance.

6.3. Voting Rights. The voting rights of the Owners with respect to matters arising out of the Common Elements shall be in the same proportion as their interest therein.

6.4. Common Expenses and Common Surplus. All expenses and surplus arising out of the ownership of the Common Elements identified in this Section 6 shall be a Common Expense and Common Surplus of the Association to be shared equally by all of the Members of the Association.

6.5. Use of Common Elements. The use of the Common Elements shall be limited to the Unit Owners in residence, to their tenants in residence and to their guests, invitees and licensees and shall be governed by the Condominium Documents and Rules and Regulations.

6.6. Exclusive Easement Areas. Each Unit Owner shall have an exclusive easement to use the patio or balcony appurtenant to his Unit subject to Rules and Regulations which may be promulgated by the Board from time to time and provided further that such usage may not interfere with the right of any adjoining Unit Owner to use the patio or balcony appurtenant to the adjoining Unit Owner's unit.

6.7. No Revocation, Abandonment or Partition. The Common Elements shall remain undivided and shall not be abandoned by any act or omission and no Unit Owner or any other person may bring any action for partition or division of the Common Elements unless the condominium regime is terminated pursuant to the procedures set forth herein.

6.8. Plans. The Unit Owners and the Owner recognize that the Plans attached hereto do not reflect all Common Elements since items such as load bearing walls and common pipes are not depicted and that the architectural drawings attached hereto may vary due to construction tolerances. In the event that a dispute arises concerning the issue of whether any of such items is a common element, the Board shall hire an architect to determine whether the wall or other item is a Common Element or a Private Element as defined herein and such determination shall be binding on the parties. All costs associated with hiring such Architect shall be divided equally between the Association and the Unit Owner.

7.0. Easements in Common. Owner hereby reserves for and grants to the Association for

the benefit of its Members, their guests and lessees, the following easements, rights and privileges:

(a) An easement in common with others for ingress and egress, by vehicle or on foot, in, to, upon, over and under all roads, walks and passageways located on the Common Elements.

(b) An easement for the placement and maintenance of all roadways and utilities, including sewer, gas, electricity and telephone lines, pipes, sewers and conduits, and cable lines in and through the Condominium Property, including right of access thereto, such easements being in common with and subject to the terms and conditions of all easements and rights of way which may heretofore have been granted by Owner or its predecessors in title or which may be granted by Owner or its successors in interest to companies furnishing utilities to the Condominium Property.

(c) An easement in common with the Unit Owner of each Unit served through other Units for the conduits, ducts, plumbing, wiring and other facilities and systems furnishing utility services to the Unit served, including the right of access thereto for the purpose of maintenance, repair and replacement.

8. Encroachment. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements as a result of the construction of any Building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any Building, a valid easement for the encroachment and for the maintenance of the same, so long as the Building stands, shall exist. In the event any Building, any Unit, any adjoining Unit, or any adjoining Common Element, shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements due to such construction and maintenance thereof shall exist so long as the Building shall stand.

9. Units Subject to Declaration, Bylaws and Rules and Regulations. All present and future owners, tenants and occupants of the Units shall be subject to, and shall comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into of occupancy of any Unit shall constitute an agreement that the provisions of the Condominium Documents as they may be amended from time to time, are accepted and ratified by such Unit Owner, tenant, or occupant, and all such provisions shall be deemed and taken to be 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 at length in each and every deed or conveyance or lease thereof.

10. Exclusive Ownership. Each Unit Owner shall have exclusive ownership and possession of his Unit. He shall have an undivided interest in the Common Elements in the percentages expressed in this Declaration, which percentages of undivided interest of each Unit Owner shall have a permanent character and shall not be altered without the consent of all Unit Owners expressed in an amended Declaration, duly recorded. The percentage of undivided interest in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Unit Owner may use the Common Elements, without hindering or encroaching upon the lawful rights of the other owners in accordance with this Declaration, the Articles of Incorporation, By-Laws and Rules and Regulations governing such usage.

11. Enforcement. Failure of any Unit Owner, tenant or occupant of any Unit to comply strictly with the provisions of the Condominium Documents and the Rules and Regulations shall be grounds for an action to recover any sums due, or damages, or injunctive relief, or the imposition of a fine, or any or all of them. The amount of any fine, damages, and any sums necessary to remove any unauthorized addition or alteration and to restore the property to good condition and repair shall constitute an Assessment against the Unit Owner and the Unit. Such actions may be maintained by the Association on its own behalf or on behalf of the Unit Owners aggrieved. In any case of a flagrant or repeated violation by a Unit Owner, tenant or occupant of any Unit he may be required by the Association to give sufficient surety or sureties for his future compliance with the provisions of the Condominium Documents and the Rules and Regulations. Nothing herein contained shall prevent, in a proper case, an independent action by an aggrieved Unit Owner for such relief. The failure of the Association or any Unit Owner to take any action or to exercise any remedy hereunder shall not constitute a waiver of the right to do so thereafter.

12. Changes In Plans And Amendment Of Declaration By Owner.

12.1 Amendment of Plans. Owner reserves the right to change the interior design and arrangement of all Units and to alter the boundary between the Units so long as Owner owns the Units so altered.

12.2 Amendment of Declaration By Owner.
An amendment of this Declaration reflecting an authorized alteration of Unit plans by Owner or to correct errors or misspellings in the Declaration need be signed and acknowledged only by the Owner and need not be approved by the Association, the Unit Owners, lienholders, or mortgagees of the Units unless required under Section 13.5 hereof. Authorized amendments by the Owner of this Declaration shall be effective when recorded in the public records of Jefferson County, Alabama. Prior to the closing of the sale of any individual Unit, Owner reserves the right to amend this Declaration; provided, however, that no such

amendment shall alter the percentage of ownership in the common elements of any purchaser without the consent of such purchaser.

13. Amendment of Declaration By Unit Owners and Board. This Declaration may be amended by the Unit Owners and Board in the following manner:

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

13.2 Resolution. A resolution to adopt a proposed amendment may be proposed by either the Board or by the Members of the Association, and after being proposed and approved by one of such bodies, it must then be approved by the other to become effective. Directors and Members not present at the meeting considering the amendment may express their approval or disapproval in writing, providing such approval or disapproval is delivered to the secretary of the Association at or prior to the meeting. Such approvals must be by not less than a majority of the directors, and by not less than a three quarters (3/4) majority of the votes of the Members of the Association.

13.3 Recording. A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the public records of Jefferson County, Alabama.

13.4 Agreement. In the alternative, an amendment may be made by an agreement signed and acknowledged by a majority of the directors and by all of the Members required to take such action if such members were present and voting and such signatures are acknowledged in the manner required for the execution of a deed. Such amendment shall be effective when recorded in the public records of Jefferson County, Alabama.

13.5 Proviso. Without the prior written approval of the Unit Owner and the holder of any first mortgage lien on any Unit affected, and the prior written approval of at least three quarters (3/4th) of all of the Unit Owners other than Owner no amendment of this Declaration shall be effective which shall: (a) seek to abandon or terminate the Condominium, (b) change the prorata interest or obligations of any Unit Owner with respect to the Common Elements, Common Expenses or Common Surplus, or alter the voting rights appurtenant to any Unit, (c) change the procedure for levying Assessments or allocating the distribution of hazard insurance proceeds or condemnation awards, (d) partition or subdivide any Unit, (e) seek to abandon,

partition, subdivide, encumber, sell or transfer the Common Elements, (f) seek to apply hazard insurance proceeds for losses to any of the Condominium Property for other than repair, replacement or reconstruction of such Condominium Property, or (g) prejudice the rights or priorities of any holder of any first mortgage lien on any Unit.

14. Sale Or Lease By Owner. Owner is irrevocably empowered to sell and/or lease Units to any person or persons without restriction. Owner shall have the right to transact on the Condominium Property any business necessary to consummate the sale of Units, including, but not limited to, the right to maintain models, have signs, maintain an office, and use the Common Elements and to show Units to prospective purchasers and lessees. The sales office, signs and other items used in connection with the sale or leasing of Units shall not be considered a part of the Common Elements and shall remain the property of the Owner. Except as provided in this Section, the Owner shall be subject to the same restrictions and entitled to enjoy the same privileges as any other Unit Owner with respect to the use of each Unit owned by Owner.

15. Maintenance Responsibilities of the Unit Owners and of the Association.

15.1 Unit Owner's Maintenance. Each Unit Owner shall maintain his Unit and the interior thereof in good tenantable condition and repair, and shall repair, maintain and replace if necessary all items exclusively used by the Unit Owner including, but not limited to the following:

(a) all interior doors, walls and surfaces, including any chimneys, and the entire interior of the Unit, and all fixtures and equipment in his Unit, including the refrigerator, stove, and all other appliances, drains, plumbing fixtures and connections, sinks, and plumbing appurtenant to the Unit and all electric panels, wiring, outlets, and electric fixtures providing service exclusively to the Unit and doors, windows, screening and glass, including glass between the Unit and any patio or deck adjacent to such Unit; all exterior doors and surfaces and all walls of the Unit; and

(b) the plumbing, heating, ventilation and electrical systems serving only that Unit whether located within or without the boundary of that Unit; provided, however, that air conditioning shall be maintained by the Association.

