

**DECLARATION OF CONDOMINIUM  
OF  
LAGUNA SANDS, A CONDOMINIUM**

State of Alabama, Baldwin County  
I certify this instrument was filed  
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2005 December -14 3:48PM

Instrument Number 942778 Pages 110

Recording 300.00 Mortgage

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Index 5.00

Archive 5.00

Adrian T. Johns, Judge of Probate

THIS DECLARATION is made on this 14 day of December, 2005, by LAGUNA SANDS, LLC, an Alabama Limited Liability Company, hereinafter called the "Developer," for itself, its successors, grantees and assigns.

**RECITALS**

WHEREAS, the Developer is the fee simple owner of that certain parcel of real property situated in Baldwin County, Alabama, more particularly described in Exhibit "A" attached hereto, hereinafter referred to as the "Real Property," and Developer has improved said Real Property in the manner set out herein.

AND WHEREAS, the Developer proposes to establish a condominium pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, §35-8A-101, et seq., Code of Alabama (1975), as amended. The Condominium shall be known as Laguna Sands, a Condominium.

AND WHEREAS, the Developer proposes to develop the Condominium in multiple phases.

AND WHEREAS, the buildings may contain a maximum total of eight (8) residential Units, and supply storage areas, together with access, parking, and appurtenant facilities herein described.

AND WHEREAS, the Condominium shall be created by the recording of this Declaration, and may hereafter be amended by the Developer as herein provided without requiring the approval or consent of any of the Unit Owners.

WHEREFORE, the Developer hereby makes the following Declaration, to-wit:

942778

## I. DEFINITIONS

The terms used in this Declaration and in the Bylaws shall have the meaning stated in the Alabama Uniform Condominium Act of 1991, §35-8A-101, et seq., Code of Alabama (1975), as amended, and as follows, unless the context otherwise requires, to-wit:

1.01. "ACT" means the Alabama Uniform Condominium Act of 1991, §35-8A-101, et seq., Code of Alabama (1975), as amended.

1.02. "ARTICLES" means the Articles of Incorporation of Laguna Sands Condominium Owners Association, Inc., and all amendments thereto, a copy of which is attached hereto as Exhibit "C".

1.03. "ASSESSMENTS" means a proportionate share of the funds required for the payment of the Common Element Expenses and maintenance which from time to time may be levied against each Unit Owner.

1.04. "ASSOCIATION" means Laguna Sands Condominium Owners Association, Inc., an Alabama not for profit corporation, and its successors, organized under the Act.

1.05. "BOARD" means the Board of Directors of the Association.

1.06. "BUILDING" means all structures or structural improvements located on the Real Property and forming part of the Condominium.

1.07. "BYLAWS" means the duly adopted Bylaws of the Association, identified as Exhibit "D" attached hereto and made a part hereof as if set out fully herein.

1.08. "COMMON ELEMENTS" means all portions of the Condominium other than the Units.

1.09. "COMMON EXPENSES" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves, allocated to each Unit.

1.10. "COMMON SURPLUS" means the excess of all receipts of the Association arising out of the Common Elements over and above the amount of the Common Expenses.

1.11. "CONDOMINIUM" means Laguna Sands, a Condominium, and consists of the Condominium Property submitted to the Condominium form of ownership by this Declaration.

1.12. "CONDOMINIUM DOCUMENTS" means the Declaration, Bylaws, Articles, and all Rules and Regulations adopted by the Association and all exhibits attached thereto as the same may be amended from time to time.

1.13. "CONDOMINIUM PROPERTY" or "PROPERTY" means all property, both real, personal or mixed, which is submitted to the Condominium form of ownership as provided for herein and includes the Real Property and all improvements now existing or hereafter placed thereon and all easements, rights, interests or appurtenances thereto, and all personal property now or hereafter used in connection therewith.

1.14. "DECLARATION" means the Declaration of Condominium and all amendments thereto which may be made from time to time.

1.15. "DEVELOPER" or "DECLARANT" shall mean Laguna Sands, LLC, an Alabama Limited Liability Company, and its successors and assigns.

1.16. "DEVELOPMENT" shall have the same meaning as "Condominium Property" or "Property".

1.17. "DEVELOPER RIGHTS", "DEVELOPMENT RIGHTS" or "DECLARANT RIGHTS" shall have the same meaning as defined in the Act and as set out in the Declaration, and

shall include, but not be limited to, any right or combination of rights reserved by Developer herein to (i) add real estate to the Condominium; or (ii) create units, common elements, or limited common elements within the Condominium; or (iii) subdivide units; or (iv) convert units into common elements; or (v) withdraw real estate from the Condominium; or (vi) increase the number of units which may be created.

1.18. "LIMITED COMMON ELEMENT" shall have the same meaning as defined in the Act and as set out in the Declaration.

1.19. "MEMBER" means a Unit Owner, and membership in the Association is confined to Unit Owners.

1.20. "MORTGAGEE" means any lender holding a mortgage or vendor's lien on any part or all of the Condominium Property.

1.21. "OCCUPANT" means a person or persons in possession of a Unit, regardless of whether that person is the Unit Owner.

1.22. "PERSONS" means a natural person, corporation, association, partnership, limited partnership, limited liability company, trustee, or other legal entity.

1.23. "PLANS" or "PLAT" means the site plan, floor plans, and elevations of the Condominium prepared by an independent registered engineer or registered architect, copies of which are attached hereto as Exhibit "B" and expressly made a part hereof as though fully set out herein. The Plans contain a Certificate of Occupancy issued by the City of Gulf Shores in accordance with the Act, a copy of which is attached hereto as Exhibit "H", and contain a certification that the Plans contain all information required by the Act.

1.24. "REAL PROPERTY" means the Real Property described in Exhibit "A" which is submitted to the Condominium form of ownership as provided for herein.

1.25. "SPECIAL DECLARANT RIGHTS" shall have the same meaning as defined in the Act and set out in the Declaration.

1.26. "UNIT" shall have the same meaning as Unit and Private Unit as defined in the Act and designated on the Plans, and is a physical portion of the Condominium designated for separate or private ownership or occupancy, the boundaries of which are described and set forth herein.

1.27. "UNIT BOUNDARIES" means the physical boundaries of a unit and shall also have the same meaning as defined in the Act.

1.28. "UNIT OWNER" means the owner of a Unit and shall also have the same meaning as "Unit Owner" as defined in the Act.

1.29. "UTILITY SERVICES" shall include, but not be limited to, electrical power, gas, garbage, water and sewage disposal.

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

## **II. NAME AND ADDRESS OF CONDOMINIUM**

2.01. The name by which the Condominium shall be known is LAGUNA SANDS, a Condominium, and the address of the Condominium is 1368, 1376, 1380 and 1384 West Lagoon Avenue, Gulf Shores, Alabama 36542.

## **III. THE REAL PROPERTY**

3.01. The Real Property owned by the Developer which is herewith submitted to the Condominium form of ownership is the parcel of Real Property lying and being in Gulf Shores,

Baldwin County, Alabama, subject to certain reservations, exceptions and restrictions, all being more particularly described in Exhibit "A" attached hereto and made a part hereof.

#### **IV. PURPOSE**

4.01. The Developer hereby submits the Real Property described in Exhibit "A", together with all improvements, buildings, structures, and all other permanent fixtures thereon, and all rights and privileges belonging or in any way pertaining thereto, to the Condominium form of ownership and use in the manner provided for by the Alabama Uniform Condominium Act of 1991, §35-8A-101, et seq., Code of Alabama (1975), as amended.

#### **V. DEVELOPMENT PLANS**

5.01. Plans. The improvements of the Condominium have been completed substantially in accordance with the Plans, as evidenced by the Certificate of Occupancy executed by the City of Gulf Shores, Alabama and the registered architect or engineer.

5.02. Amendment. This Declaration may be unilaterally amended by the Developer without the consent of any Unit Owner, Mortgagee, or other Person in order to exercise any Development Rights, as defined herein, provided however, said amendment complies with the requirements of the Act.

5.03. Agreement. Each person or entity who shall acquire any Unit in the Condominium or any interest therein or lien upon such Unit, by accepting a conveyance of or otherwise acquiring such interest or lien, shall be deemed to have agreed and consented, within the meaning of this Declaration and of the Act, to be bound by the terms and provisions hereof and to have further agreed and consented to the Developer's right to unilaterally amend this Declaration and that any such amendment shall be binding and effective regardless of whether the undivided interest of the

Unit Owners in the Common Elements will be changed thereby. Each such person or entity shall be deemed to have consented to any application by the Developer to any governmental agency or other entity which may be required to exercise the Developer's rights reserved in this Declaration, and such person or entity shall indemnify the Developer for any and all costs or delays incurred or suffered by the Developer for any breach of said consent, including reasonable attorney's fees.

5.04. Easements to Developer. Easements are reserved to the Developer throughout the Common Elements as may be reasonably necessary for the purpose of discharging the Developer's obligation or exercising any Development Rights. Also, the Developer hereby reserves for itself and its successors and assigns a perpetual non-exclusive easement for access routes, ingress, egress and regress in, over, across and through all roads, access routes, parking areas, and other common areas of the Condominium Property for any guests, licensees, lessees, customers and employees of Developer to and from any adjacent and contiguous property for the purpose of real estate sales, construction, or any other use deemed convenient to the Developer, the use of the said designated areas of the Condominium described in Exhibit "B" hereto, or any other purpose or business operated by the Developer on the Condominium Property. An easement is also reserved to the Developer for all pipes, ducts, cables, wires, conduits, public utility lines and any and all other manner of utilities for the construction of any and all additional improvements to the condominium property, including any and all future properties added thereto.

