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**FAIRWAY HILLS,  
A CONDOMINIUM**

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THE DECLARATION OF CONDOMINIUM  
OF  
FAIRWAY HILLS, A CONDOMINIUM

STATE OF ALABAMA  
NOTARY PUBLIC

'92 MAR 27 P2:23

THIS DECLARATION made this 27 day of March 19 92, by SouthTrust Bank of Huntsville, National Association, (Declarant), for itself and for its successors, grantees, and assigns, pursuant to the Alabama Uniform Condominium Act of 1991, Code of Alabama (1975), Section 35-8A-101 et seq., for the purpose of creating a condominium and establishing certain easements, covenants and restrictions to run with the land.

WHEREAS, Declarant is the fee simple owner of real property situated in Huntsville, Madison County, Alabama, described in Exhibit "A" attached hereto, hereinafter referred to as the "property".

WHEREAS, the said real property has been improved by the construction thereon of residential condominium units; and said improvements have been fully and accurately depicted as to layout, location, unit numbers and dimensions identifying the Common Elements, Limited Common Elements and Private Elements of each Unit as built.

NOW, THEREFORE, the Declarant hereby makes the following Declaration, and specifies that the provisions hereof shall constitute covenants running with the land and shall be binding upon the Declarant, its successors and assigns, and all subsequent purchasers of all or any part of the Property together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

ARTICLE I-PURPOSE

The purpose of this Declaration is to submit the Property to the condominium form of ownership and use in the manner provided by the Alabama Uniform Condominium Act of 1991, Code of Alabama (1975), Section 35-8A-101 et seq. (the "Act") and the Property as that term is defined in Section 3.12 hereof, is hereby submitted to the condominium form of ownership as provided for in the Act.

ARTICLE II - NAME

The name by which this condominium is to be identified is: Fairway Hills, a Condominium (the "Condominium").

### ARTICLE III - DEFINITIONS

The terms used herein and in the Articles of Incorporation and Bylaws shall have the meaning stated in the Act and as follows:

3.01. "Act" means the Alabama Uniform Condominium Act of 1991, Code of Alabama (1975), Section 35-8A-101 et seq.

3.02. "Articles of Incorporation" means the articles of incorporation of the Association, recorded in the Office of the Judge of Probate of Madison County, Alabama.

3.03. "Assessment" means a proportionate share of the funds required for the payment of Common Expenses, including insurance, maintenance and fees required for the administration of the Condominium, and charges and expenses of the Association, which are assessed against the Unit Owners by this Declaration and the Board of Directors of the Association as necessary from time to time.

3.04. "Association" means Fairway Hills Condominium Association, Inc., an Alabama not-for-profit corporation, and its successors.

3.05. "Board" means the Board of Directors of the Association.

3.06. "Building" means any structure erected on the Land containing one or more Units or any of the recreational or maintenance facilities, as more particularly described on Exhibit "A".

3.07. "Bylaws" means the duly adopted Bylaws of the Association.

3.08. "Common Elements" means common areas and facilities as defined in said Act and shall include all parts of the Condominium Property not included within the Unit boundaries as described in Section 5.01 hereafter, in which all of the Unit Owners have an undivided interest.

3.09. "Common Expenses" include those as defined by the Act, together with the expense for which the Unit Owners are liable to the Association, actual or estimated, pursuant to the Bylaws.

3.10. "Condominium" means Fairway Hills, a Condominium covered by this Declaration.

3.11. "Condominium Parcel" means a Unit together with the undivided share in the Common Elements and Limited Common Elements which are appurtenant to the Unit.

3.12. "Condominium Property" or "Property" means and includes all the land described in Exhibit A attached hereto and all improvements and structures thereon, and additions thereto, as are subject to this Declaration or any Amended Declaration under the provisions of Article VI hereof and all easements, rights and appurtenances thereto.

3.13. "Declaration" means the within document as it may be amended from time to time.

3.14. "Developer" means SouthTrust Bank of Huntsville, National Association, and its successors and assigns, including but not limited to Ratcliff, Inc.

3.15. "Development Rights" means any right or combination of rights reserved by a declarant in the Declaration to (i) add real estate to a condominium; (ii) to create units, common elements, or limited common elements within a condominium; (iii) to subdivide units or convert units into common elements; or (iv) to withdraw real estate from a condominium.

3.16. "Land" is the real property subject to the Declaration which is hereby submitted to the condominium form of ownership.

3.17. "Limited Common Elements" means the portions of the Condominium Property in which more than one but not all Unit Owners have an undivided interest.

3.18. "Limited Common Expense" means those expenses arising out of the ownership of Limited Common Elements for which the Unit Owners having an interest in the Limited Common Elements are liable to the Association.

3.19. "Limited Common Surplus" means the excess of all receipts of the Association arising out of ownership of the Limited Common elements over the amount of Limited Common Expenses.

3.20. "Member" means a member of the Association. Membership in the Association shall be limited to those persons who hold a fee-type ownership interest in any Unit.

3.21. "Private Elements" means that part or parts of the Condominium Property intended for exclusive ownership by a Unit Owner.

3.22. "Special Declarant Rights" means rights reserved for the benefit of a declarant (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the condominium, and models; (iv)

3.23. "Unit" means the Private Elements of the Condominium Property together with the undivided interest in the Common Elements and Limited Common Elements which are assigned thereto in the Declaration or any amendment thereto.

3.24. "Unit Garage" or "Garage" means all those portions of the Condominium Property as shown on Exhibit A attached hereto which are closed sided, roofed enclosures designed for the enclosed parking of motor vehicles and related miscellaneous storage. Each Unit Garage shall be treated as a part of the Private Elements and shall be deemed a part of the Unit bearing the same Unit Number. No Unit Garage may be sold separately from the Unit to which it forms a part.

3.25. "Unit Number" means the number assigned to a Unit on Exhibit A attached hereto.

3.26. "Unit Owner" or "Owner of a Unit" means the owner of a Condominium Parcel.

3.27. "Villa" means a Unit of one (1) or more floors singularly occupying the Land beneath it.

3.28. "Singular, plural, gender". Whenever the context so permits, 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.

#### ARTICLE IV - DESCRIPTION OF THE UNITS

4.01. SURVEY, GRAPHIC DESCRIPTION AND PLOT PLAN. A survey of the Land submitted to condominium ownership is on Exhibit "A" attached hereto. Said Exhibit contains the description for the initial phase, reflects the Buildings 4 and 7, and the unit type and number of each of the eight (8) units. Exhibit "B" attached hereto reflects additional property which at Developers option may be added to the Condominium; said property is designated "Need Not Be Built." Exhibit "B" has a legal description of the property now owned by Developer and Ratliff, Inc. and shows property owned by another party out of which a strip of fifty (50) feet more or less may at Developer's option be acquired and added to the Condominium as part of an additional phase.

The units were constructed substantially in accordance with plans and specifications prepared by the Martin Organization of Philadelphia, PA. Attached as Exhibit C-1 thru C-4 are drawings of each type of unit. C-1 being type A, C-2 type B, C-3 type C, and C-4 type D. These drawings reflect the interior design of each unit type. There may be minor variation as to the actual interior design of each unit. These drawings do not reflect

basements which are located under units 2024, 2026, 2028 and 2030. The lower boundary of these units is the unfinished floor of the basement.

4.02. UNIT BOUNDARIES. Each Unit shall include that part of the Building containing the Unit that lies within the boundaries of the Unit as follows:

(a) The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with perimetrical boundaries.