15.2 Unit Owner's Covenants. Each Unit Owner agrees as follows:

(a) To perform all maintenance, repairs and replacements which are his obligation under Section 15.1 hereof.

(b) To pay for all of his utilities, including but not limited to electricity, cable t.v. and telephone used within the Unit and all taxes levied against his Unit.

(c) Not to make, or cause to be made, any repairs to any plumbing, electrical systems, heating, ventilation located outside his Unit but required to be maintained by him under Section 15.1 hereof except by licensed plumbers or electricians.

(d) To make no alterations, additions, improvements, decoration, repair, replacement or change to the Common Elements, or to any outside or exterior portion of the Unit, specifically including, but not limited to, screening or enclosing private balconies or patios, installing garage or other exterior doors, or affixing outshutters to windows, without the prior written consent of the Board of Directors of the Association. If consent is granted, the Unit Owner shall use only a contractor approved by the Board of Directors of the Association, who shall comply with all Rules and Regulations with respect to the work which may be adopted by the Association. The Unit Owner shall be liable for all damages to another Unit and to the Common Elements 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. The Unit Owner shall have the sole and exclusive responsibility to maintain and repair any improvement, repair, alteration, addition or decoration made by the Unit Owner or by the Unit Owner's predecessor in title to the common areas in which the Unit Owner has an exclusive easement. Unit Owner expressly agrees that the Unit Owner shall maintain any screens or other enclosures placed on private balconies or patios at Unit Owners sole cost and expense.

(e) To allow the Association, its delegates, agents, or employees at all reasonable times to enter into any Unit for the purpose of maintaining, inspecting, repairing, or replacing Common Elements; or for repairing, maintaining or replacing any plumbing, heating, ventilation or airconditioning system located within such Unit area but affecting other parts of the Condominium Property; or in order to determine, in case of emergency, the circumstances threatening Units or Common Elements and to correct the same; or, to determine compliance with the provisions of the Condominium Documents. In an emergency,

the Association shall have an immediate right of entry upon any of the Condominium Property, including the Private Elements areas for repairs.

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

(g) To be responsible for all damage to any Unit or to the Common Elements caused by such Unit Owner's failure to comply with the provisions herein contained.

15.3 Association's Maintenance. The Association, as a Common Expense, shall maintain, repair and replace if necessary all portions of the Common Elements not the responsibility of a Unit Owner under the provisions of this Section 15 and all air conditioning units.

15.4 Facade. No Unit Owner shall alter the color or design of any exterior surface or add or replace anything thereon or affixed thereto, without written consent of the Association. Unit Owners shall not make any changes, decorations, or alterations of balconies or patios which would affect the exterior appearance of any portion of any Building without the express written consent of the Board.

16. Assessments.

16.1 Creation of the Lien and Personal Obligation of Assessments. All assessments shall be payable to the Association. The Unit Owner, for each Unit owned by it, shall pay and each Unit Owner, by acceptance of the deed to such Unit, covenants and agrees to pay:

(a) An annual assessment in an amount which equals a proportionate share of the Common Expenses, such share being the same as such Unit Owner's fractional share of ownership in the Common Elements;

(b) Supplemental assessments if required by the Board of Directors of the Association in accordance with the Bylaws of the Association; and

(c) Special assessments for capital improvements fixed, established, and collected from time to time as hereinafter provided.

The annual, supplemental and special assessments, together with interest thereon and costs of collection thereof, shall be charged against, and the Association shall have therefor a continuing lien upon each Unit against which such assessment is made. Such lien shall also

secure all assessments which come due thereafter until the lien is satisfied. Each Unit Owner shall be liable for his portion of each assessment coming due while he is the Unit Owner of a Unit, and his successor in title shall be jointly and severally liable with the grantor for such portion thereof as may be due and payable at the time of a conveyance or which may thereafter become due and payable although applicable to the period prior to the conveyance, but without prejudice to the rights of such successor to recover from the grantor the amounts paid by such successor therefor. If the holder of a first mortgage of record or other purchase of a Unit obtains title to such Unit as a result of foreclosure of the first lien or by means of a deed in lieu of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of annual and special assessment by the Association pertaining to such Unit or chargeable to the former Unit Owner which became due prior to the acquisition of title as a result of the foreclosure. Such unpaid share of the annual and special assessments shall be deemed to be a common expense collectible from all the remaining Unit Owners excluding such acquirer, his successors and assigns. The Association shall, immediately upon foreclosure or other arrangement in lieu of foreclosure satisfy and release its assessment lien of record.

16.2 Priority of Lien. The lien against any Unit for assessments in favor of the Association shall be prior and superior to all other liens except any lien for taxes, the lien of any mortgage of record and any other lien recorded prior to the time of recording of the claim of the Association lien. The sale or transfer of any Unit shall not affect the assessment lien; provided, however, that upon the sale or transfer of any Unit pursuant to foreclosure of a first mortgage or by means of a deed in lieu of foreclosure, the lien of such assessment shall be satisfied and released of record.

16.3 Annual Assessment for Common Expenses. The annual assessments levied by the Association shall be collected and held by the Association for the payment of the Common Expenses which shall include, but not be limited to, administrative expenses, insurance expenses, repair expenses, replacement expenses, reserve funds and maintenance expenses of the Property, in accordance with this Declaration, the Bylaws of the Association and the Act. A Unit Owner shall by acceptance of title be conclusively presumed to have agreed to pay his proportionate share of the Common Expenses accruing while he is the Unit Owner of a Unit, and no Unit Owner may exempt

himself from liability for such share of the Common Expenses by waiver of the enjoyment of the right to use any of the Common Elements or by abandonment of his Unit or otherwise. The provisions of the attached by reference as if fully set forth.

16.4 Capital and Reserve Account: There shall be required, as an item included in the Common Expenses, a contribution to a capital account to cover unforeseen contingencies or deficiencies arising from unpaid assessments or liens and to cover emergency expenditures in connection with maintenance and repair of capital improvements, if any, upon the Common Elements. The portion of the annual assessment which is allocated for such contribution shall be maintained by the Association in a separate capital account with separate records maintained therefor. Except to the extent that a portion of such capital account must be maintained for a reasonable reserve to cover future estimated costs of replacement and reconstruction of the capital improvements upon the Common Elements, any surplus remaining in said capital account at the end of any fiscal year of the Association shall be carried over to the next fiscal year and applied by the Association in preparing its estimated annual budget for that next year to reduce the amount of such capital contributions required to be assessed against the Unit Owners as an item of Common Expense for such year.

16.5 Determination of Annual Assessments and Collection and Disbursements of Proceeds. The Association shall have the responsibility for payment of the Common Expenses in connection with the administration and management of the Condominium Property according to this Declaration and the Bylaws of the Association. The Board of Directors shall annually prepare an estimated annual budget for each fiscal year of the Association and shall determine and notify the Association and each Unit Owner of the annual assessment for each Unit for such coming year. The annual assessment allocable to each Unit shall be in proportion to such Unit Owner's undivided interest in the Common Elements as set forth in this Declaration. After the date of the recordation of this Declaration, the Owner shall pay its share of the Common Expenses, including the capital account expenses, pursuant to the estimated annual budget, for each Unit owned by it. After the time the Unit Owners obtain control of the Association, the Association shall have the responsibility for determining the amount of all assessments provided for herein, the collection of such assessments from the Unit Owners, and the disbursement from the proceeds of such assessments of all the Common Expenses incurred by the Association in the administration and maintenance of the Common Elements,

including the contribution to the capital account as provided for hereinabove.

16.6 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, special assessments for the purpose of defraying, in whole or in part, the costs of any portion thereof of any construction or reconstruction, repair or replacements of a capital improvement upon the Common Elements, including the necessary fixtures and personal property related thereto, which the Association cannot pay out of the funds held in the capital account; provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the vote of the Unit Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Unit Owners including the Owner in the event it is the owner of record of a Unit not less than ten (10) days nor more than sixty (60) days in advance of the meeting, which notice shall set forth the purpose of the meeting. Each Unit Owner's share of any special assessment shall be in proportion to his fractional share of undivided interest in and to the Common Elements.

16.7 Date of Commencement of Annual Assessments and Due Dates. The annual assessments shall be established on a fiscal year basis and shall commence as to each Unit conveyed to a Unit Owner on the date of each such conveyance, with adjustment for the first assessment according to the number of days remaining in the fiscal year. That portion of each such adjusted assessment attributable to the number of days remaining in the month of conveyance and the portion of the assessment attributable to the month following the month of conveyance shall be due and payable at the time of such conveyance, and the balance of such adjusted assessment shall be paid, except as provided hereinbelow, by the Unit Owner in equal monthly installments commencing on the first day of the second month following such conveyance. Unless otherwise provided by the Board of Directors, one-twelfth (1/12) of the annual assessment for each Unit shall become due and payable on the first day of each month during the assessment period. The Association shall, upon demand by any Unit Owner or purchaser of a Unit prior to the completion of a voluntary sale or upon demand by any holder of a mortgage or other lien on any Unit at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on such Unit Owner's Unit have been paid as of a specified date within ten (10) days after request therefor. A reasonable charge may be made by the Board for the issuance of such certificate, which shall be conclusive evidence of payment of any assessment therein stated to have been paid, any such person other than the Unit Owner at

the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability for such unpaid assessments shall be limited to the amounts set forth in such certificate.