5.05. Easements to Association. Each of the following easements is specifically reserved to the Association for the benefit of the Unit Owners, their guests and lessees, and said easements shall be a covenant running with the Real Property, to-wit:

A. Utilities and Drainage. Easements are reserved throughout the Condominium Property as may be required for Utility Services and drainage in order to adequately serve the Condominium; however, such easements to a Unit shall be only in accordance with the Plans or as the improvements are constructed, unless otherwise approved by the Unit Owner. Each Unit Owner shall have an easement in common with the Owners of all other Units and each Unit shall be subject to an easement in favor of all other Unit Owners to use all pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements located in any of the other Units and serving such Unit Owner's Unit or serving such other Units and located in such Unit.

B. Access to Unit. The Association shall have the absolute right of access and entry to each Unit to inspect the same, to spray for pest control, to remove any violations from the Unit, to protect an adjoining Unit, and to maintain, repair, replace or protect any Common Elements contained therein or elsewhere on the Condominium Property; however, such right of access and entry, except in the event of an emergency, shall not be made without prior notice to the Unit Owner.

C. Encroachments. If any portion of the Common Elements ever encroaches upon any Unit, or if any Unit ever encroaches upon any other Unit or upon any portion of the Common Elements as a result of the construction of any addition to the Condominium Buildings, or if any such encroachment shall occur hereafter as a result of settling or shifting of the Condominium Buildings or other improvement, or occurring after the reconstruction or repair of the Condominium as a result of fire, hurricane, or other casualty, or as a result of condemnation or eminent domain proceeding, a valid easement for such encroachment and for the maintenance of the same shall exist for as long as the Condominium Buildings stand.



D. Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and of necessity in favor of all of the other Units and all of the Common Elements.

5.06. Easements to Units. Each Unit shall have an easement for pedestrian traffic over, through and across sidewalks, paths, lobbies, elevators, stairways, walkways, and passageways, as the same may from time to time exist in the Common Elements, and each Unit Owner shall have an easement for ingress and egress over, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes; however, such easement shall not create in any Unit Owner or person the right to park on any portion of the Condominium Property not designated as a parking area or the right to use or occupy a Limited Common Element designated for the exclusive use of others, and all such easements shall be non-exclusive, and subject to the Rules and Regulations of the Association. Such easements shall include the right of ingress and egress to a public street or highway upon, over and across the Common Elements which provide such access.

5.07. General Description of Condominium. The Condominium Property consists of four (4) buildings, together with automobile parking areas, pools, lawn and landscaping, and other facilities as more particularly set forth in the Plans.

5.08. Legal Description of Unit. Each Unit is assigned a number so that no Unit bears the same designation as any other Unit. The legal description of each Unit consists of the identifying number, the name of the Condominium, the name of the office in which this Declaration is recorded, the book and page number where the first page of this Declaration is recorded, and the description and location of the particular Unit and the appurtenances as described and shown in the Plans.

5.09. Unit Boundaries. The Unit boundaries shall be determined as follows, to-wit:

A. Horizontal Boundaries. The upper and lower (horizontal) boundaries of each Unit shall extend to their planer intersections with the vertical boundaries of each Unit, with the upper boundary being the unfinished lower interior surface of the uppermost ceiling, and the lower boundary being the unfinished upper interior surface of the floor.

B. Vertical Boundaries. The vertical boundaries of each Unit shall be the vertical planes of the interior surfaces of the exterior windows and glass doors bounding a Unit and the unfinished interior surfaces of the walls and entry doors bounding the Unit; however, specifically excluded therefrom shall be all lath, furring, wallboard, plasterboard, paint, wallpaper, and exterior light coverings extended to their planer intersections with each other and with the upper and lower boundaries of said Unit.

5.10. Alteration of Units. No Unit may be altered or changed in any way that would impair or otherwise compromise the structural integrity, mechanical systems, or lessen the support of any Common Element or the Condominium Buildings, or any improvement thereto or any other building or improvement situated thereon, and no change or alteration to the appearance of any Common Element or Limited Common Element or the exterior of any Unit or any other portion of the Condominium may be made without the consent of the Association.

5.11. Unit Floor Plans. The Condominium consists of one (1) basic residential floor plan, outbuildings and reception and storage areas as follows, to-wit:

1. Units 1368(A) and 1368(B) are two (2) story, three (3) bedroom, three and one-half (3 ½) bath Units, containing a kitchen, dining, living and den areas, totaling approximately two thousand two hundred fifty (2,250) square feet, a covered parking area containing

approximately seven hundred fifty (750) square feet, an open storage area containing approximately four hundred (400) square feet, an enclosed storage area containing approximately four hundred (400) square feet, together with a porch and balcony containing approximately one hundred fifty (150) square feet, all serving the units as Limited Common Elements.

2. Pool/Maintenance Storage Area consists of approximately one building located adjacent to the pool.

5.12. Unit Ownership. Each Unit Owner shall be entitled to the exclusive ownership and possession of such Owner's Unit, and each Unit Owner shall have the unrestricted right of ingress and egress to such Owner's Unit, which right shall be an appurtenance to said Unit.

5.13. Description of Private Elements. The private elements of each Unit shall include (i) the air space of the area of the Building lying within the Unit Boundaries; and (ii) the surfacing materials on the interior of the exterior walls and on interior walls separating one Unit from another Unit; however, in no way shall this definition be intended to include the sheetrock on any common-party walls falling and situated between one or more Units. Such sheetrock shall be deemed a Common Element; and (iii) all bathtubs, toilets and sinks, the range, refrigerator, dishwasher, hot water heater, air conditioning and heating units, lighting fixtures and all hardware and interior and exterior wall fixtures except those exterior lighting fixtures assigned to the common use of the Condominium, and the power meter and its appurtenances; and (iv) the structural components and surfacing materials of all interior walls located within the boundaries of the Unit; and (v) the structural components and surfacing materials to the floors and ceiling of the Unit; and (vi) all interior trim and finishing materials.

5.14. Surfaces. A Unit Owner shall not be deemed to own the structural components of the perimeter and/or load-bearing walls, or the windows and doors bounding the Units; however, a Unit owner shall be deemed to own and shall have the exclusive right and duty to repair, maintain, paint, tile, wax, wallpaper, carpet or otherwise finish and decorate the surfacing materials on the floor, the interior of exterior walls, and on the interior walls separating a Unit from other Units. In accordance with the terms of the Act, a Unit Owner shall also be deemed to own the ceilings, partition walls, floors, window screens, and all appurtenant installations for utility and other services such as power, light, telephone, sewer, water, heat, and air conditioning, which are for the use of the Unit, including all pipes, ducts, wires, cables, and conduits used in connection therewith, whether located in the boundaries of the Unit or Common Areas. A Unit Owner shall have the exclusive right and duty to wash and keep clean the interior surfaces of windows and doors bounding the Unit.

5.15. Changes to Units. The Developer reserves the right to change the interior design and arrangement of any or all Units owned by the Developer, and no assurance or representation is made herein regarding the nature, character, or quality of said change. The Developer further reserves the right to alter the boundaries between such Units, which said change shall be reflected by an amendment to this Declaration which may be unilaterally executed by the Developer without notice, notwithstanding the procedures for amendment set forth herein; however, no such change of boundaries shall increase the number of Units or alter the boundaries of the Common Elements without proper amendment of this Declaration in the manner set forth herein. The said Developer Rights reserved in this section must be exercised on or before ninety-nine (99) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama.

5.16. Common Elements. Any right, title or interest in a Unit shall automatically include as an appurtenance to such Unit, without the necessity of specific reference thereto, an appropriate and respective undivided share of the Common Elements and the right to use the Common Elements in conjunction with the other Unit Owners. The Common Elements of the Condominium are all portions of the Condominium other than the Units, and include the common areas and facilities located substantially as shown on the Plans attached as Exhibit "B". Such Common Areas and facilities include (i) all of the Real Property; and (ii) all improvements and parts of the Real Property which are not a Unit or Private Element; and (iii) all parking areas, driveways and other means of ingress and egress, created at the time of the execution of this Declaration, notwithstanding whether any specific parking area is subsequently assigned to the exclusive use of a Unit; and (iv) the mechanical systems and installation providing service to a Building, or to any Unit, including, but not limited to, electrical power, gas, light, hot and cold water, heating and air conditioning, fireplace, sanitary and storm sewer facilities, and cables, wires, and all other apparatus and installations in the Units, except when situated entirely within a Unit for service only of that Unit; and (v) all tangible personal property required for the maintenance and operation of the Condominium and for the common use and enjoyment of the Unit Owners; and (vi) all recreational areas and facilities; and (vii) all foundations, slabs, columns, beams and supports of the Building and such component parts of exterior walls and walls separating Units, roofs, floors and ceilings as are not described herein as Private Elements; and (viii) all lawn areas, landscaping, walkways, sidewalks, curbs and steps; and (ix) all exterior steps, ramps, handrails, stairs and stairwells; and (x) all tanks, pumps, pump houses, wells, motors, fans, compressors and control equipment, and garbage equipment which are reserved for the use of certain Owners; and (xi) all outdoor and exterior lights not metered to individual Units;

and (xii) all entrance and related type signs; and (xiii) all patios, balconies, terraces, porches, storage areas, and doorsteps or stoops affixed to each Unit, even if the same are designated as a Limited Common Element; and (xiv) all other parts of the Condominium Property existing for the common use or necessity of the existence, maintenance and safety of the Condominium; and (xv) all other items listed as such in the Act.