(i) Upper Boundaries: the horizontal plane of the undecorated finished ceiling of each room of the Unit.

(ii) Lower Boundaries: The horizontal plane of the undecorated finished floor of each room of the Unit. If there is a basement, then the unfinished basement floor.

(b) The perimetrical boundaries of the Unit shall be the following boundaries extended to an intersection with the upper and lower boundaries:

(i) Exterior Building Walls: the intersecting vertical planes adjacent to and which include the undecorated interior surface of the outside walls of the Unit Building bounding the Unit and fixtures thereon. No open porches, patios or decks shall be extended, enclosed or altered in any manner whatsoever by a Unit Owner, except with the prior written consent of the Board.

(ii) Limitation: The owner of a Unit shall not be deemed to own the undecorated and unfinished surfaces of the exterior perimeter walls, or the undecorated and/or unfinished surfaces of the perimeter floors and ceilings surrounding his respective Unit, nor shall the Unit Owner be deemed to own pipes, wires, conduits, air passageways and ducts or other public utility lines running through or adjacent to said Unit which are utilized for or serve more than one Unit or the common areas, which items are by these presents hereby made a part of the Common Elements. However, said Unit Owner shall be deemed to own the walls and partitions which are contained within said Owner's Unit, as herein defined, and shall also be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including paint, wallpaper, and so forth.

(c) The air conditioning system serving only an individual Unit, including all of the air conditioning system's component parts, attachments and lines shall be deemed owned by the Unit Owner, and shall not be considered part of the Common Elements.

4.03. EASEMENTS. The Declarant hereby reserves for and grants to the Unit Owners the following exclusive Easements:

(a) Unit Owner's Easements. An exclusive easement is granted to each Unit Owner to have exclusive use of the surface area of the interior portion of any exterior wall in his Unit. Said use shall include the right to paint, wallpaper, adorn or use to hang or mount objects upon said interior surface area of a wall provided such actions are not prohibited by the Declaration, Articles of Incorporation, Bylaws or Rules and Regulations. This easement shall not, however, be construed as giving the Unit Owner the right to remove, alter, remodel or in any way endanger the structural soundness of any said walls.

Nothing in this section shall be construed as limiting in any way the right of the Association from performing maintenance on, or making repairs or improvements to the said walls, provided such maintenance, repairs or improvements are authorized by the Declaration or Bylaws. Maintenance of said walls shall be as provided for in Article X hereafter.

An easement is granted to Unit Owners of all Units to have the exclusive use, right and enjoyment of the open patio, porch and deck areas immediately adjacent to each Unit Owner's respective Unit, which areas are identified as such on the plans made Exhibit "A" hereto.

(b) The Association's Easements. The Declarant reserves for and grants to the Association for the benefit of its Members, their guests and lessees; the following easements, rights and privileges:

(i) 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 Property.

(ii) An easement for the placement and maintenance of all roadways and utilities, including sewer, electricity, telephone and T.V. cable lines, pipes, sewers and conduits, in and through the Property, including the right of access thereto, such easements being in common with and subject to the terms and conditions of all easements and rights of way heretofore granted by Declarant to companies furnishing utilities to the Property.

(iii) An easement in common with the 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.

(c) Declarant's Easements. The Declarant hereby reserves for and grants unto itself, its successors or assigns, an easement through the common elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising special declarant rights.

4.04. CHANGES. The Declarant reserves the right to designate units as common elements, to change the interior design or arrangement of all Units, the exterior elevations and projections of all Units including the patio, porch and deck areas, and to alter the boundary between the Units, so long as the Declarant owns the Units so altered. Any such change shall be reflected by an amendment described in Article XXI of this Declaration. Notwithstanding the procedures for amendment described in Article XXI of this Declaration, any amendment for such purpose needs to be signed and acknowledged only by the Developer and mortgagee, if any, and needs not be approved by the Association, contract vendees, or Unit Owners, anything herein to the contrary notwithstanding.

**ARTICLE V - COMMON ELEMENTS, LIMITED COMMON ELEMENTS  
AND PRIVATE ELEMENTS**

5.01. COMMON ELEMENTS. The Common Elements of the Condominium will include the common areas and facilities located substantially as shown on the Plans. Such common areas and facilities will include the following, unless specifically included with a Unit:

- (a) The Land on which the improvements are located.
- (b) The yard, driveways, walkways, parking areas, recreational areas, and landscaping.
- (c) All maintenance facilities, outdoor lighting and the like and storage areas. Those porch, patio, deck, and step area lights that are operated by a Unit Owner for the exclusive use and convenience of said Unit Owner are Common Elements and the Association shall remain responsible for the ordinary maintenance of any said fixture(s). However, each Unit Owner shall be responsible for the cost of the electricity used in the operation these particular light fixtures.
- (d) Easements through Units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to Units and the Common Elements.
- (e) An easement of support in every portion of a Unit which contributes to the support of a Building.
- (f) Installations for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing the installation.
- (g) The property and installation in connection therewith required for the furnishing of utilities and services to more than one Unit or to the Common Elements.



(h) All open porch, patio and deck areas, provided however, that Unit Owners whose Units have direct access to an open porch, patio or deck directly from the interior of their Unit, shall have an easement for the exclusive use of such area. Any such open porch, patio and deck shall be maintained and kept in a neat and orderly manner and free of ice, snow and other accumulation by the Unit Owner entitled to such exclusive use.

(i) All easements and/or rights of access for ingress and egress across adjoining property.

(j) All other parts or portions of the Condominium Property not included in the Units.

5.02. DETERMINATION OF THE PERCENTAGES OF OWNERSHIP IN COMMON ELEMENTS, COMMON EXPENSES AND COMMON PROFITS. The Common Profits shall be distributed among, and the common expenses shall be charged to, the Unit Owners according to the percentage of the undivided interest of the Unit in the Common Elements. The percentages of interest of the respective Units in the Common Elements shall be determined from time to time upon the basis of the relationship which the Assigned Value of each Unit bears to the aggregate of the Assigned Values of all Units on such date of calculation.

The condominium community will consist of four (4) different floor plans. The types of Units, their designation and assigned Value are as follows:

<u>Model Type</u>	<u>Designation</u>	<u>Assigned Value</u>
A	2 Bedroom Villa	2.1
B	2 Bedroom Villa	2.4
C	3 Bedroom Villa	2.8
D	3 Bedroom Villa	3.0

Each Unit is designated as to type on Exhibit "A", attached hereto. The Assigned Value of each Unit shall be the basis upon which the determination of percentages of ownership in Common Elements and prorations of Common Expenses is made notwithstanding the fact that the Unit may actually contain more or less square footage than another Unit having the same Assigned Value.

5.03. ENCROACHMENTS. 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 any Unit upon any other Unit or upon any portion of the Common Elements, due to such encroachments and maintenance thereof shall exist so long as the Building shall stand.

5.04. LIMITED COMMON ELEMENTS. The Limited Common Elements shall consist of all entrance ways, exits, stairways, stairwells and landings from which there is direct access from the interior of two or more Units and shall be for the exclusive use of the Owners of such Units. Said Limited Common Elements are as reflected on the Plat of each phase as it is recorded.

5.05. PRIVATE ELEMENTS. Any deck or porch open or enclosed which serves only one unit is a Private Elements for the benefit of that unit owner only. Such improvements are also as shown on said plats.