16.8 Effect of Non-Payment of Assessments Payable Directly to the Association and Remedies of the Association. Any assessment which is not paid when due shall be delinquent. If a monthly payment of an assessment for a Unit is not paid within ten (10) days after the due date, the Unit Owner of such Unit shall be in default and the Association may declare the balance of the entire annual assessment for such Unit immediately due and payable. At the discretion of the Association, a reasonable late charge penalty may be assessed for each payment which is delinquent for ten (10) days or more. The Board of Directors shall have the authority to determine the amount of such late charge. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the highest lawful rate of interest, and the Association may bring suit to recover a money judgment for the unpaid assessment against the owner personally obligated to pay the same without waiving the lien, and/or may file a lien claim against such Owner's Unit, in either of which events, interest, costs and reasonable attorney's fees shall be added to the amount of such assessment as may then be due.

Each Unit Owner, by his acceptance of a deed to a Unit from the Owner or from any subsequent Unit Owner of a unit, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of such charges as a debt and to file and foreclose a lien in a suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. The lien provided for in this Paragraph shall be in favor of the Association and shall be for the benefit of all other Unit Owners. The Association, acting on behalf of the Unit Owners, shall have the power to bid-in the Unit at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

16.9 Mechanic's Liens. Each Unit Owner shall only be liable for the cost of repairs and replacements to his Unit, to improvements, repairs, alterations or additions made in accordance with paragraph 15.2 (e), to the appurtenant exclusive easement area and for his proportionate share of the Common Expenses and for other expenses which a Unit Owner may incur pursuant to this Declaration. In the event any mechanic's or other lien is filed which, in the opinion of the Board, may constitute a lien against the Property, the Common Elements, or any Unit, the Board may cause the Association to discharge such lien,

and the Association shall thereupon assess each Unit Owner or Unit Owners in the amount of their proportionate share of the Association's expenses in discharging such lien, including any costs and attorney's fees incurred in connection therewith, such assessment to be secured by a lien on each Unit responsible for payment thereof in accordance with the Act, said lien to be enforced in accordance with the provision of the Act, Declaration, and Bylaws. No Unit Owner shall be liable for the liens of other Unit Owners except as provided for by the Act and this Declaration.

16.10 Repairs and Improvements by First Mortgagee. Any first mortgagee of a Unit shall be entitled to cause repairs to be made and routine maintenance to be performed with respect to a Unit, or the Common Elements if such repairs were not made by the Unit Owners or by the Association as herein required. Prior to making such repairs, the mortgagee must provide said Unit Owners and the Association, with thirty (30) days prior written notice of repairs or routine maintenance required to be performed. In the event such repairs shall not have been made or such routine maintenance satisfactorily performed with any such thirty (30) day period, then such mortgagee is hereby deemed authorized by such Unit Owner and any other Unit Owner affected, and by the Association, to complete such repairs or perform such maintenance, and such mortgagee shall be promptly reimbursed by the Association for the costs thereof. In the event any payments are made by the Association to the Mortgagee of a Unit in accordance with the terms of this Paragraph, the Association shall thereupon assess the Unit Owner or Unit Owners based upon the Board's determination of the proportion of such expense to be allocated to the Unit Owner or Unit Owners or to the Common Expenses, in accordance with the terms of the Act, this Declaration and the Bylaws, such assessment to be made in the form of a special assessment for the month following the month in which such payment was made.

16.11 Rental Pending Foreclosure. Upon foreclosure of a lien for assessments, the Unit Owner, subject to the lien, shall be required to pay a reasonable rental for the Unit from the date on which the payment of any assessment or installment thereon became delinquent, and the Association shall be entitled to the appointment of a receiver for such Unit. The rental required to be paid shall be equal to the rental then charged on comparable types of rental dwelling units in the City of Birmingham, Alabama, and the surrounding area within a five (5) mile radius of the Condominium. The right of the Association to collect said rental payments is assignable.

17. THE ASSOCIATION

The operation and administration of the Condominium shall be performed by an association, pursuant to the provisions of the Act, which shall be incorporated as a not-for-profit corporation, and shall be organized and shall fulfill its functions pursuant to the following provisions:

17.1 Name: The name of the Association shall be: The Hermitage Association, Inc., an Alabama not-for-profit corporation (hereinafter referred to as the "Association").

17.2 Powers: The powers and duties of the Association shall include those set forth in the Code of Alabama, this Declaration and the Bylaws of the Association, and it shall have the power to purchase one or more Units of the Condominium.

17.3 Members: The members of the Association shall consist of all the record Unit Owners of Units. Change of membership in the Association shall be established by recording in the public records of Jefferson County, Alabama, of a deed or other instrument establishing a record title to a Unit of the Condominium, and the delivery to the Association of a certified copy of such instrument, the Unit Owner designated by such instrument, thereby becoming a member of the Association. Membership of the unit prior owner shall be thereby terminated. The vote for a Unit shall be cast by the Unit Owner thereof, or the duly authorized proxy of the Unit Owner, or the Unit Owner's certified voting representative in the manner provided by the Bylaws. Each Unit Owner is entitled to votes for each Unit owned by him in accordance with the Unit Owner's percentage of ownership in the common elements.

17.4 Board of Directors: The affairs of the Association shall be conducted by a Board of Directors of not less than three (3) nor more than seven (7) directors, who shall be designated in the manner provided by the By-Laws.

17.5 Indemnification: Every directors and every officer of the Association shall be indemnified by the Association against expenses and liabilities, in the manner provided for in the Articles of Incorporation of the Association and the By-Laws.

17.6 Fidelity Bond: The Association shall obtain fidelity bond coverage for any person or entity handling funds of the Association, including employees of professional managers, if any, retained by the Association.

17.7 Limitation of Liability: Notwithstanding the liability of the Association to maintain and repair parts of the Property, the Association shall not be liable for injury or

damage caused by a latent condition of the Property to be maintained and repaired by the Association nor for injury or damage caused by the elements or Unit Owners or other persons.

17.8 Bylaws: The Bylaws of the Association shall be in the form attached hereto as Exhibit "B".

17.9 Agent to Receive Service of Process: The following person, whose place of business is Jefferson County, Alabama, is designated as an agent to receive service of process upon the Association:

Name: Joan C. Ragsdale
Address: 2222 Arlington Avenue South
Birmingham, Alabama 35255

18. Insurance Provisions Insurance which shall be carried on the Condominium Property shall be governed by the provisions of this Section 18 and the Bylaws.

18.1 Insurance Trustee; Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering casualty losses shall be paid to the Association, as Trustee for each of the Unit Owners and their mortgagees, which said Association, for the purpose of these provisions, is herein referred to as the Insurance Trustee. The duty of the Insurance Trustee shall be to receive such proceeds as the same are paid and hold the same in trust for the purposes stated in the By-Laws and elsewhere herein for the benefit of the Unit Owners and their mortgagees, as follows:

(a) Common Elements. Proceeds on account of damage to the Common Elements shall be held as an undivided share for each Unit Owner, such share being the same as his undivided interest in the Common Elements appurtenant to his Unit.

(b) Units. Proceeds on account of Units shall be held for the Unit Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

(c) Mortgages. In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear.

18.2 Distribution of Proceeds. The proceeds of insurance for losses to any of the Condominium Property shall be applied for the repair, reconstruction and replacement of the Condominium Property in the manner provided

for in the Bylaws. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to Unit Owners and their mortgagees being payable jointly to them. No Unit Owner or other party shall have a priority over any first mortgagee in connection with the distribution of insurance proceeds. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

18.3 Association as Agent. The Association is hereby irrevocably appointed agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon the payment of claims.

18.4. Proportionate Changes In Common Expenses And Common Surplus. In the event any one or more of the Units are not rebuilt by reason of loss as a result of destruction, and therefore the number of Units is reduced, then the proportionate share of the Common Expenses and of the Common Surplus of each Unit shall be increased by adding to each remaining Unit their proportionate percentages of ownership Unit out of the percentages of ownership of the Units so reduced.

19. Condemnation. In the event of condemnation of all or a portion of the Condominium Property, the disposition of proceeds of the award shall be governed by the following provisions:

19.1 Entire Property. In the event of condemnation of the entire Condominium Property, the Association shall be entitled to receive the proceeds of the award which shall be distributed by the Association to the Unit Owners and their mortgagees, as their interests may appear, in proportion to their undivided interests in the Common Elements.

19.2 Partial Taking. In the event of condemnation of a portion of the Condominium Property, the Association shall be entitled to receive the proceeds of the award which shall be distributed in accordance with the findings of a panel of three (3) arbitrators to be selected by the Board which shall proceed in accordance with the then existing rules of the American Arbitration Association to determine the portion of the award due to be distributed to each of the several Unit Owners and their mortgagees, as their interests may appear, by virtue of the Unit Owner's interest in the portion of the award allocable to the Common Elements taken by condemnation. The portion of the award allocable to the Common Elements shall be retained by the Association which shall treat the same as insurance proceeds and proceed under Section 18 hereof to reconstruct and restore the affected portion of the Condominium Property to complete architectural units if the Board determines that such is

feasible. The panel of arbitrators shall also determine the percentage of undivided interest of the remaining Unit Owners in the Common Elements following the condemnation and each Unit Owner shall be deemed to have consented to the amendment of this Declaration in accordance with such findings and the continuation of the Condominium regime with respect to the Condominium Property remaining following condemnation. If it is determined not to be feasible to restore the Condominium Property to complete architectural units, the portion of the award allocable to the Common Elements shall be distributed to the Unit Owners and their mortgagees, as their interest may appear, in proportion to their undivided interests therein. The expense of the arbitration shall be paid by the Association, and shall constitute a common expense.