5.17. Limited Common Elements. The Limited Common Elements located on the Property and the Unit to which they are assigned shall be appurtenant to those Units to which they attach and whose use is restricted to Units to which they are appurtenant. Such Limited Common Elements shall include (i) the patio, balcony, terrace, or porch abutting each Unit, including any storage closet or area located on said balcony; and (ii) any doorsteps or stoops abutting the Unit which provides access to and serves such patio, balcony, terrace, or porch.

5.18. Maintenance of Limited Common Elements. The maintenance, repair, upkeep, and replacement of each patio, balcony, terrace, porch, storage area, and any doorsteps or stoops providing access thereto shall be the exclusive responsibility of the Unit Owner to which such patio, balcony, terrace, porch, or storage area attached to a Unit are appurtenant. The boundary lines of each such patio, balcony, terrace, porch, or storage area attached to a Unit shall be the interior vertical surfaces thereof and the exterior unpainted finished surface of the perimeter balustrade or railing abutting the patio, balcony, terrace, or porch and shall include the interior of the storage area.

## VI. COMMON ELEMENTS

6.01. Ownership. A schedule setting forth the percentage of the undivided interest of each Unit in and to the Common Elements is attached hereto as Exhibit "F" and is incorporated by reference herein as if set forth in full. For purposes of percentage ownership in and to the Common

Elements, the percentage of Common Expenses, the percentage of Common Surplus, and voting on all matters requiring action by the Unit Owners, the percentages as set out in said Exhibit "F" shall govern. The ownership interest in the Common Elements shall be an undivided interest, and except as provided in the Act and this Declaration, such interest shall remain undivided. Each Unit Owner and the holder of any mortgage or lien or other interest in any Unit shall be deemed, by the acceptance of a conveyance of, title to, or mortgage or lien on such Unit, to have agreed and consented, within the meaning of this Declaration and the Act, to such change or changes in the Unit's respective interest in the Common Elements and Common Surplus and each Unit's share of the Common Expenses as may result from the addition, if any, of further phases or other additions, and to have so agreed and consented to any amendment or amendments to this Declaration effectuating the same. Also, no Unit Owner shall bring any action for partition or division of the Common Elements or any other common part of the Condominium. The ownership interest in the Common Elements shall not be conveyed, transferred, encumbered or otherwise affected separate from the ownership of the Unit, and any agreement to the contrary shall be void.

6.02. Use. Each Unit Owner shall have the right to use the Common Elements in conjunction with the Owners of other Units as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the Condominium Property, except and subject to, however, any portions thereof designated as a Limited Common Element and restricted to the exclusive use of and as an appurtenance to a specific Unit, and subject to any leases made by or assigned to the Board, and subject to the exclusive and semi-exclusive parking spaces and areas. The right to use the Common Elements shall be subject to and governed by the provisions of the Act, the Condominium Documents, and the Rules and Regulations of the Association as may be established

from time to time. The Association shall have the expressed authority to convey, lease, grant concessions, or grant easements with respect to parts of the Common Elements, subject however, to the provisions of the Declaration and Bylaws. In the event any portion of the Real Property described in Exhibit "A" is not included in and made part of the Condominium, the owner of such property and such owner's agents, guests, invitees, employees, occupants, and patrons shall not use or enjoy any recreational facility of the Common Area without the consent of the Board.

6.03. Share of Expenses. Each Unit shall be assessed and such Unit and its Owner shall be individually liable for such Unit's proportionate share of the Common Expenses, and such proportionate share of the Common Expenses shall be the same ratio as the Unit Owner's percentage ownership in the Common Elements as determined in accordance with the provisions hereof. Each Unit and its owner shall also be assessed and are individually liable for the Limited Common Expenses in connection with any patio, balcony, terrace, porch, storage area, doorsteps or stoops attached to and servicing the Unit and as set forth herein. Payment of all Common Expenses and Limited Common Expenses shall be in such amounts and at such times as determined by the Association, by and through the Board in accordance with this Declaration, the Articles, and the Bylaws. A copy of the Projected Operating Budget for 2005-2006 is attached hereto as Exhibit "G". All Assessments shall be collected by the Association on a monthly basis, and no Unit Owner shall be exempt from any payment of such Unit Owner's proportionate share of the Common Expenses or Limited Common Expenses by waiver, non-use or non-enjoyment of the Common Elements or Limited Common Elements, or by abandonment of such Owner's Unit. All Common Expenses and Limited Common Expenses shall include, but shall not necessarily be limited to, all expenditures,



costs, or other liabilities made or incurred by the Association, together with payments or obligations to reserve accounts.

6.04. Late Payment of Assessments. All Assessments for Common Expenses and Limited Common Expenses, and installments thereon shall be timely paid when due. If any such Assessment or other charge is not paid on or before fifteen (15) days after the date the same shall have become due, the Board shall have the right to levy and assess such late charges, penalties, interest and other costs and expenses, at a rate set by the Board, but not to exceed the maximum legal rate, together with all expenses, including, but not limited to, reasonable attorney's fees incurred by the Association in any undertaking to collect any and all such unpaid Assessments and expenses. All payments upon account shall be first applied to such late charges, penalties, interests and other costs and expenses, including reasonable attorney's fees, and then to the Assessment payment due.

6.05. Liens for Assessments. The Association is hereby granted a continuous lien upon each Unit and its appurtenant undivided interest in the Common Elements and upon the goods, furniture and effects belonging to the Unit Owner and located in such Unit. Such lien shall and does secure any and all sums due the Association for all Assessments now or hereafter levied or subject to being levied against the Unit and the Unit Owner. Such lien shall also secure all late fees, penalties, interest, attorney's fees, and all other charges and expenses which may be charged or levied and become due on account of any delinquent Assessment due and owing to the Association and/or which may be incurred by the Association in enforcing such lien upon said Unit and its appurtenant undivided interest in the Common Elements.

6.06. Priority of Lien. The Association shall have a continuous and priority lien against the Units for non-payment of the Common Expenses and Limited Common Expenses as is provided

by and set forth in the Act. The Association's lien shall be superior and prior to all other liens and encumbrances on a Unit except, (i) liens and encumbrances recorded before this Declaration; or (ii) a first security interest on the Unit recorded before the date on which such lien or Assessment sought to be enforced became delinquent; or (iii) liens for real estate taxes and other governmental charges or Assessments against the Unit. The lien granted to the Association shall also secure any advances for taxes, costs, expenses, and other payments, including reasonable attorney's fees, which may be required to be advanced or paid by the Association in order to preserve and protect its lien. All persons, firms or corporations who shall acquire any right, title or interest in the ownership of any Unit, by whatever means, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the continuous and priority lien granted to the Association.

6.07. Sale or Transfer of Unit. The Association's lien for Common Expenses or Limited Common Expenses shall not be affected by any sale or transfer of a Unit, except as herein provided. A sale or other transfer of a Unit pursuant to a foreclosure of a first mortgagor or first vendor's lien shall not extinguish a subordinate lien for Assessments provided such lien became due and payable prior to such sale or transfer.

6.08. Proviso. A sale or other such transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall not extinguish the lien of the Association to the extent of the Common Expenses Assessments and Limited Common Expense Assessments based on the periodic budget adopted by the Association pursuant to the Act which would have become due in the absence of acceleration during the six (6) months immediately preceding the institution of an action to enforce the lien. Any such delinquent Assessments which were extinguished pursuant to foreclosure shall

not relieve the purchaser or transferee of a Unit from liability for, or the Unit from, the lien for any Assessments made against the Unit thereafter.

6.09. Interest. The Association shall be entitled to interest at a rate set by the Board, but in no case in excess of the maximum legal rate on any such advances made for such purposes.

6.10. Foreclosure of Lien. Any lien of the Association may be foreclosed by the Association or its assigns in accordance with the law of past due mortgages.

6.11. Association Entitled to Rent. In any legal action or other proceeding for the foreclosure of such lien for Assessments, the Association shall be entitled to the appointment of a receiver for said Unit, without notice to the Unit Owner. The rental required to be paid shall be equal to the rental charged on comparable type dwelling Units in the area in which the Condominium is located.

6.12. Disposition of Surplus. Each Unit shall include with it a proportionate share of Common Surplus or Limited Common Surplus, as the case may be. Such proportionate share of Common Surplus or Limited Common Surplus shall be the same ratio as that Unit Owner's percentage ownership of the Common Elements, or in the alternative, at the sole discretion of the Association, any portion of such surplus may be added to a reserve fund for the maintenance, repair, and replacement of the Common Elements and/or the Limited Common Elements, whether same shall be ongoing, expected or a general or specific reserve for same.

## **VII. THE ASSOCIATION**

7.01. Powers and Duties. The operation and administration of the Condominium shall be by the Association of the Unit Owners pursuant to the provisions of the Act and the terms and provisions of this Declaration and all other Condominium Documents. The Association shall be a

not for profit Alabama corporation incorporated by Articles of Incorporation recorded in the Office of the Judge of Probate of Baldwin County, Alabama. The Association shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or non-exercise of its powers. The Association shall have all the powers and duties set forth in the Act, as well as all the powers and duties granted to or imposed upon it under the Bylaws and other Condominium Documents as they may be amended from time to time. The Association shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of Unit Owners of the Condominium with reference to the Common Elements or the Limited Common Elements, the roof and structural components of the Condominium or other building as distinguished from mechanical elements serving only a Unit, and any and all other matters in which all the Unit Owners have a common interest. The Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other person or persons. The Association shall have a reasonable right of entry upon any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Department. The Association shall further have the right to grant permits, licenses, and easements upon, over and across the Common Elements and other common areas for utilities, roads, and other purposes reasonably necessary or useful for the proper inspection, operation, maintenance or repair of the Condominium or any Unit therein. The Association, by and through its Board, shall have the authority and duty to levy and enforce the collection of all general and specific Assessments for Common Expenses and Limited Common Expenses, and the Association is further authorized to provide adequate remedies for failure to pay such Assessments. The Association may, in the manner provided for in the Act and as set forth herein and in the Bylaws,

after notice and an opportunity to be heard, levy such reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations of the Association the Board deems warranted under the circumstances.