#### **ARTICLE VI - RESERVATION OF DEVELOPMENT RIGHTS IN ACCORDANCE WITH A GENERAL PLAN OF DEVELOPMENT**

The Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional structures and improvements in future expansions of the development known as Fairway Hills, a Condominium, in accordance with a general plan of development for Fairway Hills, a Condominium, prepared prior to the sale of any Unit. Such general plan of development shall be substantially in accordance with the final development plan approved by the Planning Commission of the City of Huntsville; provided, however, the total number of Units to be built on the initial property subject to this Declaration shall not exceed 8 Units. Such general plan of development shall not bind the Declarant, its successors and assigns, to make the proposed additions.

The Declarant, its successors and assigns, shall also have the right to bring within the scheme of this Declaration contiguous properties in future expansions in the development known as Fairway Hills, a Condominium, in accordance with a general plan of development for Fairway Hills, a Condominium. Such general plan of development for contiguous properties will be substantially in accordance with the final development plan approved by the Planning Commission of the City of Huntsville prior to the sale of any Unit built on such contiguous property. Such general plan of development shall not bind the Declarant, its successors and assigns, to make the proposed additions.

The additions authorized under this Article may be made without the requirement of approval or consent by any Unit Owner, lessee or mortgagee and shall be made by the Declarant, its

contiguous property which shall extend the scheme of the covenants and restrictions of this Declaration to such structures, improvements or contiguous property. Declarant, in the exercise of the Development Rights reserved herein, shall comply with all of the provisions of the Act, including, but not limited to, the recording of new plats and plans or the recertification of plats and plans previously recorded.

The Declarant reserves to itself the right to add up to an additional 35 Units so long as the said Units are constructed within the bounds of the property reflected on the plat recorded herewith as property on which Units "Need Not Be Built" is designated. Such additional phases must be added no later than January 1, 2000. Declarant may maintain sales offices, management offices and/or models in Units as deemed necessary by it so long as the aggregate number of such shall not exceed 4 at any one time. Unsold Units which are not furnished shall not be deemed models.

#### **ARTICLE VII - UNITS SUBJECT TO DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS**

All present and future Unit Owners, tenants and occupants of the Units shall be subject to, and shall comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations, as they may be amended from time to time. The initial Bylaws of the Association are attached hereto as Exhibit "D" and are incorporated herein by reference.

#### **ARTICLE VIII - EXCLUSIVE OWNERSHIP**

Each Unit Owner shall have exclusive ownership and possession of his Unit. 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 in accordance with the purpose for which the same are intended, without hindering or encroaching upon the lawful rights of other owners, subject, however, to the provisions of Section 4.03.

#### **ARTICLE IX - ENFORCEMENT**

Failure of any Unit Owner to comply strictly with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations, shall be grounds for an action to recover sums due, or damages, or injunctive relief of any or all of them. Such actions may be maintained by the Association on its own behalf or on behalf of the Unit Owners aggrieved. In any case of flagrant or repeated violation by a

action to recover sums due, or damages, or injunctive relief of any or all of them. Such actions may be maintained by the Association on its own behalf or on behalf of the Unit Owners aggrieved. In any case of flagrant or repeated violation by a Unit Owner, he may be required by the Association to give sufficient surety or sureties for his future compliance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and Rules and Regulations. Nothing herein contained shall prevent, in a proper case, an independent action by an aggrieved Unit Owner for such relief. Furthermore, any Unit Owner shall have a right of action against the Association to recover sums due, or damages, or injunctive relief or any of them for failure of the Association to comply strictly with the provisions of the Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations.

#### ARTICLE X - MAINTENANCE

The responsibility for the maintenance of the Property shall be as follows:

10.01. UNITS AND PRIVATE ELEMENTS. Each Unit Owner shall perform promptly, and at his own risk, cost and expense, all maintenance and repair work with respect to all portions of his Unit and Private Elements, as defined in this Declaration, and which, if omitted, would adversely affect or jeopardize the safety of the Condominium Property. Each Unit Owner shall promptly report to the Association any need for maintenance or repair of portions of the Condominium Property which may be the responsibility of the Association to maintain and repair.

10.02. LIMITED COMMON ELEMENTS. The Unit Owners having an interest in Limited Common Elements shall perform promptly, and at their own risk, cost and expense, all maintenance and repair work with respect to such Limited Common Elements and which, if omitted, would adversely affect or jeopardize the safety of the Condominium Property.

10.03. COMMON ELEMENTS. The responsibility of the Association to maintain and repair, as a Common Expense of the Condominium, shall be limited to the portions of the Condominium Property designated as Common Elements in this Declaration, and all conduits, ducts, pipes, wiring or other facilities which may be contained within a Unit but which service part or parts of the Condominium Property other than or in addition to the Unit in which the facilities are contained. The Association shall repair, as a Common expense of the Condominium, all incidental damage to an individual Unit resulting from maintenance or repair work done by the Association.

10.04. ALTERATIONS AND IMPROVEMENTS.

(a) To Units or Private Elements. Neither a Unit Owner nor the Association shall make any alterations in the portion of a Unit, or Private Elements, or Building which is to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do any work which would jeopardize the safety or soundness of the Buildings, or impair any easement, without first obtaining approval of the Board of Directors of the Association.

(b) To Common Elements. There shall be no substantial alteration or improvement (other than required maintenance and repairs) of the Common Elements without prior approval in writing of sixty-six and two-thirds (66 2/3%) percent of the Unit Owners. There shall be no change in the shares and rights and obligations of a Unit Owner in the Common Elements except as provided in Article VI, hereof.

**ARTICLE XI - DECORATING**

Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating in his own Unit from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the walls, floors and ceilings, and such Unit Owner shall maintain the interior surfaces in good condition at his sole expense as may be required from time to time and each such Unit owner shall have the right to decorate such interior surfaces from time to time as he may see fit and at his sole expense. The use of and the covering of the interior surfaces of the windows, whether by draperies, shades or other items visible on the exterior of the building, shall be subject to the Rules and Regulations of the Association. Decorating of the Common Elements (other than interior surfaces within the Units as above provided), and any redecorating of Units to the extent made necessary by any damage to existing decoration of such Units caused by maintenance, repair or replacement work on the Common Elements by the Association, shall be furnished by the Association as part of the Common Expenses. The interior and exterior surfaces of all windows forming part of the perimeter wall of a Unit shall be cleaned or washed at the expense of each respective Unit Owner. The exterior surfaces of all doors forming a part of perimeter wall shall be painted and repaired as a part of the Common Expenses of the Association at such time or times as the Association shall determine. No burglar bars, screens, or storm windows or doors shall be installed without the prior written approval of the Association.

## ARTICLE XII - ASSESSMENTS

The making and collection of Assessments against Unit Owners shall be pursuant to the Bylaws and subject to the following provisions:

12.01. SHARE OF COMMON EXPENSE. Each Unit Owner shall be liable for a proportionate share of the Common Expenses, and shall share in the common surplus or profits, such share being the same as his percentage of ownership in the Common Elements.

12.02. LATE PAYMENTS. All monthly assessments shall be due and payable on or before the first (1st) of the month. Any payment after the tenth of the month shall be considered delinquent and shall be subject, at the discretion of the Board, to a Ten Dollar (\$10.00) per day late charge.