19.3 Priority. No Unit Owner or other party shall have a priority over any first mortgagee in connection with the distribution of any condemnation proceeds. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

20. Reconstruction or Repair After Casualty.

20.1 Vote. In the event of the damage or destruction of all or more than two-thirds (2/3) of the then total value of the Property (as determined by the Board of Directors), then, unless it be determined by the vote of eighty percent (80%) of all of the Members of the Association not to repair or reconstruct such damaged or destroyed property, the same shall be repaired, reconstructed or replaced. In the event of fire or other disaster or casualty resulting in damage to a Building or Buildings and common elements which the Board of Directors shall determine to be two-thirds (2/3) or less than the then total value of the Property, the net proceeds of all insurance collected shall be made available for the purpose of restoration or replacement. Any such repair, reconstruction or replacement must be substantially in accordance with the Plans and specifications for the original Building, or as the Building was last constructed, or according to plans approved by the Board, the Unit Owners and the holders of all first mortgage liens on the Units in the Building.

20.2 Responsibility. If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

20.3 Estimates of Costs. Immediately after a casualty causing damage to property

for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair so as to place the damaged property in condition as good as that before the casualty.

20.4 Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction, repair or replacement by the Association, Assessments shall be made against the Unit Owners who own the damaged property, and against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction, repair or replacement, or upon completion of reconstruction and repair or replacement, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the Unit Owners who own the damaged property, and against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such Assessments against Unit Owners shall be in proportion to the cost of reconstruction and repair of the private elements of their respective Units to which repairs are being made. Such assessments for reconstruction or repair of damage to Common Elements shall be in proportion to the Unit Owners' shares in the Common Elements.

20.5 Construction Funds. The funds for payment of costs of reconstruction, repair and replacement after casualty for which the Association is responsible, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from Assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(a) Association. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Association from collections of Assessments against the Unit Owners on account of such casualty, shall constitute a construction fund, which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(1) Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the Unit Owner shall be paid by the Insurance Trustee to the Unit Owner, or if there is a mortgagee endorsement, then to the Unit Owner and the mortgagee jointly, who may use such proceeds as they may be advised.

Damage. If the amount of the estimated (11) Association -- Lesser

costs of reconstruction and repair which is the responsibility of the Association is less than the total of the annual Assessments for recurring expense to be made during the year in which the casualty occurs, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for for the reconstruction and repair of major damage.

(iii) Association -- Major Damage. If the amount of estimated costs of reconstruction and repair which is the responsibility of the Association is more than the total of the annual assessments for recurring expense to be made during the year in which the casualty occurs, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Alabama and employed by the Association to supervise the work.

(iv) Surplus. It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund as their interests may appear.

21. Use Restrictions. The use of the Condominium Property shall be in accordance with the following provisions:

21.1 Residences. The Condominium Property shall be used solely for residential purposes.

21.2 Nuisances. No nuisances shall be allowed upon the Condominium Property nor any use or practice which is the source of unreasonable annoyance to residents or which interferes with the peaceful possession and proper use of the Condominium Property by its residents. All parts of the Condominium Property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist.

21.3 Lawful Use. No offensive or unlawful use shall be made of the Condominium Property nor any part thereof, and all valid

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

21.4 Leasing. Units may be leased by the Unit Owners; provided, however, that such lease and the rights of any tenant thereunder is hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Units, and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including eviction.

21.5 Damages. The Unit Owner, and the tenant or occupant of any Unit shall be jointly and severally liable for expenses incurred by the Association in any maintenance, repair or replacement rendered necessary by his act, negligence or carelessness or by that of any member of his family or his or their guests, employees or agents, and for all other expenses incurred by the Association in connection therewith, including attorney's fees incurred in exercising any remedy available to it hereunder.

21.6 Rules and Regulations. The Board of Directors is authorized to promulgate, amend and enforce shall have the authority to make Rules and Regulations governing the Condominium Property; provided, that such Rules and Regulations are not contrary to or inconsistent with the Act, the Declaration or Bylaws. Each Unit Owner shall abide by all of such Rules and Regulations.

21.7 Rules and Regulations Binding. All present and future Unit Owners, tenants and occupants of Units and any person who uses any part of the Condominium in any manner, are subject to, and shall comply with, the provisions of the Condominium Documents and of the Rules and Regulations as they may be adopted or amended from time to time.

21.8 Remedies. In the event of a breach of any of the covenants and use restrictions set forth herein, in the Rules and Regulations, or elsewhere in the Condominium Documents, the Association shall be entitled to any and all remedies available to it at law or in equity including those provided for in this Declaration;

22. Escrow Account. The Board shall have the right to establish and maintain in a national or state bank or savings and loan association interest bearing savings accounts for such purposes as it may see fit from time to time. With the approval of the Association any sums held by

the Board on behalf of the Association including the deposits comprising the Fund established under Section 19 hereof, may be invested and reinvested in such other accounts, securities or other investments as the Board may recommend, whether or not the same are approved trust investments under the laws of the State of Alabama or of any other state.

23. Further Assurances for First Mortgagees. Notwithstanding anything to the contrary contained in this Declaration or in the Bylaws of the Association, all terms, conditions, regulations, and requirements which are now existing, or which may be amended from time to time by the Federal National Mortgage Association pertaining to condominiums, are hereby incorporated as terms and conditions of this Master Deed and Bylaws and such shall be governing upon the Condominium, Declarant, and the Association, so long as such terms or conditions neither are inconsistent with the Laws of the State of Alabama nor deprive any Unit Owner of vested property rights secured by the laws of the State of Alabama. Specifically, without limitation upon the foregoing, and in addition to all other rights as may be provided herein or in the Condominium Act, the following provisions shall be complied with regarding the Condominium:

23.1 Foreclosure.

(a) Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or deed of trust, or upon foreclosure of the mortgage or deed of trust or upon receiving a deed (or assignment) in lieu of foreclosure will be exempt from the provisions of Paragraph 17 relating to the rights of the Association upon transfer of a Unit. Specifically, and without limitation upon the above provisions of this Subparagraph (a), the Declaration, the attached Bylaws, or any other of the Condominium's constituent documents shall not impair the rights of a first mortgagee to:

- (1) Foreclose or take title to a Unit pursuant to the remedies provided in the mortgage, or
- (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or
- (3) Sell or lease a Unit acquired by the mortgagee.

23.2 Books and Records. First mortgagees shall have the right to examine the books, records and financial statements of the Association, as well as the Bylaws and other rules concerning the Condominium at reasonable times and upon reasonable notice.

23.3 Financial Statements. First mortgagees shall have the right, upon written request, to receive a financial statement from the Association for the immediately preceding fiscal year.

23.4 Reserve Fund. Condominium assessments shall include an adequate reserve fund for maintenance, repair and replacement of those Common Elements that must be replaced on a periodic basis and shall be payable in regular installments rather than by special assessments.

23.5 Award Proceeds. No interpretation shall be given to this Declaration or any of the other Condominium constituent documents which would give a Unit Owner, or any other party, priority over any rights of first mortgagees of Units pursuant to their mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

23.6 Management Contracts. Any agreement for professional management of the Condominium, or any other contract providing for service by the Declarant may not have a term greater than three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

23.7 Notice of Impaired Value. The Association, upon receiving notification of the existence of a first mortgage on any particular Unit, shall provide notice in writing to such mortgagee, or to such other entity as such mortgagee may direct, of any loss to, or taking of, the Common Elements of the Condominium if such loss or taking exceeds One Thousand Dollars (\$1,000.00).

23.8 Insurance Lapse. First mortgagees shall have the right, upon written request, to receive notice from the Association of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

23.9 Notice of Action. First mortgagees shall also have the right, upon written request, to receive written notice from the Association of any proposed action which requires the consent of a specified percentage of mortgage holders.

23.10 Information. The Association shall make available to Unit Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the declaration, bylaws, other rules concerning the project, and the books, records and financial statements of the Association.

24. Notice of Lien or Suit.

24.1 Notice of Lien. A Unit Owner shall give notice to the Association of every lien upon his Unit, including taxes and special assessments, within five (5) days after the Unit Owner's receipt of notice thereof.

24.2 Notice of Suit. A Unit Owner shall give notice to the Association of every suit or other proceeding which may affect the title to his Unit, such notice to be given within five (5) days after the Unit Owner receives knowledge thereof. The Association shall within ten (10) days of receipt of such notice, forward a copy to the first mortgagee of the Unit affected.

24.3 Failure To Comply. Failure to comply with any subsection concerning liens will not affect the validity of any judicial sale.

25. Covenant Against Partition or Subdivision. There shall be no judicial or other partition or subdivision of the Condominium Property or any part thereof, nor shall Unit Owners or any person acquiring any interest in the

Condominium Property for any part thereof seek any such partition or subdivision unless the Condominium Property has been removed from the provisions of the Act.