7.02. Name. The name of the Association shall be Laguna Sands Condominium Owners Association, Inc., An Alabama Not for Profit Corporation.

7.03. Members. Each Unit Owner, by reason of being an Owner, shall be a member of the Association as long as such Owner is a Unit Owner. A Unit Owner's membership shall immediately terminate when such Owner ceases to be a Unit Owner. The membership of a Unit Owner cannot be assigned or transferred in any manner, except as an appurtenance to such Owner's Unit.

7.04. Voting Rights. Each Unit shall be entitled to one (1) vote, and such vote is not divisible. The numerical value of each such vote shall be the percentage of undivided interest in the Common Elements assigned to the Unit as per Exhibit "F" attached hereto. The vote for a Unit shall be cast by the Owner thereof or such Owner's proxy in the manner set forth herein and in the Bylaws. If the Association is a Unit Owner, the Association shall not have the right to vote for that Unit.

7.05. Designation of Voting Representative. The right to vote shall be limited exclusively to one (1) person who shall be the established record title Owner of the Unit. If a Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record Owners of the Unit and filed with the Secretary of the Association. If a Unit is owned by a corporation, LLC, partnership, limited partnership, or other entity, the officer, employee or individual entitled to cast the vote for the Unit shall be designated by a certificate of appointment signed by the appropriate authority of such entity and submitted to

and attested by the Secretary of the Association. If such a certificate is not on file with the Secretary of the Association, such membership or vote of the Unit concerned may be cast in accordance with the Act. A certificate designating the person entitled to cast the vote of a Unit may be revoked by any Owner thereof, and such certificate shall be valid until so revoked or until suspended by a subsequent certificate or until a record change in the ownership of the Unit.

7.06. Restraint Upon Assignment of Share in Assets. The share of a member in the funds and assets of the Association cannot and shall not be assigned, hypothecated, mortgaged, conveyed or otherwise transferred in any manner, except as an appurtenance to the Owner's Unit.

7.07. Board of Directors. The affairs of the Association shall be conducted by a Board of Directors which shall consist of such number not less than three (3) nor more than five (5) members who shall, from time to time, be determined and fixed by a vote of a majority of the voting rights present at any annual meeting of the members.

7.08. Bylaws. The Association and its members shall be governed by the Bylaws of the Association as initially set forth in Exhibit "D" attached hereto and as may hereafter be amended.

7.09. Indemnification. Every officer and director of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including reasonable attorney's fees, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such director or officer may be made a party or otherwise become involved by reason of such director or officer having been served as a director or officer of the Association, notwithstanding whether such director or officer is or was a director or officer at the time such expenses or liabilities were incurred; however, in any case where a director or officer is adjudged guilty of willful malfeasance or misfeasance in the performance of his or her duties, such

indemnification herein shall not apply unless the Board approves such indemnification as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to any and all other rights to which a director or officer may be entitled at law or equity or otherwise.

7.10. Limitation of Liability. Notwithstanding the liability of the Association to maintain and repair parts of the Condominium property, the Association shall not be liable for any injury or damage caused by a latent condition of the property so maintained and repaired by the Association or for injury or damage caused by acts of God, inclement weather, or other Owners or persons.

7.11. Rights of the Developer in Unsold Units. The Developer may make such use of the unsold Units and of the common areas and facilities as may facilitate the completion and sale of such Units, including, but not limited to, the showing of Units and the Condominium property. The Developer may maintain sales offices and models in any such unsold Unit of the Condominium or the Common Elements in the Condominium without restriction as to the number, size, or location of said sales offices, management, leasing and operations offices, and models, and the Developer may relocate the same from one Unit location to another or from one area of the Condominium and Common Elements in the Condominium to another. The Developer may maintain and display signs on the Common Elements advertising such Units and the Condominium. The said Developer rights reserved by the Developer in this section shall cease and terminate ninety-nine (99) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama.

7.12. Rights of Developer in the Association. Pursuant and subject to the Act and the provisions herein, the Bylaws and Rules and Regulations adopted by the Developer shall govern, and

the Developer shall have the exclusive control of the Association and the right to appoint, remove, and designate the officers and members of the Board as the Developer should elect.

7.13. Termination of Developer Control. The Developer's said right of control shall terminate upon the earliest of either, (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Developer; or (ii) two (2) years after the Developer, its successors or assigns have ceased to offer Units for sale in the ordinary course of business; or (iii) two (2) years after any Development Right to add new Units was last exercised. The Developer may voluntarily surrender the right to appoint and remove officers and members of the Board; however, in such event, the Developer may require for the duration of the period of Developer control, that certain specified actions of the Association or Board as described in a recorded instrument executed by the Developer, be approved by the Developer before they become effective. Notwithstanding anything contained herein to the contrary, in no way shall any Unit Owner, Unit tenant or other occupant, the Association, the Board, or any other person or entity using the Condominium property interfere with the Developer's completion of any additional improvements on the Condominium property or the sale of any unsold Units, or any other Developer right.

7.14. Proviso. Pursuant to and in accordance with the Act, not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units which may be credited to Unit Owners other than the Developer, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than the Developer, and not later than ninety (90) days after conveyance of fifty percent (50%) of the Units which may be credited to Unit Owners other than the Developer, not less than thirty-three and one-third percent (33 1/3%) of the



members of the Board must be elected by Unit Owners other than the Developer. Except as provided and set forth in the Act, not later than the termination of any period of Developer control, the Unit Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Unit Owners other than the Developer.

7.15. Availability of Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act. The Association shall make such records reasonably available in the county where the Condominium is located for examination by Unit Owners, prospective purchasers, first mortgagees of any Unit, or their authorized agents, including, but not limited to, current copies of the Declaration, Bylaws, Rules and Regulations and other books, records, financial statements and the most recent annual financial statement of the Association. "Reasonably available" shall mean available for inspection upon request, during normal business hours.

7.16. Reserves for Replacements. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and Limited Common Elements. The fund shall be maintained out of regular Assessments for Common Expenses and Limited Common Expenses.

## **VIII. MAINTENANCE**

8.01. Maintenance by the Association. The Association is responsible for the continued maintenance, repair, and replacement of the Common Elements.

8.02. Maintenance by Unit Owner. Each Unit Owner is responsible for the maintenance, repair, and replacement of such Owner's Unit and all Limited Common Elements attached thereto.

8.03. Alteration to the Common Elements. No addition, alteration, or other change to the Common Elements or Limited Common Elements shall be made without the prior approval of the Association except as may be authorized and allowed under any Development Rights and Special Declarant Rights reserved and provided for herein, and as may be authorized by the Act. No Unit Owner or other party shall make any addition or alteration to such Owner's Unit or to the Common Elements or any Limited Common Elements or do any other act that would impair or otherwise compromise the structural integrity or safety of any part of the Unit or the Condominium property. No structural alterations shall be made within a Unit without the written consent of the Association, and no alterations, additions, improvements, repairs, replacements, or other changes to the Common Elements or the Limited Common Elements or to any outside or exterior portion of the Condominium Building shall be made, specifically including, but not limited to, screening or enclosing balconies, installing exterior doors or affixing shutters to the exterior windows, without the prior written consent of the Association. If such consent is granted, the Unit Owner shall use only a licensed contractor who shall comply with the Rules and Regulations with respect to the work which may be adopted by the Association. The Unit Owner making such change, whether or not such change was approved by the Association, shall assume all liability and responsibility for all damages to another Unit and to the Common Elements or Limited Common Elements caused by any contractor employed by such Unit Owner or by the subcontractor or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise.

8.04. Right of Access. Every Unit Owner shall allow the Association, its delegates, agents, and employees at all reasonable times to enter into the Owner's Unit and any Limited Common Element attached thereto for the purpose of (i) maintaining, inspecting, repairing, or replacing any

Common Elements or Limited Common Elements; and (ii) to repair, maintain or replace any electrical, plumbing, heating, ventilation, air conditioning, or other system located within such Unit which services other parts of the Condominium Property; and (iii) ascertaining, in case of emergency, any circumstances threatening other Units or Common Elements or Limited Common Elements and to correct the same; and (iv) inspecting and determining the Unit Owner's compliance with the provisions hereof and the other Condominium Documents.

8.05. Unit Owner's Covenants. Each Unit Owner, by acceptance of such Owner's deed, hereby covenants and agrees (i) to perform all maintenance, repairs, and replacements which are the Unit Owner's obligations under this Declaration and the Act; and (ii) to pay for all the Unit Owner's utilities, including electricity, gas, water and telephone used within the Unit and all taxes levied against the Unit Owner's Unit; and (iii) not to make, or cause to be made, any repairs, to any plumbing, heating, ventilation or air conditioning systems located outside the Unit Owner's Unit, but required to be maintained by the Unit Owner pursuant to the provisions hereof, except by licensed plumbers or electricians authorized to do such work by the Association or its agent; and (iv) to promptly report to the Association any defects or needed repairs for which the Association is responsible; and (v) to reimburse the Association for any repairs or replacements which are made necessary and may be assessed against such Unit Owner because of abuse or negligent use of the Condominium Property by the Unit Owner or the Owner's family, guest, tenant, agent, employee or other person or entity; and (vi) to comply with all of the obligations of a Unit Owner hereunder and under the Act.