12.03. MECHANIC'S LIENS. Each Unit Owner shall only be liable for the cost of repairs and replacements to his Unit, and for his proportionate share of the Common Expenses. No Unit Owner shall be liable for the liens of other Unit Owners except as provided for by the Act and this Declaration.

12.04. LIENS FOR ASSESSMENT. The Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in the Common Elements, which lien shall secure the following Assessments now and hereafter levied or subject to be levied against each Unit Owner by the Association for advances made by the Association, together with interest thereon as herein provided, and all related costs including reasonable attorney's fees:

(a) All Assessments for Common Expenses;

(b) All Assessments for taxes and other payments which may be required to be advanced or paid by the Association in order to protect or preserve any lien; and

(c) All Assessments for payments and expenses incurred in discharging any mechanic's lien, tax lien or other lien or encumbrance filed which in the opinion of the Board, may constitute a lien against the Property, the Common Elements or any Unit.

The lien for the Assessments herein granted to the Association shall be foreclosed in the manner of a mortgage with a power of sale, and shall have priority to all of the liens, except those liens established as prior liens under the terms of the Act. The lien shall have priority to a first security interest on the subject Units recorded prior to the date on which the assessment sought to be enforced became delinquent, to the extent of the Common Expense Assessments which would have become due in the absence of acceleration during the six months immediately preceding institution of proceedings to enforce the lien. The

Association shall have the power to bid on any Unit at a foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Suit by the Association to recover a money judgment for any sums secured by a lien hereunder shall be maintainable without foreclosing or waiving the lien securing the same.

12.05. RENTAL PENDING FORECLOSURE. In any 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 Fairway Hills, a Condominium. The right of the Association to collect said rental payments is assignable.

12.06. NO EXEMPTION FOR ASSESSMENTS. No Unit Owner may exempt himself from liability for contribution toward the Common Expenses by waiver of the same or the enjoyment of any of the Common Elements or by the abandonment of his Unit.

12.07. SUBORDINATION OF LIENS. Any institutional mortgagee which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage or deed in lieu of foreclosure, shall take the property free of any claim for unpaid assessments or charges of the Association against the mortgaged Unit which accrue prior to the time such institutional mortgagee comes into possession of the Unit (except for claims for a pro rata share of any tax or special assessment as provided for in this Declaration of Condominium; and except for six months of maintenance assessments on the foreclosed Unit).

#### ARTICLE XIII - 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 provision:

13.01. NAME. The name of the Association shall be Fairway Hills Condominium Association, Inc.

13.02. POWERS. The powers and duties of the Association shall include those set forth in the Act, this Declaration and the Bylaws of the Association, and it shall have the power to purchase a Unit of the Condominium.

thereby becoming a member of the Association. Membership of the prior owner shall be thereby terminated.

(c) Voting Rights. 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. Subject to any provision of the Bylaws applicable thereto, each Unit Owner is entitled to one vote for each Unit owned by him, regardless of the percentage of Common Elements apportioned to his Unit.

13.04. BOARD OF DIRECTORS. The affairs of the Association shall be conducted by a Board of Directors who shall be designated in the manner provided by the Bylaws.

13.05. INDEMNIFICATION. Every Director 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 Bylaws.

13.06. 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 person. Neither shall the Association be liable for loss or injury to personal property occurring on or within the Common Elements.

13.07. BYLAWS. The operation of the Association shall be governed by the Bylaws of the Association, a copy of which is attached hereto as Exhibit "D" and made a part hereof by reference.

13.08. AGENT TO RECEIVE SERVICE OF PROCESS. The following person, whose place of business is in Madison County, Alabama, is designated as an agent to receive service of process upon the association:

Name: James G. Harrison  
Address: 333 Franklin Street or P. O. Box 307  
Huntsville, Alabama 35801 Huntsville, AL 35804

#### ARTICLE XIV - INSURANCE

Insurance (other than title insurance) which shall be carried upon the Property shall be governed by the provisions of Section 2.11 of the Bylaws.

14.01 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 mortgagee as their interest may appear, and shall provide that



#### ARTICLE XIV - INSURANCE

Insurance (other than title insurance) which shall be carried upon the Property shall be governed by the provisions of Section 2.11 of the Bylaws.

14.01 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 mortgagee as their interest 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 Board of Directors of the 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 are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their mortgagees, as follows:

(a) Common Elements and Facilities. Proceeds on account of damage to Common Elements and facilities -- 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 owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner.

(c) Mortgages. In the event a mortgage 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 interest may appear.

14.02. DISTRIBUTION OF PROCEEDS. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be used to defray the cost thereof as elsewhere provided. 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. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

14.03. 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.

## ARTICLE XV - CONDEMNATION

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

15.01. ENTIRE PROPERTY. In the event of condemnation of the entire 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 interest may appear, in proportion to their undivided interest in the Common Elements.

15.02. PARTIAL TAKING. In the event of condemnation of a portion of the 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 solely in the Units or portions thereof taken and the portion of the award allocable to the Common Elements taken by condemnation. The portion of the award which shall treat the same as insurance proceeds and proceed under Article XVI hereof to reconstruct and restore the affected portion of the Property to a complete architectural unit if the Board determines that such is feasible. If it is determined not to be feasible to restore the Property to a complete architectural unit, the portion of the award allocable to the Common Elements shall be distributed to the unit Owners and their mortgagees, as their interests may appear, in proportion to their undivided interest therein. The expense of the arbitration shall be paid by the Association, and shall constitute a Common Expense.

## ARTICLE XVI - RECONSTRUCTION OR REPAIR AFTER CASUALTY

In the event of the damage or destruction of all or part of the Property, then, unless it be determined by the vote of eighty (80%) percent of the Unit Owners including every owner of a Unit or assigned Limited Common Element which will not be rebuilt not to repair or reconstruct such damaged or destroyed property, the following provisions shall apply:

16.01. RECONSTRUCTION OR REPAIR. If any part of the Property shall be damaged by casualty, it shall be reconstructed or repaired.

(a) Common Elements. If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired.

(b) Building.

(i) Partial Destruction. If the damaged improvement is part of a Building or a Common Element, the damaged property shall be reconstructed, replaced or repaired.

(ii) Total Destruction. If a Building is so damaged that the same is untenable, the Building shall be reconstructed, unless the Condominium is terminated in the manner designated by the Act.

(c) Plans and Specifications. Any such reconstruction or repair must be 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.

16.02. RESPONSIBILITY. If the loss shall occur within a single Unit without damage to the Common Elements, then the Unit Owner shall be responsible for reconstruction and repair after casualty. Where a loss or damage occurs to more than one Unit, to the Common Elements, or to any Unit or Units and the Common Elements, the responsibility of reconstruction and repair after casualty shall be that of the Association.

16.03. 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 estimates of the cost to rebuild or repair so as to place the damaged property in condition as good as that before the casualty.

16.04. ASSESSMENTS. If the proceeds of insurance and reserves are not sufficient to defray the estimated costs of reconstruction and repair by the Association, Assessments shall be made against all Unit Owners in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the Unit owners in sufficient amount to provide funds for the payment of such costs. Such Assessments for reconstruction or repair of damage to Common Elements shall be in proportion to the Unit Owner's share in the Common Elements.

16.05. CONSTRUCTION FUNDS. The funds for payment of costs of reconstruction and repair 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) 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 shall use such funds for the restoration of his Unit.

(b) Association. Where it shall be obligatory upon the Association to repair or reconstruct the damage caused by said loss, then the construction fund shall be disbursed in payment of such costs upon the order of the Association.