26. Notices.

26.1 Unit Owners. Whenever notices are required to be sent hereunder to Unit Owners, such notices shall be sent first class mail addressed to such Unit Owner's Unit address, unless the Unit Owner has, by written notice duly receipted for, specified a different address. Proof of such mailing or personal delivery by the Association may be given by the affidavit of the person mailing or personally delivering said notices.

26.2 Association. Notices to the Association shall be delivered by mail to the Secretary of the Association at the registered office of the Association or at the Secretary's Unit or, in the event of the Secretary's absence, then to the President of the Association at his Unit, and, in his absence, any member of the Board of Directors of the Association.

26.3 Owner. Notices to the Owner shall be delivered by registered or certified mail at:

The EnMark Corporation
P. O. Box 11368
Columbia, South Carolina 29211
Attn: George W. Flynt, Jr.

27.4 Effective Date. All notices shall be deemed and considered to have been given when delivered, or when deposited in the United States mail, postage prepaid, and addressed as aforesaid. Any party may change his or its mailing address by written notice duly receipted for. Notices required to be given the personal representatives of a deceased Owner or devisee, when there is no personal representative, may be delivered either personally or by mail, to such party at his or its address appearing in the records of the Court wherein the estate of such deceased Owner is being administered.

28. Termination. The Condominium may be terminated in the following manner:

28.1 Agreement. The termination of the Condominium may be effected by unanimous agreement of the Unit Owners and the holders of all liens of record affecting any of the Condominium Property which agreement shall be evidenced by written instrument executed in the manner required for conveyance of land. The termination shall be effective when such instrument is recorded in the public records of Jefferson County, Alabama.

28.2 Assessments. Any unpaid sums due the Association shall survive any termination of the Condominium and shall continue to be an obligation of the Association and the Unit Owners or either of them and shall continue to be a lien against the Condominium Unit, or the undivided interest of the Unit Owners in the Condominium Property, until paid.

28.3 Shares. After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares. Each Unit Owner's share with respect to the previous Common and Limited Common Elements shall be the same as the percentage of Common and Limited Common Elements appurtenant to his Condominium Unit prior to the termination. Each Unit Owner's share with respect to the previous Private Elements shall be the same as the percentage of Common Elements appurtenant to his Condominium Unit prior to termination.

29. Acceptance of Terms. The prospective purchaser of any Unit, by virtue of entering into a contract of purchase and sale with reference to a Unit to be submitted to the condominium form of ownership by this Declaration, shall be deemed to approve all of the terms and conditions, and the duties and obligations, provided for herein and in the Condominium documents. The Unit Owners, by acceptance of a deed of conveyance with respect to their Unit, and other parties, by virtue of their occupancy of a Unit, shall approve all of the terms and conditions and accept all duties and obligations provided for in the Condominium Documents. The Association evidences its approval of all terms, conditions, duties and obligations provided for herein and in the Condominium Documents by its execution of this Declaration.

30. Maintenance By Owner. The Association shall keep the Common Elements in a neat and attractive condition at all times. In the event the Association fails to so maintain the Common Elements, the Owner shall have the right, but not the obligation, to go upon the Common Elements and to cut and remove tall grass and weeds; to remove rubbish and trash; and to do any and all other things necessary or desirable to maintain the Common Elements in a neat and attractive condition, all at the sole expense of the Association. The reasonable expenses of Owner incurred pursuant hereto shall be paid by the Association to Owner upon demand and shall constitute Common Expenses.

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

32. Gender. Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, and the plural shall include the singular.

33. Interpretation. The provisions of this Declaration shall be liberally construed to effect 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.

34. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of the Condominium Documents shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, The EnMark Corporation has caused these presents to be executed on this 16th day of NOVEMBER, 1984.

ATTEST:

By: [Signature]
ITS SECRETARY

THE ENMARK CORPORATION

By: [Signature]
ITS [Signature]

STATE OF SOUTH CAROLINA)
RICHLAND COUNTY)

Before me, the undersigned Notary Public in and for said County and said State, hereby certifies that Ed R. Robinson and Robert A. Feisler, President and Secretary, respectively of The EnMark Corporation, are signed to the foregoing Declaration of Condominium, and who are known to me, acknowledged before me on that date, that, being informed of the contents of said Declaration of Condominium, they, as officers and with full authority, did execute the same voluntarily for and as an act of the said corporation on the same bears date.

Given under my hand and official seal on this the 16th day of NOVEMBER, 1984.

[Signature]
Notary Public

Ref: JCR/A238840907

JOINDER OF MORTGAGEE

NCNB National Bank of North Carolina and Citizens and Southern National Bank of South Carolina, hereinafter collectively called the "Mortgagee", owner and holder of a mortgage on the land described in the Declaration of Condominium of Arbor Place, a condominium, the Declaration being recorded on the 26th day of November, 1984, in Real Book 2608, Page 337, in the Probate Office of Jefferson County, Alabama, and the land being described in Exhibit "A" attached hereto, joins in execution of the foregoing plan of Arbor Place, a condominium, solely for the purpose of permitting said plans to be recorded and agrees that the lien of said mortgage shall thereafter be a lien upon all of the individual units of Arbor Place, a condominium, together with all appurtenances of the common elements.

NCNB NATIONAL BANK OF NORTH CAROLINA

ATTEST:

S. Vandiver Smith
Atty. in Law President

BY C. Thomas Swartz
Its Vice President

CITIZENS AND SOUTHERN NATIONAL BANK
OF SOUTH CAROLINA

ATTEST:

Paul B. Stewart
Atty. in Law

BY Robert P. Swartz
Its Vice President

STATE OF North Carolina
COUNTY OF Mecklenburg

I, the undersigned, a Notary Public in and for said County, in said State hereby certify that C. Thomas Swartz whose name as Vice President of NCNB National Bank of North Carolina, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 26th day of November, 1984.

James G. Neel
Notary Public

My Commission Expires: 3/6/87

STATE OF South Carolina)

COUNTY OF Richland)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Culver P. Chosta whose name as Vice President of Citizens and Southern National Bank of South Carolina, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 27th day of November, 1984.

Maria J. Lewis
Notary Public

My Commission Expires: September 6, 1984

EXHIBIT "A" TO
DECLARATION OF CONDOMINIUM
OF
ARBOR PLACE, A CONDOMINIUM

Parcel 1:

Begin at the northwest corner of the southwest quarter of the northeast quarter of Section 18, Township 18 South, Range 2 West, Jefferson County, Alabama, being situated within the city limits of the city of Homewood, Alabama; thence run in an easterly direction along the north line of said quarter-quarter section a distance of 673.05 feet to its intersection with the southerly right-of-way line of the U.S. Highway No. 31; thence 114° 39' to the right and run in a southwesterly direction a distance of 140 feet; thence 28° 10' to the right and run in a southwesterly direction a distance of 576 feet; thence 6° 30' 15" to the right and run in a southwesterly direction a distance of 159.41 feet to its intersection with the west line of said quarter-quarter; thence 118° 45' 30" to the right and run in a northerly direction along the west line of said quarter-quarter a distance of 557 feet to a point of beginning. Situated in Jefferson County, Alabama.

Parcel 2:

All right, title, and interest in those certain easements as set forth in Real 372, page 33, as re-recorded in Real 375, page 243, as re-recorded in Real 389, page 784, as amended by Real 467, page 953, and as further amended by Real 510, page 560, in said Probate Office.

Ed. C.

ARCHITECTS



CHARLES H. MCCAULEY
1893-1970

CHARLES H. MCCAULEY ASSOCIATES, INC.

1400 SOUTH TWENTIETH STREET

BIRMINGHAM, ALABAMA 38205

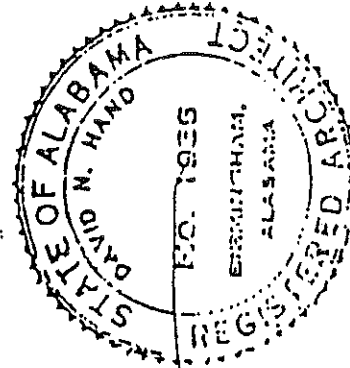
12051 933-7100

**Arbor Place
[Formerly Mayfair Colonial]**

The undersigned, David N. Hand, Architect, certifies that to the best of his knowledge the following listed Unit Plans and Unit/Location Plans depict the units, subject to construction tolerances. Unit Plans were prepared from measurements made of one unit only of each type. Other units of the same type may therefore vary from that measured. No representations are made concerning means or methods employed during the construction of the units. Common elements are described within the Declaration and where indicated on the unit location plans are so indicated to show generally their physical location within the development and are not intended to show their actual size, exact location, or physical properties.