8.06. Contracts for Maintenance. The Association may enter into a contract with any firm, person or corporation, or may join with other entities, subject to the limitations set forth herein, to

contract for the maintenance and repair of the Condominium or any other part of the Condominium property, and the Association may delegate to such agent all or any portion of the powers and duties of the Association, except such as are specifically required by the Condominium Documents to have the approval of the members of the Association.

8.07. Exterior Surface. The Developer shall determine the initial exterior color scheme of the Condominium Building, and thereafter the Association shall determine such color scheme and shall be responsible for the maintenance thereof. No Unit Owner shall paint any exterior surface or make any changes thereto without the approval of the Association.

## **IX. INSURANCE**

9.01. Purchase of Insurance. Commencing not later than the time of the first conveyance of a Unit to a person other than the Developer, the Association shall maintain insurance upon the Condominium Property to the extent reasonably available as provided for in the Act and herein.

9.02. Location of Policies. The Association shall retain and keep the original of all insurance policies in a place of safe keeping such as a safe or a safety deposit box.

9.03. Copies to Mortgagees. The Association shall furnish one copy of each insurance policy and all endorsements thereto to any first mortgagee requesting a copy thereof.

9.04. Authorization to do Business. All policies of insurance must be issued by companies specifically authorized by the laws of the State of Alabama to transact such business in the state.

9.05. Property and Casualty Insurance. The Association shall obtain, maintain, and pay the premiums therefor, as a Common Expense, the property insurance required by the Act. The type of policy shall be a "master" or "blanket" type policy of property insurance covering all of the Common Elements and fixtures, excepting, however, land, foundation, excavation, and other items usually

excluded from coverage, to the extent they are part of the Common Elements of the Condominium Property, or building service equipment and supplies, or other personal property belonging to the Association. All references herein to a "master" or "blanket" type of policy of property insurance are intended to denote single entity Condominium insurance coverage. In addition, any fixtures, equipment, or other property within the Units which are to be financed by a first Mortgagee, regardless of whether such property is a part of the Common Elements, must be covered by such "master" or "blanket" policy if required by said first Mortgagee. The policy shall be in an amount deemed appropriate by the Association, but not less than the greater of eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased or such greater percentage of such actual cash value as may be necessary to prevent the applicability of any coinsurance provision at any renewal date, exclusive of land, excavation, foundation, and other items normally excluded from property policies. The property insurance policy shall provide, as a minimum, coverage and protection against (i) loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement; and, (ii) all other perils which are customarily covered with respect to other condominiums in the area similar in construction and to meet the requirements of the Act.

9.06. Liability Insurance. The Association must, as required by the Act, obtain, maintain, and pay the premiums therefor, as a Common Expense, a comprehensive general liability insurance policy, including medical payments insurance, covering all the Common Elements, commercial space owned and leased by the Association, if any, and all public ways of the Condominium. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects in the area similar in construction, location, and use; however, such coverage shall be,

if reasonably available, for at least one million dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, if reasonably available, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of legal actions or proceedings related to employment contracts of the Association. The policy shall also include, if reasonably available, coverage for protection against water damage liability, and, if applicable and necessary, elevator collision and garage keepers liability. If required by any first mortgage holder, and if reasonably available, the policy shall also include protection against such other risks as are customarily covered with respect to other condominiums in the area similar in construction, location and use, including, but not limited to, host liquor liability, employers liability, contractual, and comprehensive automobile liability insurance.

9.07. Flood Insurance. If any building in the Condominium Property shall be deemed to be in a special flood hazard area, as defined by the Federal Emergency Management Agency or other governmental agency, the Association shall, if reasonably available, obtain, maintain, and pay the premiums therefor, as a Common Expense, a "master" or "blanket" type of flood insurance policy. The policy shall cover the Common Elements falling within the designated flood area, and shall be in a form which meets the criteria set forth in the most current guidelines issued on the subject by the Federal Government. The insurance shall be in an amount deemed appropriate by the Association, but not less than an amount equal to the lesser of (i) eighty percent (80%) of the actual cash value of the insured property located within the flood hazard area; or (ii) the maximum coverage available for the Property under the National Flood Insurance Program.

9.08. Personnel Coverage. If the Association employs any personnel, the Association shall purchase worker's compensation and all other such insurance required by the Act and the law.

9.09. Fidelity Bonds. The Association shall, if reasonably available, obtain, maintain and pay the premiums therefor, as a Common Expense, a fidelity bond to protect against loss of money by dishonest acts of all officers, directors and employees of the Association and all other persons handling or otherwise responsible for funds of the Association or funds administered by the Association. Where a management agent has the responsibility for handling or administering funds of the Association, the management agent, at such agent's own expense, shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or otherwise responsible for funds of the Association or administered on behalf of the Association. The fidelity bond shall name the Association as the named insured and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent at any given time during the term of each bond; however, in no event shall the aggregate amount of such bonds be less than one hundred fifty percent (150%) of the estimated annual Common Expenses. The bond shall require any first mortgagee to receive notice of cancellation or modification of the bond, and the bond shall contain a waiver by the issuer of the bond of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or other similar terms. The premiums on all bonds required herein to be maintained by the management agent shall be paid by the agent.

9.10. Other Insurance. The Association shall obtain all such other insurance required by the Act and shall have authority to obtain such other insurance in such amounts, from such sources

and in such forms as the Association deems desirable. The premiums for such insurance shall be a Common Expense and paid for by the Association.

9.11. Insurance Premiums. All premiums required herein and by the Act to be maintained by the Association shall be paid by the Association as a Common Expense. In the event the Association should fail to pay such insurance premiums when due, or if the Association should fail to comply with other insurance requirements of a first mortgage, the said first mortgagee shall have the right, at its option, to purchase such insurance policies and to advance such sums as are required to maintain or procure such insurance, and to the extent of any money so advanced, the said first mortgagee shall be subrogated to the lien and Assessment rights of the Association as against the individual Unit Owners for the payment of such item of Common Expense.

9.12. Proviso. All insurance coverage, if reasonably available, shall comply with the requirements of the Act and this Declaration and shall in substance and effect provide that the policy shall be primary, even if the Unit Owner has other insurance that covers the same loss, and further provide that the liability of the insurer thereunder shall not be affected by, and the insurer shall not claim any right of, set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any Unit Owner. All such coverage shall contain a waiver by the insurer of any right of subrogation to any right of the Association, or either against the Owner or lessee of any Unit, and such coverage shall not contain any provision relieving the insurer from liability for a loss occurring because the hazard to the Condominium building is increased, regardless of whether such hazard is within the knowledge or control of the Association, or because of any breach of warranty or condition or any other act or neglect by the Association or any Unit Owner or any other persons under either of them. All such coverage shall provide and contain, regardless of



whether such provision is requested by the Association, that such policy may not be canceled or substantially modified and the insurer may not refuse to renew said policy, except by the insurer giving at least thirty (30) days prior written notice thereof to the Association, the Unit Owner, each holder of a first mortgage on an individual Unit, and every other person in interest who shall have requested such notice by the insurer. Such coverage shall also contain a standard mortgagee clause which provides that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit, whether or not named therein, and that such insurance, as to the interest of any mortgagee, shall not be invalidated by any act or neglect of the Association or any Unit Owner or any person under any of them. Said standard mortgagee clause shall waive any provisions invalidating such mortgagee clause because of the failure of the mortgagee to notify the insurer of any hazardous use or conveyance. Said standard mortgagee clause shall also waive any requirement that the mortgagee pay any premium thereon. No policy shall contain a contribution clause, and any policy hereunder shall specifically waive the same.

9.13. Unavailability of Insurance. If any insurance required herein or by the Act to be maintained is not reasonably available, the Association shall promptly give notice of that fact to all Unit Owners by hand delivery or by prepaid United States Mail.

9.14. Individual Insurance. Nothing contained herein shall be construed to prevent a Unit Owner from obtaining insurance for such Owner's own benefit.

9.15. Liabilities and Responsibilities of Unit Owners. Each Unit Owner shall be responsible for obtaining insurance for such Owner's own benefit, and each Unit Owner shall be liable for any claim, damage, or judgment entered as a result of the use or operation of such Owner's Unit or caused by such Owner's conduct.

9.16. Insurance Trustee. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Association, as Insurance Trustee for each of the Unit Owners, in the percentage as established by this Declaration, 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 are paid and hold the same in trust for the purpose elsewhere stated herein and for the benefit of the Unit Owners and their mortgagees. The Insurance Trustee shall have the power (i) to adjust all claims arising under insurance policies purchased by the Association; and (ii) to bring suit thereon in its name and/or in the name of another insured; and (iii) to deliver releases upon payment of claims; and (iv) to compromise and settle such claims; and (v) to otherwise exercise all the rights, powers and privileges of the Association and each Unit Owner and any other holder of an insured interest in the Condominium property under such insurance policies. All actions of the Insurance Trustee shall be subject to the approval of any first mortgagee if the claim shall involve more than one Unit, and if only one Unit is involved, such actions of the Insurance Trustee shall be subject to approval of any first mortgagee holding a mortgage and encumbering such Unit.

9.17. Share of Proceeds. The Association as Insurance Trustee shall receive such insurance proceeds as are paid to it and shall hold the same in trust for the benefit of the Unit Owners and their mortgagees as follows, to-wit:

A. Common Elements. If the damage is to a Common Element, an undivided share of the proceeds on account of such damage shall be held by the Insurance Trustee for each Unit

Owner, with each Owner's portion of the total proceeds being the same percentage as each Owner's share of the Common Elements appurtenant to each Owner's Unit.