(c) 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, then such balance may be retained as a reserve, or wholly or partly distributed, at the discretion of the Board of Directors.

#### ARTICLE XVII - USE RESTRICTION

The use of the Property of the Condominium shall be in accordance with the following provisions:

17.01. RESIDENCES. The Property shall be used solely for residential purposes.

17.02. NUISANCES. No nuisances shall be allowed upon the Property nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents. All part of the 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.

17.03. LAWFUL USE. No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof; and all valid laws, zoning ordinances, and regulations of all governmental bodies which require maintenance, modification or repair of the Property shall be the same as the responsibility for the maintenance and repair of the property concerned.

17.04. LEASING. Units may be leased or rented for such terms as the Unit Owner thereof may deem appropriate, provided, however, no Unit may be leased or rented for less than 30 days and all such leases shall be subject to the Rules and Regulations applicable to Units occupied by Unit Owners.

17.05. REGULATIONS. Reasonable regulations concerning the use of the Property not inconsistent with the provisions of this

Declaration may be made by the Board. Copies of such regulations or amendments thereto shall be furnished by the Association to all Unit Owners and residents of the Condominium.

#### ARTICLE XVIII - NOTICE OF LIEN OR SUIT

18.01. NOTICE OF LIEN. A Unit Owner shall give notice to the Association of every lien upon his Unit, including taxes and special assessments, such notice to be given within five (5) days after the Unit Owner receives knowledge thereof.

18.02. 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.

18.03. FAILURE TO COMPLY. Failure to comply with this subsection concerning liens will not affect the validity of any judicial sale.

#### ARTICLE XIX - COMPLIANCE AND DEFAULT

Each Unit Owner shall be governed by and shall comply with the terms of the Act, this Declaration, the Articles of Incorporation, the Bylaws and Rules and Regulations adopted pursuant thereto and said documents and regulations as they may be amended from time to time. A default shall entitle the Association or other Unit Owners to the following relief in addition to the remedies provided by the Act:

19.01. NEGLIGENCE. Each Unit Owner shall be responsible for all damages to all other Units and/or the Common Elements necessitated by his act, negligence or misuse or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association, and the Association shall have the right to levy an Assessment on such Unit Owner, which Assessment shall have the same force and effect as all other Assessments. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances.

19.02. COSTS AND ATTORNEY'S FEES. In any proceeding arising because of an alleged default by a Unit Owner, the Association shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the Court.

19.03. NO WAIVER OF RIGHTS. The failure of the Association or any Unit Owner to enforce any covenant, restrictions, or other

provision of the Act, this Declaration, the Bylaws, or the Rules and Regulations shall not constitute a waiver of the right to do so thereafter.

#### ARTICLE XX - COVENANT AGAINST PARTITION

There shall be no judicial or other partition of the Property, any part thereof or any Unit, nor shall Developer, any Unit Owner, or any person acquiring any interest in the project or any part thereof seek any such partition unless the Property has been removed from the provisions of the Act, as in said Act provided.

#### ARTICLE XXI - AMENDMENT

This Declaration of Condominium may be amended in the following manner:

21.01. 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.

21.02. RESOLUTION. A resolution adopting a proposed amendment may be proposed by either the Board or by the Members of the Association. The resolution must be approved by the affirmative vote or agreement of Unit Owners of Units to which at least 2/3's of the votes in the Association are allocated. No amendment in the absence of unanimous consent of the Unit Owners may create or increase special declarant rights; increase the number of Units; change the boundaries of any Unit, the allocated interest of a Unit, or the uses to which a Unit is restricted.

The Declarant hereunder shall amend the Declaration in connection with the exercise of any development rights set forth in Articles IV and VI hereof, pursuant to the provisions of the Act.

In addition, amendments must be approved by eligible mortgage holders who represent at least 51% of the votes of Units that are subject to mortgages held by eligible holders. Eligible mortgage holders are those holders of a first mortgage on a Unit who have requested the Association to notify them on any proposed action that requires the consent of a specified percentage of eligible mortgage holders. Implied approval may be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment in writing 30 days after it receives proper notice of the proposal by certified or registered mail, return receipt requested.

21.03. 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 Madison County, Alabama.

21.04. PROVISO. Provided, however, that no amendment shall discriminate against any Unit Owner nor against any Unit or class or group of Units or Building or Unit Owners in a Building unless the Unit Owners so affected shall consent.

21.05. PROVISIONS PERTAINING TO THE DECLARANT. Subject to the proviso contained in Section 21.06 hereof, and notwithstanding any other provisions herein contained, until such time as the First Annual Meeting of Unit Owners is held in accordance with the procedure set forth in the Bylaws or until Declarant elects not to be subject to the provisions of this Section 21.05, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations as a Unit Owner to pay assessments as to Units owned by it in accordance with the Condominium Documents:

(a) The Declarant reserves the right to amend the Bylaws of the Association.

(b) The Declarant reserves the right to amend this Declaration of Condominium, subject, however, to the limitations provided for in Section 21.04 hereof.

(c) The Directors of the Association shall be designated by the Declarant and such Directors as may be designated need not be Unit Owners.

(d) Notwithstanding any other provision to the contrary, the Declarant reserves the unrestricted right to sell, assign or lease any units which it continues to own after the recording or filing of the Condominium documents, and to post signs on the Property as long as it owns at least one Unit.

21.06. PROVISO. Provided, however, that notwithstanding any other provisions contained in this Declaration, the Articles of Incorporation of the Association or the Bylaws, the Declarant shall relinquish all special rights, expressed or implied, through which the Declarant may directly or indirectly control, direct, modify or veto any action of the Association, its directors or a majority of Unit Owners; and control of the Association shall pass to the owners of Units within the Condominium, not later than the earliest of the following: (a) 60 days after the date by which seventy-five (75%) of all of the Units which may be created have been conveyed to Unit purchasers other than Declarant or its assignee, Ratcliff, Inc.; or (b) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or (c) two (2) years after any development right to add new Units was last exercised.

#### ARTICLE XXII - TERMINATION

The Condominium may be terminated in the manner provided by the Act; provided however, that in the event of termination, each Unit shall be subject to the payment of a share of the Common Expenses as heretofore defined.

#### ARTICLE XXIII - ASSIGNMENT OF DECLARANT RIGHTS

It is anticipated that Declarant shall assign all of its rights and obligations, including its development rights and special declarant rights reserved herein, to Ratcliff, Inc., or others, and that such transfer will be governed by the provisions of the Act.

#### ARTICLE XXIV - EASEMENTS AND LICENSES

The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium Property.

#### ARTICLE XXV - 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.

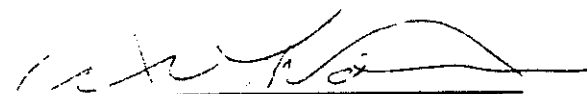
#### ARTICLE XXVI - SEVERABILITY

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 this Declaration and the Bylaws shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, SouthTrust Bank of Huntsville, National Association by and through its Exec. Vice President, has executed this instrument on the day and year first above written.



SOUTHTRUST BANK OF HUNTSVILLE,  
National Association


By:   
Its: Executive Vice President

STATE OF ALABAMA )

COUNTY OF MADISON )

I, the undersigned authority, in and for said County, in said State, hereby certify that William T. Morrow whose name as Exec. Vice President of SouthTrust Bank of Huntsville, National Association, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, 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 27 day  
of March, 19 92.