LISTING OF PLANS

- First Floor and Basement Floor Unit Location Plan
- Second Floor Unit Location Plan
- Efficiency Unit Plan
- 1BR/1 Bath Unit Plan
- 2BR/1 Bath Unit Plan
- 2BR/2 Bath Unit Plan
- 3BR/2 Bath Unit Plan



David N. Hand

Signed:

David N. Hand, Architect

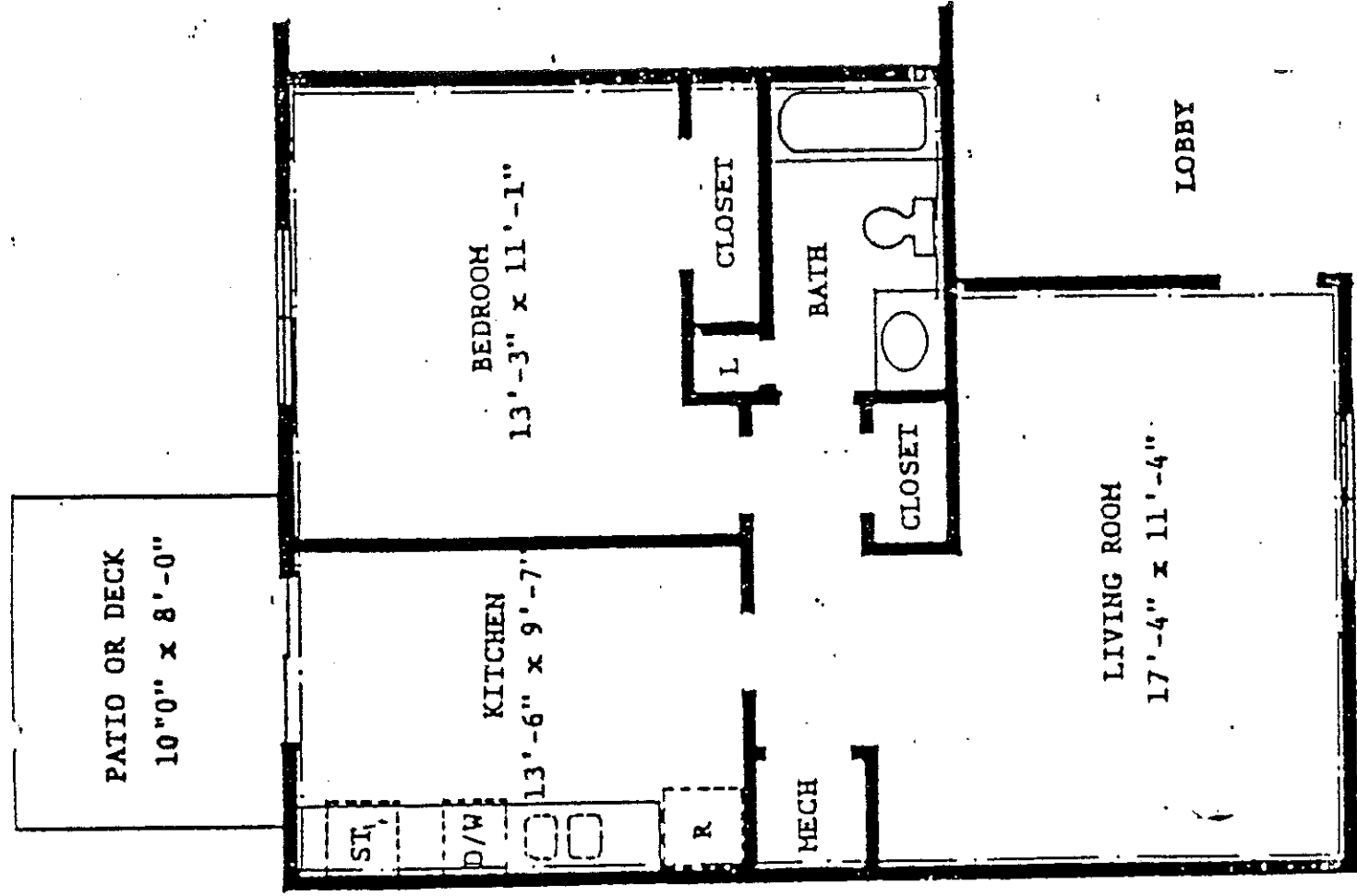
Date: Nov 14 1984

Sworn to and subscribed before me this 14th

day of November 1984

Timothy J. Pender L.S.

Notary Public
My commission expires 11-9-87



ARBOR PLACE

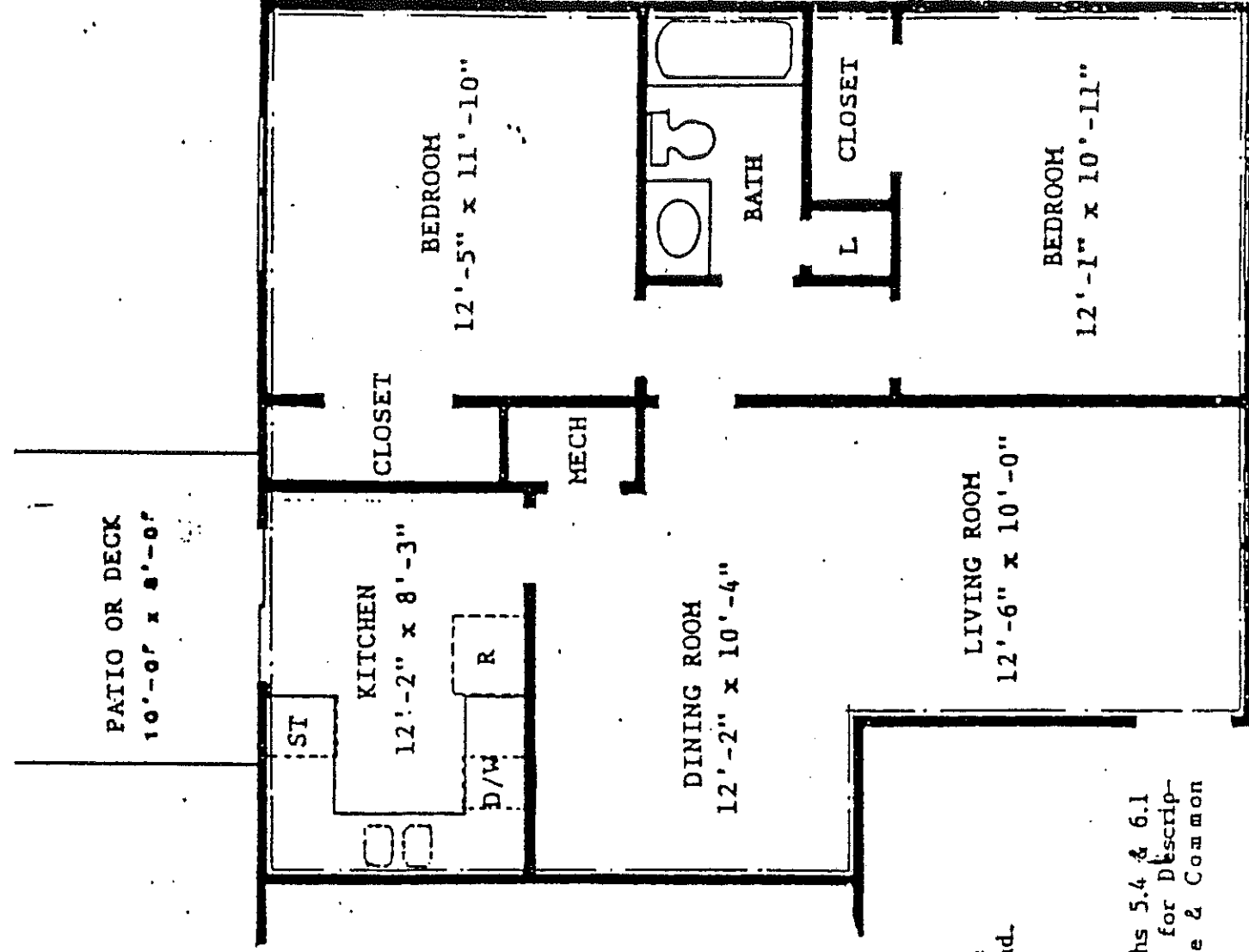
Refer to Paragraphs 5.4 & 6.1 of the Declaration for Description of The Private & Common Elements.

1BR/1 Bath Unit

Unit	Plan
3405A	3417A
3405C	3417C
3408A	3429A
3408C	3429C
	3430A
	3430C
	3441A
	3441C

Common Walls are indicated by Legend.---

DIMENSIONS MAY VARY DUE TO CONSTRUCTION TOLERANCES



Common Walls are indicated by Legend.