B. Units and Limited Common Elements. If the damage is to a Unit or a Limited Common Element attached to the Unit, except as provided elsewhere herein, if the Unit or other Condominium property is to be repaired or restored, the proceeds on account of such damage shall be held by the Insurance Trustee for the Unit Owners of damaged Units and damaged Limited Common Elements, with the share of each Owner in the total proceeds being in the proportion that the cost of repairing the damage suffered by such Unit Owners bear to the total cost of repair, which cost shall be determined by the Board. If the Unit or other Condominium property is not to be restored, the proceeds shall be held by the Insurance Trustee for the Unit Owners in the undivided shares that are the same as the Owners' respective shares in the Common Elements.

C. Mortgagees. In the event a mortgagee endorsement has been issued with respect to a Unit, the share of the Owner of such Unit shall be held in trust for the mortgagee; however, no mortgagee shall have any right to determine or participate in the determination of whether any damaged property will be reconstructed or repaired except as may be specifically provided to the contrary elsewhere herein or in the Act.

9.18. Distribution of Proceeds. Insurance policy proceeds received by the Association as Insurance Trustee shall be held and distributed to or for the benefit of the Unit Owners in the manner set forth herein. If the damage for which the proceeds are paid is to be repaired or reconstructed, said proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, with remittances payable to Unit Owners and their mortgagees jointly. If the damage for which the proceeds are paid shall not be reconstructed or

repaired, the remaining proceeds shall be distributed to the beneficial Owners with remittances paid to each Unit Owner and their mortgagee jointly. This section shall be a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

**X. RECONSTRUCTION OR REPAIR AFTER CASUALTY**

10.01. Determination to Reconstruct or Repair. Any portion of the Common Elements or other part of the Condominium for which insurance is required hereunder which is damaged or destroyed must be repaired or replaced promptly by the Association unless, (i) the Condominium is terminated in accordance with the Act; or (ii) repair or replacement of such damage would be illegal under any state or local statute or ordinance covering health or safety; or (iii) not less than eighty percent (80%) of the Unit Owners, including every owner of a Unit or assigned Limited Common Element which will not be rebuilt, votes not to rebuild. The cost of repair or replacement of a Common Element in excess of insurance proceeds in reserves is a Common Expense as provided herein and shall be paid by the Association.

10.02. Plans. Any reconstruction or repair must be performed substantially in accordance with the Act and in accordance with the Plans for the original improvements or as the Condominium property was last constructed, or if not, then according to Plans approved by the Board and by one hundred percent (100%) of the Unit Owners.

10.03. Responsibility. The Association shall be responsible for the reconstruction and repair after casualty. If the damage is only to those parts of a Unit or Limited Common Element for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for such reconstruction and repair after casualty.

10.04. Estimate of Cost. Immediately after a casualty causing damage to any part of the Condominium 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.

10.05. Assessments for Damage. If the damage is to any Common Element or facility of the Condominium and the proceeds of insurance are not sufficient to pay the estimated costs of reconstruction and repair of same, Assessments shall be made against all of the Unit Owners in sufficient amounts to provide funds for the payment of such costs. If the damage is to a Unit and the proceeds of insurance are not sufficient to pay the estimated costs of reconstruction and repair of such Unit, the Association shall levy Assessments against the Unit Owner of the damaged Unit in sufficient amounts to pay for reconstruction and repair. If the damage is to a Limited Common Element and the proceeds of insurance are not sufficient to pay the estimated costs of reconstruction and repair of such Limited Common Element, the Association shall levy Assessments against the Owner of the Unit to which such damaged Limited Common Element is appurtenant. Any Assessment for reconstruction and repair may be collected and enforced in the same manner as provided for Assessments herein and in the Act.

10.06. Construction Fund. The funds for payment of costs of reconstruction and repair after casualty for which the Association is responsible shall constitute a construction fund which shall be disbursed by the Association in payment of the cost of such reconstruction and repair. Said fund shall consist of proceeds of insurance held by the Association as Insurance Trustee and funds collected by the Association from Assessments against Unit Owners on account of such casualty.

10.07. Disbursement of Fund. All distributions in payment of costs of reconstruction and repair shall first be made from insurance proceeds in the manner provided by the Board.

10.08. Surplus. If there remains a balance of any insurance proceeds or of a construction fund after payment of all costs of the reconstruction and repair of a Common Element or other part of the Condominium which is the responsibility of the Association to repair, such balance shall be distributed to the Unit Owners in the same percentage as each Owner's share of the Common Elements. If there remains a balance of insurance proceeds or of a construction fund established for the reconstruction and repair of a Unit or Limited Common Element after payment of all costs of reconstruction and repair to same, such balance shall be distributed to the Owners of such damaged Units or damaged Limited Common Elements in the same proportion that the actual total cost of reconstruction and repair of such damage to the Owner's Unit or the Limited Common Element bears to the total amount of such insurance proceeds collected or construction fund established.

10.09. Proviso. In no event shall any Unit Owner be paid an amount in cash in excess of such estimated cost for such Owner's Unit or Limited Common Element.

10.10. Mortgagees. If there is a first mortgagee or other first lien holder, all distributions shall be paid to the Unit Owner and to the first mortgagee or other lien holder jointly.

## **XI. EMINENT DOMAIN**

11.01. Taking of Condominium Property. The taking of any portion of the Common Elements or a Unit by eminent domain shall be deemed to be a casualty, and the determination whether the Condominium will be reconstructed, repaired or continued after condemnation shall be in accordance with the provisions of the Act and the Condominium Documents.

11.02. Proceeds. Any award for a taking, whether from condemnation or otherwise, shall be deemed as casualty insurance proceeds and deposited with, held, and disbursed by the Association as Insurance Trustee. All condemnation awards for the taking of any portion of the Common

Elements shall first be used to make the remaining portion of the Common Elements useable in the manner approved by the Board, and if the cost of such work exceeds the balance of such awards, the work shall be approved in the manner required elsewhere herein for further improvement of the Common Elements. Notwithstanding whether any such condemnation award may be owing and payable to a Unit Owner, the Unit Owner shall deposit such award with the Association as Insurance Trustee, and if the Owner fails to do so, the Board shall have the authority to levy an Assessment against such defaulting Unit Owner in the amount of such award or, in the alternative, set off the amount of such award against any sums thereafter made payable to such Unit Owner.

11.03. Disbursement of Funds. All proceeds for such awards shall be used and disbursed in the manner provided herein for disbursement of funds by the Association after damage to the Common Elements. If the Condominium is terminated after condemnation, all awards therefor shall be deemed to be insurance proceeds as defined herein, and said proceeds shall be owned and distributed in the same manner set forth herein for the distribution of insurance proceeds. If the Condominium is not terminated after condemnation or other such taking, the property damaged by the taking shall first be made usable in the manner set forth herein and as provided by the Act, and the size of the Condominium property shall be reduced and adjusted accordingly.

11.04. Unit Reduced But Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the award for the taking such portion of the Unit shall first be used to render the Unit habitable. If the cost of such restoration exceeds the amount of the award and the Unit Owner does not within a sufficient period of time provide the additional funds required for the restoration, the Association shall have the authority to extend and

pay such additional funds and levy an Assessment against the Unit Owner for all such funds advanced.

11.05. Unit Made Unhabitable. If the taking is of the entire Unit, or the size of the Unit is reduced to the extent the Unit cannot be used practically or lawfully for any purpose permitted herein, the award for such condemnation or taking of the Unit shall be paid, held and disbursed in the same manner set forth herein for the distribution of insurance proceeds if the Condominium is terminated after damage to the Common Elements. If such Unit is encumbered by a first mortgage or other first lien holder, the award shall first be paid to such first mortgagee or lien holder in an amount sufficient to pay off such mortgage or lien, and then jointly to the Unit Owner and other mortgagees. No Unit Owner shall receive from such award and be paid an amount which exceeds the market value of the Unit immediately prior to the taking. Any balance of such award after payment to the Unit Owner shall be used to repair and replace any Common Element damaged by the taking. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in condition for use by all of the Unit Owners in the manner approved by the Board. If the cost of such repair and incorporation exceeds the balance of the fund from such award, the work shall be approved by the Board in the manner set forth herein for further improvement of the Condominium.

11.06. Adjustment of Shares. The shares in the Common Elements, the Common Expenses, and the Common Surplus shall be adjusted to distribute the ownership of the taken Units among the reduced number of Units that continue as part of the Condominium. This adjustment shall be done by restating said share of the continuing Unit Owners as percentages aggregating one hundred



percent (100%) and the shares appurtenant to the Units of the continuing Owners shall be in the same proportions to each other as before the adjustment.

11.07. Assessments. If the balance of the award after payments to the Unit Owner(s) and all mortgagees or other lien holders of such Owner(s) is not sufficient to finance the alteration and incorporation of the remaining portion of the Unit for use as part of the Common Elements, the Association shall have the authority to levy an Assessment for such additional funds against all the Unit Owners who will continue as Unit Owners after such incorporation in proportion to the shares of those Unit Owners in the Common Elements after adjusting for such incorporation.

11.08. Surplus. Any balance or surplus of awards for the taking of a Common Element shall be distributed to the Unit Owners in the same percentages as each Owner's share of the Common Elements after proper adjustment of the shares on account of the condemnation. If such Common Element is encumbered by a first mortgage or other first lien holder, the balance shall be paid jointly to the Owners and the said first mortgagee or other first lien holder. Any balance or surplus of an award for the condemnation or taking of a Unit or Limited Common Element shall be distributed to the Owner of said Unit or the Owner of the Unit to which said Limited Common Element is attached. If such Unit or Limited Common Element is encumbered by a first mortgage or other first lien, such surplus shall be paid jointly to such Owner and first mortgagee or other first lien holder.