  
Notary Public  
My commission Expires: 6/12/95

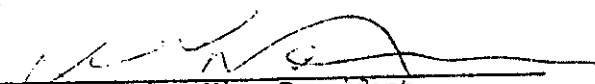
THIS INSTRUMENT PREPARED BY:  
James G. Harrison  
STEPHENS, MILLIRONS, HARRISON  
& WILLIAMS, P. C.  
P. O. Box 307  
Huntsville, Alabama 35804  
(205) 533-7711

**CONSENT BY MORTGAGEE**

SouthTrust Bank of Huntsville, National Association, for the purpose of complying with the provisions of the Alabama Uniform Condominium Act of 1991 of the State of Alabama as set forth in Section 35-8A-101, Code of Alabama (1975), and for no other purpose, does hereby consent to the submission of the real property described in Exhibit "A" to the Declaration of Condominium of Fairway Hills, a Condominium, and pursuant thereto does hereby consent to the establishment of the condominium regime contained in the above and foregoing Declaration of Condominium of Fairway Hills, a Condominium.

It is understood and by the acceptance of this instrument agreed, that the mortgage lien held by the undersigned on said real property remains in full force and effect in accordance with the terms of said mortgage, unamended, unchanged and unaltered, except for the submission of said real property to said Declaration of Condominium.

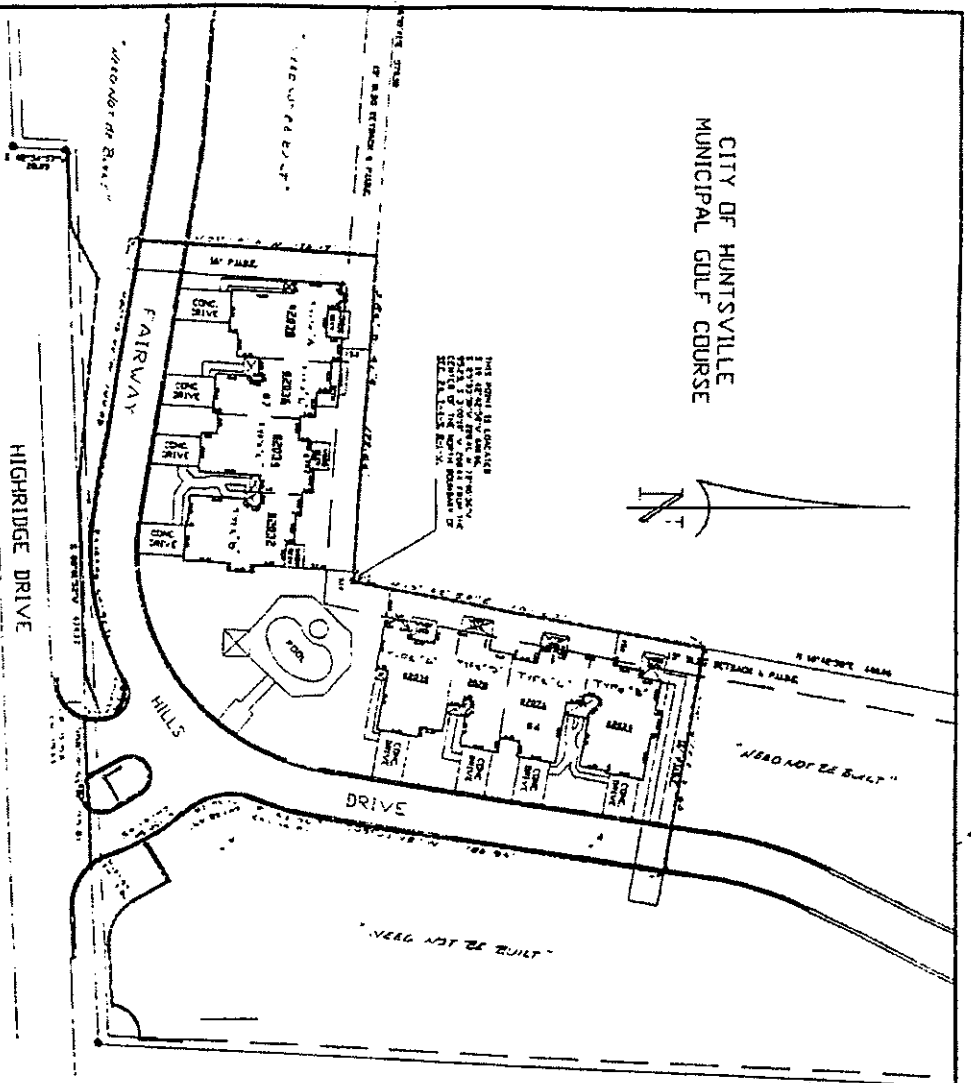
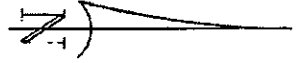
SOUTHTRUST BANK OF HUNTSVILLE,  
National Association

By:   
Its: Executive Vice President

ATTEST:

  
Its: Corp Sec

CITY OF HUNTSVILLE  
MUNICIPAL GOLF COURSE

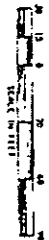


NOTICE

1. TO BE IN FORCE
2. TO BE IN FORCE
3. TO BE IN FORCE
4. TO BE IN FORCE

SUTTON PLACE  
CONDOMINIUMS

THIS DOCUMENT IS A PRELIMINARY PLAT AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. IT IS SUBJECT TO THE CITY OF HUNTSVILLE, ALABAMA, ZONING ORDINANCES AND THE CITY OF HUNTSVILLE, ALABAMA, PLATTING ORDINANCES. THE CITY OF HUNTSVILLE, ALABAMA, ENGINEERING DEPARTMENT HAS REVIEWED THIS DOCUMENT AND HAS DETERMINED THAT IT COMPLIES WITH THE CITY OF HUNTSVILLE, ALABAMA, PLATTING ORDINANCES. THE CITY OF HUNTSVILLE, ALABAMA, ENGINEERING DEPARTMENT HAS REVIEWED THIS DOCUMENT AND HAS DETERMINED THAT IT COMPLIES WITH THE CITY OF HUNTSVILLE, ALABAMA, PLATTING ORDINANCES.