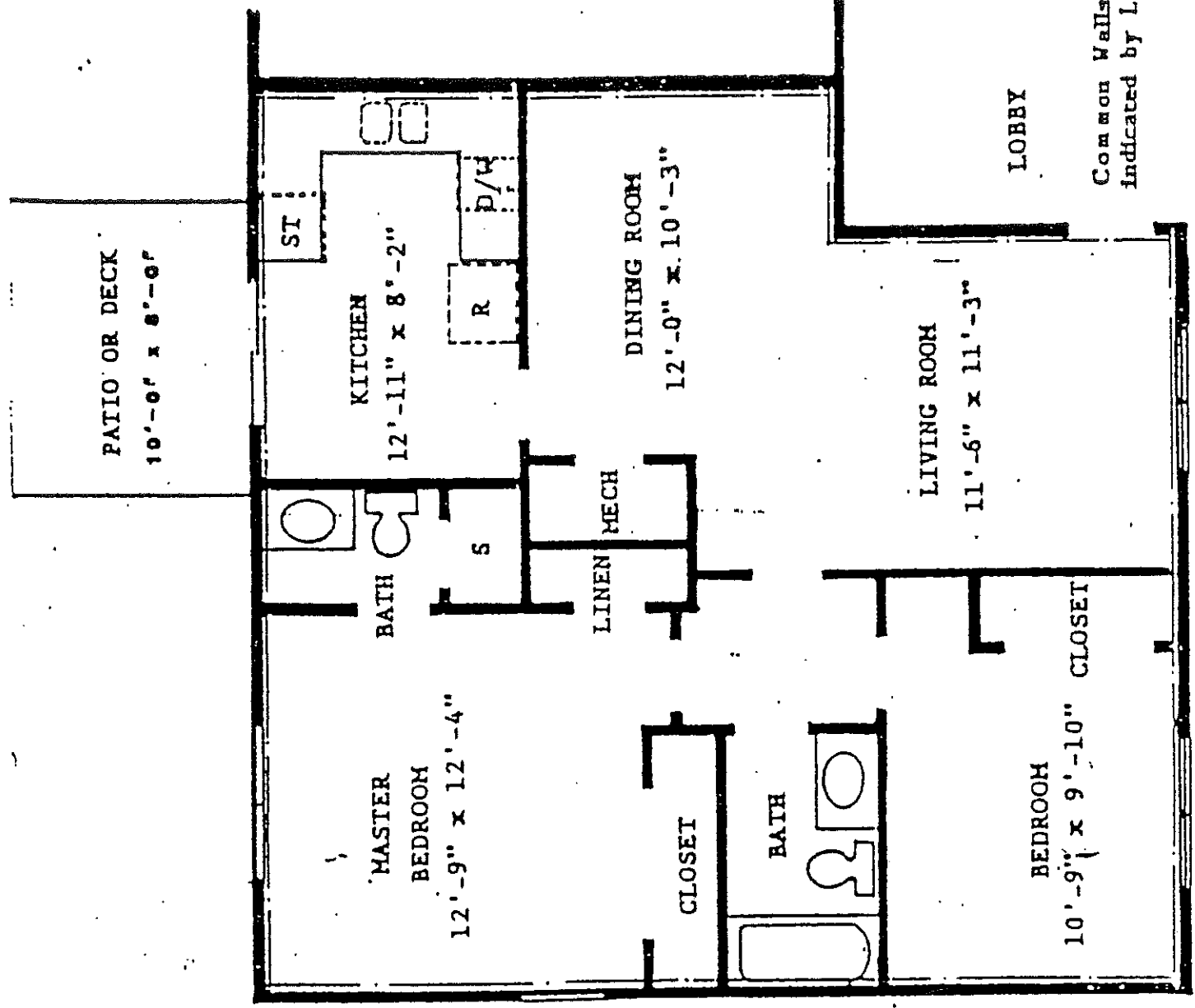
Refer to Paragraphs 5.4 & 6.1 of the Declaration for Description of The Private & Common Elements.

ARBOR PLACE

2BR/1 Bath Unit

Unit Plan	<u>Plan Reversed</u>			
3401B	3412B	3421B	3433B	3437B
3401D	3412D	3421D	3433D	3437D
3409B	3413B	3425B	3434B	3445B
3409D	3413D	3425D	3434D	3445D
	3412A	3412C	3413A	3413C
	3425A	3425C	3434A	3434C
	3437A	3437C	3449A	3449C

DIMENSIONS MAY VARY DUE TO CONSTRUCTION TOLERANCES.



Common Walls are indicated by Legend.

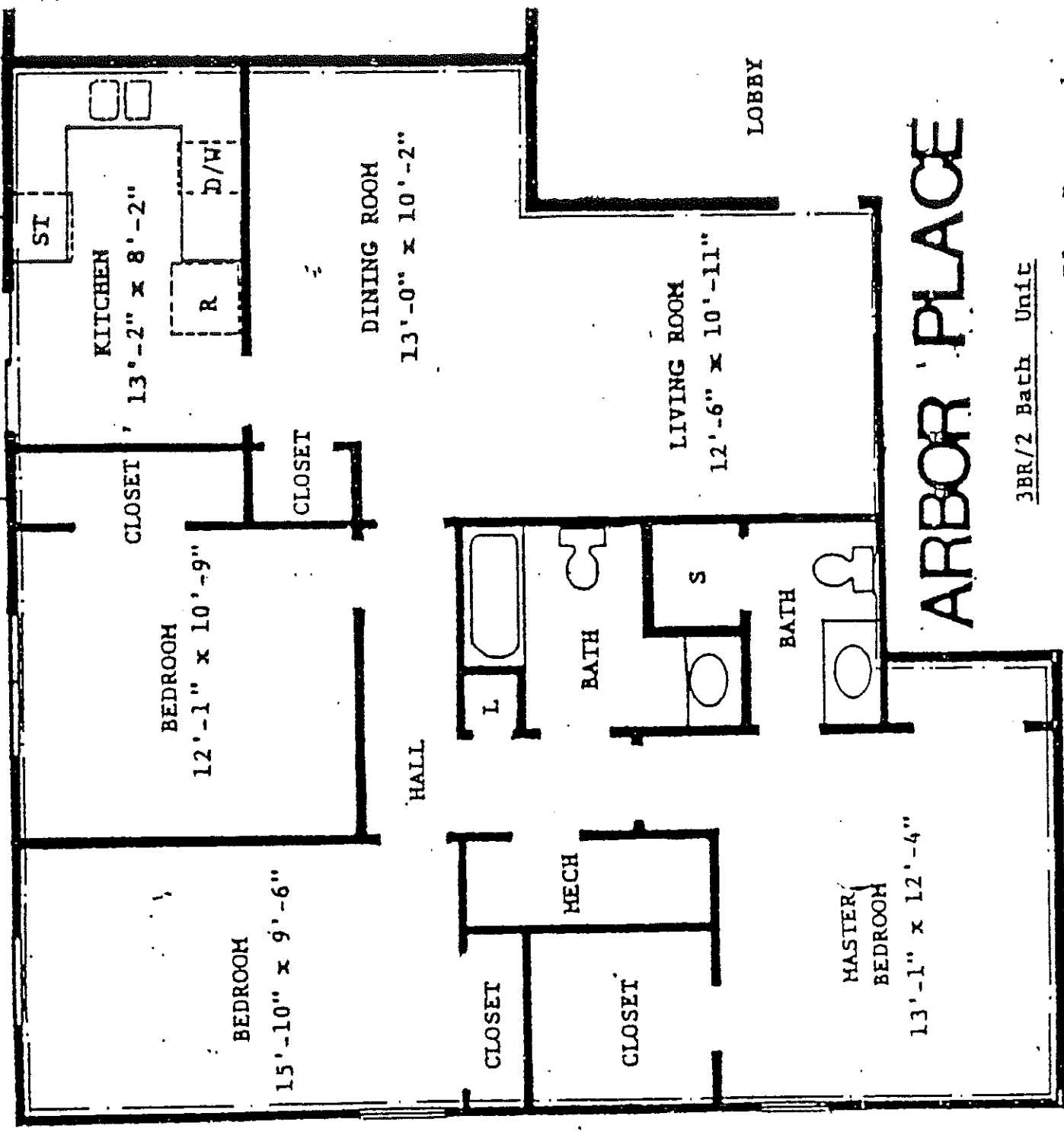
Refer to Paragraphs 5.4 & 6. of the Declaration for Description of The Private & Common Elements.

ARBOR PLACE

2BR/2 Bath Unit	
Unit Plan	Plan Reversed
3401A	3405B
3401C	3405D
3416A	3408B
3416C	3408D
	3416B
	3416D
	3430B
	3430D
	3438B
	3438D
	3449B
	3449D

DIMENSIONS MAY VARY DUE TO CONSTRUCTION TOLERANCES.

PATIO OR DECK
10'-0" x 8'-0"



Refer to Paragraphs 5.4 & 6.1
of the Declaration for Description
of The Private & Common
Elements.

Common Walls are
Indicated by Legend. ---

DIMENSIONS MAY VARY DUE TO CONSTRUCTION TOLERANCES.

3BR/2 Bath Unit		Plan Reversed	
Unit Plan	Unit	Unit Plan	Unit
3409A	3421C	3417B	3429D
3409C	3433A	3417D	3441B
3421A	3433C	3429B	3441D

ARBOR PLACE

THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO, CALIFORNIA, DO HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS SUBMITTED TO THE BOARD OF SUPERVISORS ON APRIL 11, 1967, AND THAT THE SAME IS THE PROPERTY OF THE COUNTY OF SAN DIEGO, CALIFORNIA.

DATE OF BOARD APPROVAL

I, Donald L. Hallen, a duly licensed Professional Engineer, hereby certify that the construction of this project was done in accordance with the provisions of the San Diego Building Code, and that the same is a true and correct copy of the original as submitted to the Board of Supervisors on April 11, 1967, and that the same is the property of the County of San Diego, California.