11.09. Conflict with Act. If there is any conflict with the provisions of this article and the Act, the provisions of the Act shall control.

## **XII. USE RESTRICTIONS**

12.01. Residential Units. Each residential Unit shall be occupied and used only as a single family residence; however, such restriction shall not be construed in any manner as to prohibit a Unit

Owner from maintaining such Owner's personal professional library, or keeping such Owner's personal business or professional records or accounts, or handling such Owner's personal business or professional telephone calls or correspondence. Such general uses are declared expressly customarily incidental to the principal residential use and not in violation thereof.

12.02 Common Elements. The Common Elements shall be used only by the Unit Owners and the Owners' agents, servants, tenants, family members, invitees, and licensees for access, ingress to, and egress from the respective Units and for such other purposes incidental to use of the Units; however, other areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance, and operation of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession, or easement, presently in existence or entered into by the Association at some future time, affecting any part or all of said Common Elements.

12.03. Limited Common Elements. The Limited Common Elements shall be used only by the Unit Owners having an undivided interest in and to the Unit to which the Limited Common Elements are assigned, and their agents, servants, tenants, family members, invitees, and licensees for such purposes incidental to the use of said Units and consistent with the Declaration.

12.04. Signs. Except as otherwise permitted herein, no Unit Owner or occupant shall place, distribute, or maintain any sign, poster, or bill in any portion of the Common Elements or Limited Common Elements outside the Unit Owner's Unit without the written approval of the Board.

12.05. Developer Exempted. The provisions of this Article shall not be applicable to the Developer who is and shall be exempted and is hereby irrevocably empowered at all times, without limitation, whether for permanent or temporary occupancy, to sell, lease or rent Units owned by the

Developer for any period and under any terms to any lessees or potential or actual purchasers or transferees, together with the right to take any action necessary to consummate the sale or rental of said Units, including, but not limited to, the right to maintain model units, post signs, conduct any and all construction activities, have employees in offices maintained in or upon the Condominium property, use the Common Elements and show Units to prospective purchasers. Signs and all other items pertaining to the sales office and the sale of Units shall not be considered Common Elements and shall remain the Developer's exclusive property.

12.06. Leases. Units may be leased by the Unit Owners; however, such lease and the rights of any tenant thereunder are hereby expressly made subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of the Units and to enforce the same directly against the Unit Owner or the Owner's tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including, but not limited to, eviction. Each Unit Owner who has or who shall hereafter lease a Unit hereby irrevocably empowers and authorizes the Association or its managing agent to enforce the Rules and Regulations of the Association and to terminate the lease of and evict any tenant who fails to comply with said rules or who provides other sufficient cause for termination of the lease and eviction in accordance with the laws of the State of Alabama, this Declaration, the Bylaws, Rules and Regulations of the Association, or any contract or lease. The Association, the Board, or designated managing agent shall not become liable to any Unit Owner, tenant, lessor, manager or any other party for any loss of rents or other damages or claims resulting from the Association's reasonable exercise of the provisions of this paragraph and the authority granted the Association by the Act and the Condominium Documents.

12.07. Time Share. No time share or other similar form of ownership shall be permitted.

12.08. No Restriction on Conveyance. Except for time share, notwithstanding anything else construed herein or the Condominium Documents to the contrary, no first right of refusal or other restriction shall exist in favor of the Developer or any other person or entity which restricts a Unit Owner's absolute right to mortgage, sell, lease, transfer, or otherwise convey the Owner's Unit.

12.09. Completion of Improvements. Until such time as the Developer has completed and sold all of the Units and retained property as set forth herein, the Developer may make such reasonable use of the unsold Units and Common Elements as may facilitate such completion and sale.

12.10. Miscellaneous Restrictions.

(1) No agent, employee, customer, or patron of a Unit Owner shall be allowed to use any portion of the recreational facilities or other portions of the Common Elements without the expressed written approval of the Board.

(2) No waste of any kind, character or nature shall be committed in or on the Common Elements or Limited Common Elements, and any such waste shall be actionable by the Board against the Unit Owner and the Owner's agent, servant, tenant, family member, invitee, or other party committing such waste.

(3) Nothing shall be altered or construed in or on or removed from the Common Elements or Limited Common Elements without the written consent of the Board or as may otherwise be provided herein and in the other Condominium Documents.

(4) Nothing shall be stored in or upon the Common Elements or Limited Common Elements except in storage closets or other storage areas designated as such or as may

otherwise be provided herein or in the Condominium Documents without the prior written consent of the Board.

(5) Nothing shall be done or kept in any Unit or in or upon the Common Elements which will increase the rate of insurance for the Condominium property without the prior written consent of the Board, and no Unit Owner shall permit anything to be done or kept in the Owner's Unit or in or on the Common Elements which will result in the cancellation of insurance of any Unit or any part of the Common Elements or which will be in violation of any law.

(6) No trailer, camper, tent, shack, garage, barn, structure of a temporary nature or character, or other outbuildings shall be permitted on the Condominium property at any time, either temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the repair or reconstruction of the Condominium and other buildings.

(7) Parking of vehicles in driveways and parking areas shall be subject to the rules and regulations of the Board.

(8) The storage of boats, trailers, campers, personal watercraft, inoperable vehicles, and any other items designated by the Board shall be subject to the rules and regulations of the Board.

(9) The outdoor drying of clothes, bedding, rugs, or other similar items shall not be permitted in any form without the approval of the Board.

(10) Motorcycles, motor bikes, motor scooters, or other similar vehicles shall not be operated within or on the Condominium Property except for the purpose of transportation, it being

intended that said vehicles shall not be operated within or on the Condominium property which would annoy or otherwise disturb persons or endanger persons or property.

(11) No planting, transplanting, or gardening shall be done, except within an Owner's individual Unit, and no fences, hedges, or walls shall be erected or maintained upon the Condominium property without the expressed written approval of the Board.

(12) No animals, or pets of any kind shall be kept in any Unit or in or on the Condominium property except those of the Unit Owners, and no animals shall be kept for commercial purposes nor be allowed to create or cause any disturbance or nuisance of any kind. Any animal or pet which causes or creates any such nuisance or any unreasonable disturbance, regardless of whether owned by a Unit Owner, may be immediately and permanently removed from the Condominium property by the Board if, after warning, the animal or pet continues to cause or create a nuisance or disturbance. The owner of any pet or animal, whether or not such owner is a Unit Owner, shall be liable for any and all damage caused by such animal or pet to any part of the Condominium property or to any other property operated by the Association or to any other Unit Owner or guest in the Condominium.

(13) No nuisances shall be allowed on the Condominium property, and no use or practice will be allowed which is offensive or causes unreasonable annoyance to occupants or otherwise interferes with the peaceful possession and proper use of the Condominium property.

(14) All parts of the Condominium property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate nor any fire hazard allowed to exist.

(15) No unlawful use shall be made of the Condominium property, nor any part thereof, and all valid laws, ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. The Association and the Unit Owners shall ensure compliance.

(16) The Board shall not take or permit to be taken any action that unlawfully discriminates against one or more Unit Owners.

(17) The Developer may make reasonable rules and regulations regarding the use of the Condominium property which may be amended from time to time by the Board; however, all such amendments shall be approved by not less than a majority of the votes of the Association before such shall become effective. Copies of such regulations and amendments thereto shall be furnished by the Association to all Unit Owners and residents of the Condominium upon request.

(18) No action shall be taken or be permitted to be taken by the Board or the Association which unlawfully discriminates against any Unit Owner.

(19) The Unit Owners, the Association, and all persons or entities under them shall have the responsibility to comply with all governmental regulations and ordinances.

(20) In the event of a conflict between any applicable rules and regulations, those promulgated by the Condominium Documents and the Association shall prevail and apply.

### **XIII. PURCHASE OF CONDOMINIUM UNIT BY ASSOCIATION**

13.01. Decision. The decision of the Association to purchase a Unit shall be made by a majority vote of the entire Board, and such decision may be made without the approval of the members subject to the provisions and limitations set forth in this Article.

13.02. Limitation. If at any time the Association is already the Owner of a Unit or has previously agreed to purchase one or more Units, the Board may not purchase any additional Units

without the prior approval of members holding a total of seventy-five percent (75%) of the votes of the members eligible to vote thereon, except as otherwise provided herein. A member whose Unit is the subject matter of the proposed purchase shall not be eligible to vote thereon.

13.03. Proviso. Notwithstanding the foregoing limitation or anything contained herein or in the Condominium Documents to the contrary, the Board or its designee acting on behalf of the Association, may purchase any Unit at any time if deemed necessary by a majority vote of the Board to be in the Association's best interest or to protect the loss or other compromise of the Association's lien because of the foreclosure of (i) a lien on the Unit for unpaid taxes; or (ii) a lien of a mortgage; or (iii) the Associations' lien for unpaid Assessments; or (iv) any other judgment lien or lien attaching to such Unit by operation of law or otherwise.

#### **XIV. NOTICE OF LIEN OR SUIT**

14.01. Notice of Lien. A Unit Owner shall give notice in writing to the Secretary of the Association of every judgment or other lien upon such Owner's Unit, except liens for mortgages, taxes, and general and special Assessments. Such Owner shall give such notice to the Secretary within five (5) days after the Owner receives notice of the attaching of such lien.