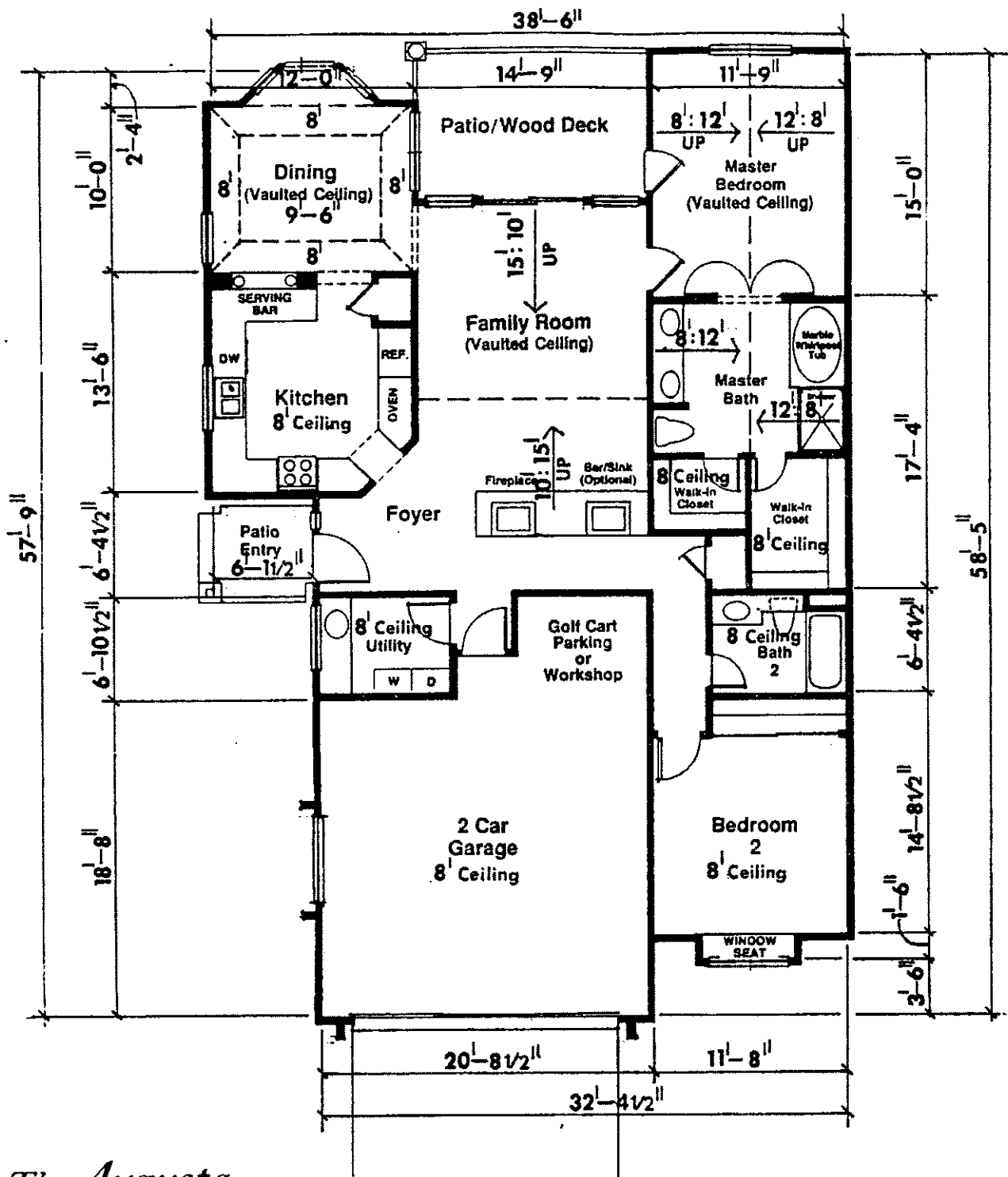


**STATE OF ALABAMA**  
**CLERK OF COURTS**  
 COUNTY OF MADISON, ALABAMA  
 I, \_\_\_\_\_, Clerk of Courts for the County of Madison, Alabama, do hereby certify that the foregoing is a true and correct copy of the original as filed in my office on this \_\_\_\_\_ day of \_\_\_\_\_, 2000.  
 \_\_\_\_\_  
 CLERK OF COURTS  
 COUNTY OF MADISON, ALABAMA

<b>GSA</b> 1000 North 1st Street Huntsville, AL 35894	
PROJECT TITLE FAIRWAY HILLS DEVELOPMENT HUNTSVILLE, AL	ENGINEERING SERVICES CIVIL ENGINEERING 1000 North 1st Street Huntsville, AL 35894
SHEET NO. 11	TOTAL SHEETS 11

EXHIBIT "A"

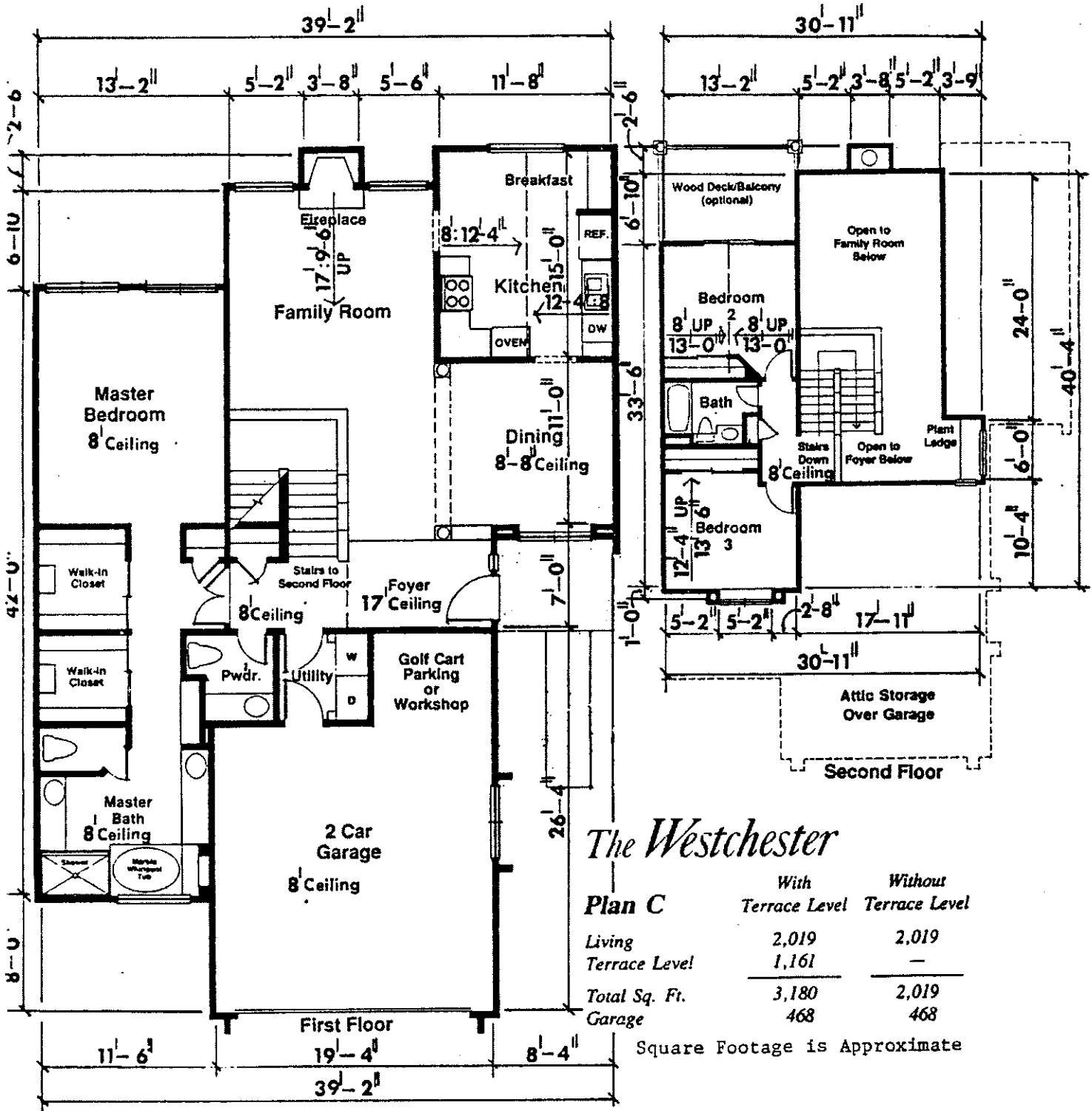




## The Augusta

Plan A	With Terrace Level	Without Terrace Level
Living	1,560	1,497
Terrace Level	1,384	—
<b>Total Sq. Ft.</b>	<b>2,944</b>	<b>1,497</b>
Garage	433	496