 Donald L. Hallen
 Professional Engineer



DATE OF BOARD APPROVAL

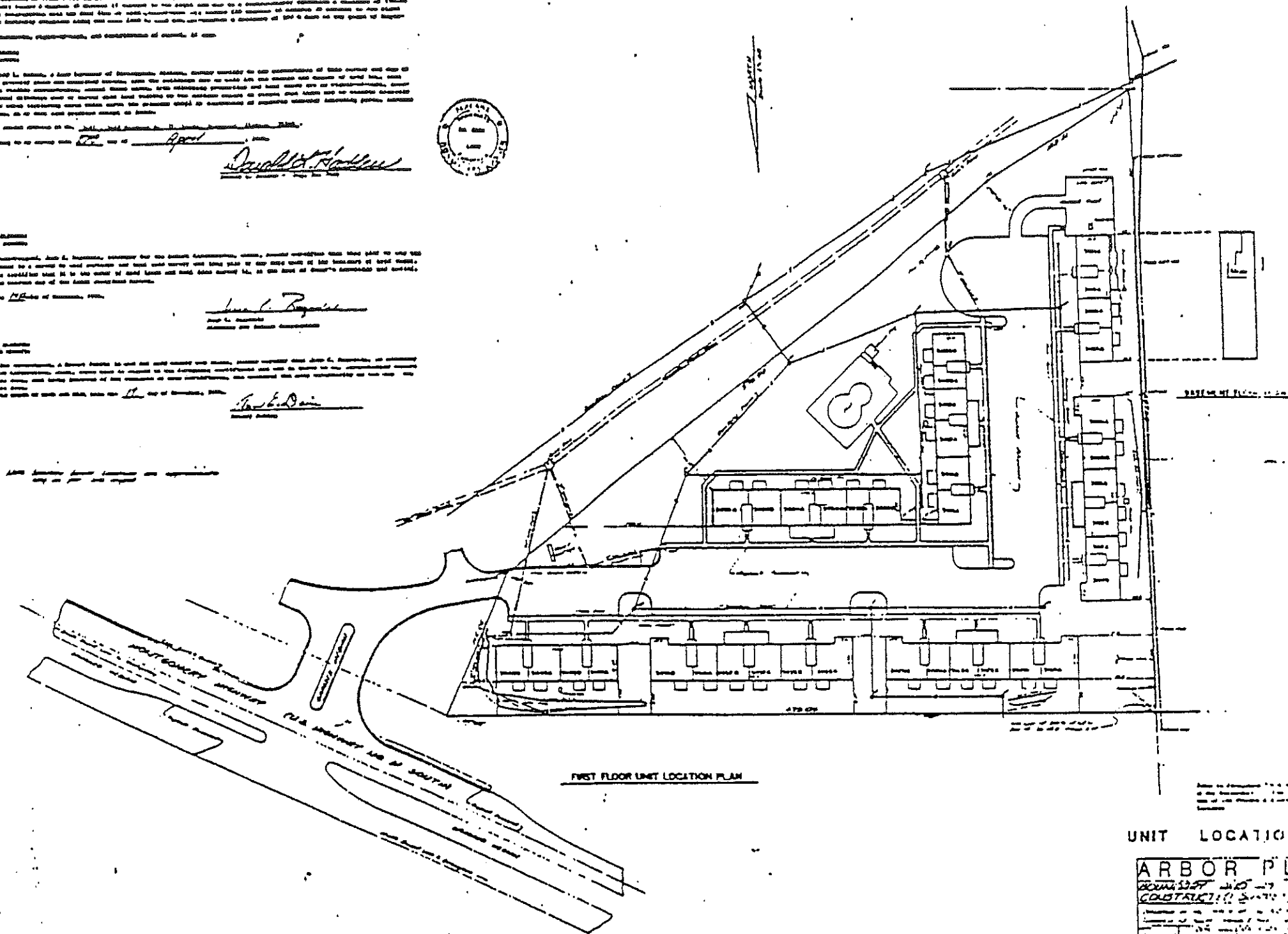
The undersigned, John C. Reynolds, hereby certify that the construction of this project was done in accordance with the provisions of the San Diego Building Code, and that the same is a true and correct copy of the original as submitted to the Board of Supervisors on April 11, 1967, and that the same is the property of the County of San Diego, California.

 John C. Reynolds
 Professional Engineer

DATE OF BOARD APPROVAL

I, Paul E. Davis, a duly licensed Professional Engineer, hereby certify that the construction of this project was done in accordance with the provisions of the San Diego Building Code, and that the same is a true and correct copy of the original as submitted to the Board of Supervisors on April 11, 1967, and that the same is the property of the County of San Diego, California.

 Paul E. Davis
 Professional Engineer



FIRST FLOOR UNIT LOCATION PLAN

UNIT LOCATION PLAN

ARBOR PLACE
 CONSTRUCTION

DATE	BY

EXHIBIT "D" TO
DECLARATION OF CONDOMINIUM
OF
ARBOR PLACE, A CONDOMINIUM

Percentage of
Interest in the
Common Element

<u>Unit #</u>	<u>Type</u>	<u>Percentage of Interest in the Common Element</u>
3401 A	2 BR - 2 Bath	1.3151
3401 B	2 BR - 1 Bath	1.2264
3401 C	2 BR - 2 Bath	1.3151
3401 D	2 BR - 1 Bath	1.2264
3401 R	Efficiency	.8856
3405 A	1 BR - 1 Bath	1.1201
3405 B	2 BR - 2 Bath	1.3151
3405 C	1 BR - 1 Bath	1.1201
3405 D	2 BR - 2 Bath	1.3151
3408 A	1 BR - 1 Bath	1.1201
3408 B	2 BR - 2 Bath - W/D	1.3447
3408 C	1 BR - 1 Bath	1.1201
3408 D	2 BR - 2 Bath	1.3151
3409 A	3 BR - 2 Bath - W/D	1.6698
3409 B	2 BR - 1 Bath - W/D	1.2264
3409 C	3 BR - 2 Bath - W/D	1.6698
3409 D	2 BR - 1 Bath	1.2264
3412 A	2 BR - 1 Bath	1.2264
3412 B	2 BR - 1 Bath	1.2264
3412 C	2 BR - 1 Bath	1.2264
3412 D	2 BR - 1 Bath	1.2264
3413 A	2 BR - 1 Bath	1.2264
3413 B	2 BR - 1 Bath	1.2264
3413 C	2 BR - 1 Bath	1.2264
3413 D	2 BR - 1 Bath	1.2264
3416 A	2 BR - 2 Bath	1.3151
3416 B	2 BR - 2 Bath	1.3151
3416 C	2 BR - 2 Bath	1.3151
3416 D	2 BR - 2 Bath	1.3151
3417 A	1 BR - 1 Bath	1.1201
3417 B	3 BR - 2 Bath - W/D	1.6698
3417 C	1 BR - 1 Bath	1.1201
3417 D	3 BR - 2 Bath - W/D	1.6698
3421 A	3 BR - 2 Bath - W/D	1.6698
3421 B	2 BR - 1 Bath	1.2264
3421 C	3 BR - 2 Bath - W/D	1.6698
3421 D	2 BR - 1 Bath	1.2264
3425 A	2 BR - 1 Bath	1.2264
3425 B	2 BR - 1 Bath	1.2264
3425 C	2 BR - 1 Bath	1.2264
3425 D	2 BR - 1 Bath	1.2264
3429 A	1 BR - 1 Bath	1.1201
3429 B	3 BR - 2 Bath - W/D	1.6698
3429 C	1 BR - 1 Bath	1.1201
3429 D	3 BR - 2 Bath - W/D	1.6698
3430 A	1 BR - 1 Bath	1.1201
3430 B	2 BR - 2 Bath	1.3151
3430 C	1 BR - 1 Bath	1.1201
3430 D	2 BR - 2 Bath	1.3151
3433 A	3 BR - 2 Bath - W/D	1.6698
3433 B	2 BR - 1 Bath	1.2264
3433 C	3 BR - 2 Bath - W/D	1.6698
3433 D	2 BR - 1 Bath	1.2264
3434 A	2 BR - 1 Bath	1.2264
3434 B	2 BR - 1 Bath	1.2264

3434 C	2	BR	-	1	Bath	1.2264
3434 D	2	BR	-	1	Bath	1.2264
3437 A	2	BR	-	1	Bath	1.2264
3437 B	2	BR	-	1	Bath	1.2264
3437 C	2	BR	-	1	Bath	1.2264
3437 D	2	BR	-	1	Bath	1.2264
3438 A	2	BR	-	2	Bath	1.3447
3438 B	2	BR	-	2	Bath	1.3151
3438 C	2	BR	-	2	Bath	1.3447
3438 D	2	BR	-	2	Bath	1.3151
3441 A	1	BR	-	1	Bath	1.1201
3441 B	3	BR	-	2	Bath	1.6698
3441 C	1	BR	-	1	Bath	1.1201
3441 D	3	BR	-	2	Bath	1.6698
3445 A	2	BR	-	2	Bath	1.3151
3445 B	2	BR	-	2	Bath	1.2264
3445 C	2	BR	-	2	Bath	1.3151
3445 D	2	BR	-	1	Bath	1.2264
3449 A	2	BR	-	1	Bath	1.2264
3449 B	2	BR	-	1	Bath	1.3151
3449 C	2	BR	-	2	Bath	1.3151
3449 D	2	BR	-	1	Bath	1.2264
77 Units						<u>1.3151</u>
						100.0000

Ref: MMQ/A063841121B

May 26 3 27 PM '84