14.02. Notice of Suit. A Unit Owner shall give notice in writing to the Secretary of the Association of every suit or other legal proceeding which may affect the title to the Owner's Unit, and such notice shall be given within five (5) days after the Unit Owner obtains knowledge thereof.

14.03. Failure to Comply. Failure to Comply with this section will not affect the validity of any such suit or other legal action or judicial proceeding.



## **XV. RULES AND REGULATIONS**

15.01. **Compliance.** Each Unit Owner and the Association shall be governed by and shall comply with the terms of the Condominium and the rules and regulations applicable to the Condominium property. Ownership of a Unit subjects the Unit Owner to compliance with provisions of the Declaration, the Articles, the Bylaws, the Rules and Regulations of the Association, and any contracts to which the Association is a party, as well as to any amendments to any of the foregoing. A copy of the Rules and Regulations is attached hereto as Exhibit "E". In the event any Unit Owner fails to comply therewith, the Association and other Unit Owners shall have the authority to file an action for damages or injunctive relief, or both, in addition to any other remedies provided in the Condominium Documents and the Act.

15.02. **Enforcement.** The Association, by and through the Board, after reasonable notice and opportunity to be heard, shall be empowered to enforce the Condominium Documents and all Rules and Regulations of the Association by such means as are provided by the Act, including the imposition of reasonable fines from time to time as set forth in the Bylaws. In the event a Unit Owner fails to maintain his Unit in the manner required in the Condominium Documents or any rule or regulation of the Association, the Association, by and through the Board, shall have the right to levy and assess a special Assessment against such Unit Owner and the Unit for all sums necessary to do the work necessary to effect compliance, and the Association and its employees and agents shall have the right to enter such Owner's Unit and perform the necessary work to effect compliance.

15.03. **Responsibility for Negligence.** A Unit Owner shall be liable for all damage and expenses of maintenance, repair, and replacement of or to such Owner's Unit and/or any other part of the Condominium property which is required because of such Owner's act, neglect, or

carelessness or by such Owner's family member, guest, lessee, invitee, employee, or agent, or other person. Such liability shall be limited, however, to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire and casualty insurance rates occasioned by the use, misuse, occupancy or abandonment of a Unit, or the Common Elements. The liability for such increases in insurance rates shall equal five (5) times the first resulting increase in the annual premium rate for such insurance.

15.04. No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any right, covenant, restriction, or other provision of the Act, the Condominium Documents, or any rules or regulation shall not be deemed to constitute a waiver of the right to do so.

#### **XVI. GENERAL PROVISIONS PERTAINING TO MORTGAGES**

16.01. Lender's Notices. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number, the mortgage holder, insurer, or guarantor shall be entitled to timely written notice of (i) any condemnation or casualty loss which affects either a material portion of the project or the Unit securing the mortgage; and (ii) any delinquency of more than sixty (60) days in the payment of any Assessments or charges owed by the Unit Owner of any Unit on which the holder holds a mortgage; and (iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and (iv) any proposed action which requires the consent of a specified percentage of mortgage holders.

16.02. Blanket Mortgages. The entire Condominium property, or some or all of the Units included therein, may be subjected to a single or blanket mortgage constituting a first lien thereon created by a recordable instrument executed by all of the Owners of the property or Units covered thereby, and any Unit included under the lien of such mortgage may be sold or otherwise conveyed

or transferred subject thereto. Any such mortgage shall provide a method whereby any Unit Owner may obtain a release of such Owner's Unit from the lien of such mortgage and a satisfaction and discharge in recordable form upon payment to the holder of the mortgage of a sum equal to the reasonable proportionate share attributable to the Owner's Unit of the then outstanding balance of unpaid principal and accrued interest, and any other charges then due and unpaid. The proportionate share of the mortgage required to be paid for release shall be determined by provisions pertaining thereto stated in the mortgage, or, if the mortgage contains no such provisions, then according to the proportionate share of the Common Elements of the Condominium attributable to such Unit or Units.

## **XVII. TERMINATION**

17.01. Written Agreement. The termination of the Condominium may only be effected in accordance with the provisions of the Act and by agreement and consent of the Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated, and such agreement shall be evidenced by a written instrument executed in the manner required for a deed and the same shall be recorded in the public records of Baldwin County, Alabama. Notwithstanding the foregoing provisions, at no time during the period of Declarant control shall the Condominium be terminated without the consent of the Declarant.

17.02. Ownership After Termination. After proper 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.

## **XVIII. COVENANT AGAINST PARTITION**

18.01. No judicial or other partition of the Common Elements or any other portion of the Condominium property, or any part thereof, shall be made, and no person or entity having or

acquiring any interest in the property or any part thereof shall file or seek any such partition unless such property has been properly removed from the provisions of the Act.

### **XIX. AMENDMENT**

19.01. General. This Declaration, the Articles, and the Bylaws may be amended as provided by the Act upon the affirmative vote and agreement of the Unit Owners representing at least two-thirds (2/3) of the eligible allocated votes in the Association.

19.02. Written Instrument. Any such amendment shall be in writing and executed by the Secretary of the Association and recorded in the public records of Baldwin County, Alabama.

### **XX. MISCELLANEOUS**

20.01. Intent. The intent of the Developer is to create a Condominium pursuant to the Act, and in the event the Condominium fails in any respect to comply with the Act, then the common law as the same exists on the filing date of this Declaration shall control.

20.02. Government of the Condominium. The Condominium hereby created shall be governed in accordance with the laws of the State of Alabama, this Declaration, the Bylaws, the Articles, and all amendments, other instruments, and exhibits attached to or made a part thereof.

20.03. Covenants Running With the Land. All provisions of the Condominium Documents shall, to the extent applicable and unless otherwise expressly therein provided to the contrary, be perpetual and be construed to be covenants running with the land and with every part thereof and interest therein; and all of the provisions of the Condominium Documents shall be binding on and inure to the benefit of any Owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, successors, and assigns, but said provisions are not intended to create, nor shall they be construed as creating, any rights in or for the benefit of the

general public. All Unit Owners and Occupants shall be subject to and shall comply with the provisions of the Condominium Documents and any rules and regulations promulgated thereunder.

20.04. Applicable Law and Venue. Any dispute or litigation arising between any parties whose rights or duties affected or determined by the Condominium Documents shall be governed by the laws of the State of Alabama and venue shall be proper in Baldwin County.

20.05. Notice. All notices required or desired to be sent by or to the Association hereunder pursuant to any of the Condominium Documents from time to time shall comply with the provisions of the Act. All notices required or desired to be sent by the Association to the Unit Owners shall be in writing, and except as provided specifically herein to the contrary or in the Act, all notices to any Unit Owner shall be delivered in person or sent by first-class mail to the address of such Unit Owner at the Condominium, or to such other address as such Owner may have designated from time to time, in writing, to the Association. Proof of such mailing or personal delivery to a Unit Owner may be provided by the affidavit of the person delivering such notice or by a post office certificate of mailing, and such notice shall be deemed to have been given when delivered to the addressee in person or when shown by a certified mail receipt or other post office certificate of mailing.

20.06. Waiver. No right, condition, covenant, or provision contained in the Condominium Documents shall be deemed to have been waived by reason of any election or failure to enforce the same, notwithstanding the number of violations or breaches thereof which may occur.

20.07. Ratification. Each Unit Owner, by reason of having acquired ownership of the Unit, whether by purchase, gift, operation of law, or otherwise, shall be deemed to have acknowledged, agreed, and ratified that all the provisions of the Condominium Documents and any rules and regulations promulgated thereunder are fair and reasonable in all material respects.

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

20.09. Costs and Attorney's Fees. In any proceeding arising because of an alleged default by a Unit Owner of the provisions herein, the Association and/or the Developer shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be awarded by the Court.

20.10. Severability. If any Court with proper jurisdiction determines, in whole or in part, that any covenant or restriction, or any paragraph, subparagraph, sentence, clause, phrase, word or other provision of the Act, this Declaration, the Articles, the Bylaws, or any rule or regulation of the Association promulgated pursuant thereto, or any exhibits attached thereto, all as may be amended from time to time, is invalid, or such Court determines, in whole or in part, the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase, word or other provision is invalid, such invalidity shall not affect the remaining portion thereof in any way.

IN WITNESS WHEREOF, the Developer, LAGUNA SANDS, LLC, by and through its duly authorized member, has caused this instrument to be executed under seal on this 14<sup>th</sup> day of December, 2005.

**LAGUNA SANDS, LLC**  
**An Alabama Limited Liability Company**



**AGEE AND AGEE**  
**An Arkansas General Partnership**  
**Its Authorized Member**  
**By: Charles Agee, Authorized Agent**

STATE OF ALABAMA  
COUNTY OF BALDWIN

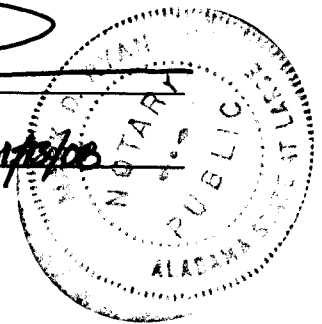
I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that CHARLES AGEE, whose name as Authorized Agent of AGEE AND AGEE, an Arkansas General Partnership, Authorized Member of Laguna Sands, LLC is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as said Agent of said Member, and with full authority, executed the same voluntarily for and as the act of Laguna Sands, LLC on the day the same bears date.

Given under my hand and official seal on this 14 day of December, 2005.



NOTARY PUBLIC

My Commission Expires: 01/13/08



This Instrument Prepared By:

Mark D. Ryan, P.C.  
Post Office Box 1000  
Bay Minette, Alabama 36507  
(251)580-0500