Square Footage is Approximate

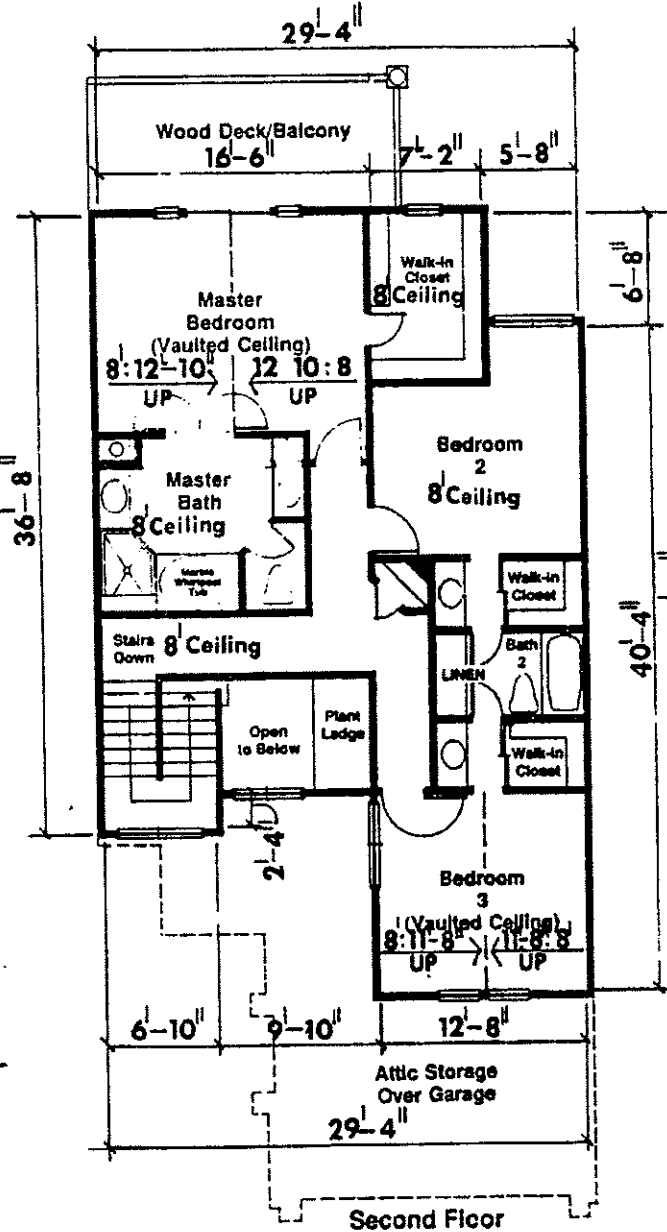
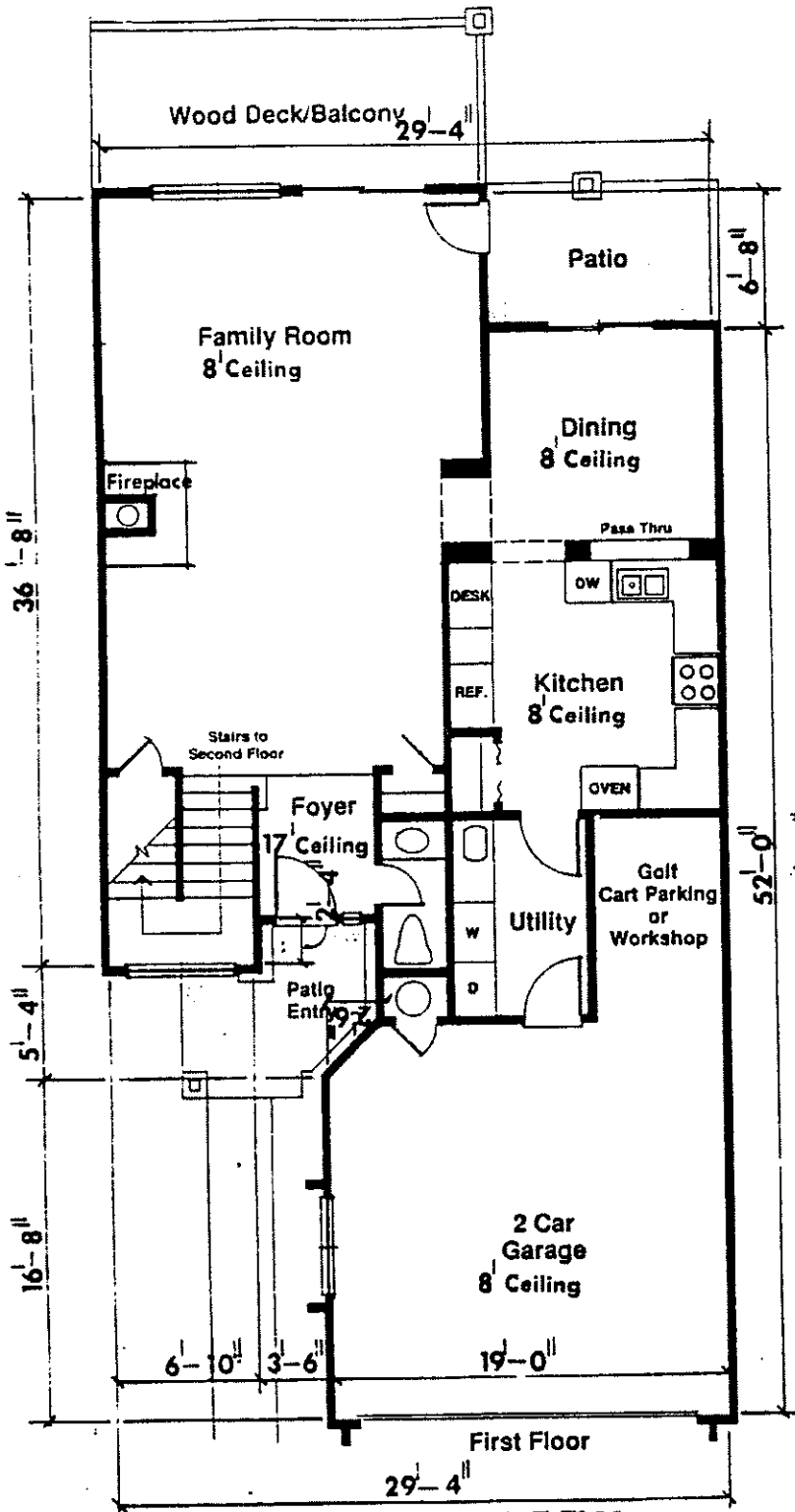


## The Westchester

### Plan C

	With Terrace Level	Without Terrace Level
Living	2,019	2,019
Terrace Level	1,161	—
<b>Total Sq. Ft.</b>	<b>3,180</b>	<b>2,019</b>
Garage	468	468

Square Footage is Approximate



## The Oak Hill

Plan D	With Terrace Level	Without Terrace Level
Living	2,167	2,167
Terrace Level	1,038	—
Total Sq. Ft.	3,205	2,167
Garage	459	459

Square Footage is Approximate