

FIRST AMENDMENT TO THE
DECLARATION
OF
MUSTIQUE, A CONDOMINIUM
(2023)

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Table of Contents

Article I

<u>Definitions</u>	1
Section 1.01. <u>Act</u>	1
Section 1.02. <u>Articles of Incorporation</u>	1
Section 1.03. <u>Assessment</u>	1
Section 1.04. <u>Association</u>	1
Section 1.05. <u>Board of Directors</u>	1
Section 1.06. <u>Boat Slip</u>	1
Section 1.07. <u>Building</u>	1
Section 1.08. <u>By-Laws</u>	1
Section 1.09. <u>Certification</u>	2
Section 1.10. <u>Common Elements</u>	2
Section 1.11. <u>Common Expenses</u>	2
Section 1.12. <u>Common Surplus</u>	2
Section 1.13. <u>Condominium</u>	2
Section 1.14. <u>Condominium Documents</u>	2
Section 1.15. <u>Condominium Property</u>	2
Section 1.16. <u>Declaration</u>	2
Section 1.17. <u>Eligible Security Interest Holder</u>	2
Section 1.18. <u>Improvements</u>	2

Section 1.19. <u>Limited Common Element</u>	2
Section 1.20. <u>Limited Common Expenses</u>	3
Section 1.21. <u>Majority</u>	3
Section 1.22. <u>Member</u>	3
Section 1.23. <u>Mustique, a Condominium</u>	3
Section 1.24. <u>Occupant</u>	3
Section 1.25. <u>Owner</u>	3
Section 1.26. <u>Person</u>	3
Section 1.27. <u>Plans</u>	3
Section 1.28. <u>Private Marina</u>	4
Section 1.29. <u>Real Property</u>	4
Section 1.30. <u>Rules and Regulations</u>	4
Section 1.31. <u>Security Interest</u>	4
Section 1.32. <u>Supplemental Plans</u>	4
Section 1.33. <u>Unit or Private Element</u>	4
Section 1.34. <u>Utility Services</u>	4
Section 1.35. <u>Vessel</u>	4
Section 1.36. <u>Wharf</u>	5
 Article II	
<u>Name</u>	5
 Article III	
<u>The Real Property</u>	5
Section 3.01. <u>The Real Property</u>	5
Section 3.02. <u>Encumbrances to Title</u>	6
 Article IV	
<u>Purpose</u>	10

Article V

Property Access 10

Section 5.01. Plans 10

Section 5.02. Agreement 10

Section 5.03. Easements 10

Section 5.04. General Description of Improvements 11

Section 5.05. Units. (Private Elements) 12

Section 5.06. Type of Units 12

Section 5.07. Unit Ownership 13

Section 5.08. Surfaces 13

Section 5.09. Common Elements 14

Section 5.10. Limited Common Elements 15

Section 5.11. Navigable Waterways and Submerged Land 16

Article VI

Common Elements 16

Section 6.01. Ownership of the Common Elements 16

Section 6.02. Use 16

Section 6.03. Share of the Common Expenses and Limited Common Expenses 17

Section 6.04. Late Payment of the Assessments 17

Section 6.05. Liens for Assessments 17

Section 6.06. Priority of Lien 18

Section 6.07. Disposition of Surplus 18

Article VII

The Association 19

Section 7.01. Powers and Duties 19

Section 7.02. Name 19

Section 7.03. Members 19

Section 7.04. <u>Voting Rights</u>	20
Section 7.05. <u>Designation of Voting Representative</u>	20
Section 7.06. <u>Restraint upon Assignment of Shares in Assets</u>	20
Section 7.07. <u>Board of Directors</u>	20
Section 7.08. <u>Indemnification</u>	20
Section 7.09. <u>Limitation of Liability</u>	21
Section 7.10. <u>By-Laws</u>	21
Section 7.11. <u>Availability of Records</u>	21
Section 7.12. <u>Reserves for Replacements</u>	21
Article VIII	
<u>Maintenance</u>	21
Section 8.01. <u>Maintenance by the Association</u>	21
Section 8.02. <u>Maintenance by the Owner</u>	21
Section 8.03. <u>Addition, Alteration, and Improvement of the Common Elements</u>	22
Section 8.04. <u>Covenants of Owner</u>	22
Section 8.05. <u>Contracts for Maintenance</u>	23
Section 8.06. <u>Exterior Surface</u>	23
Article IX	
<u>Insurance</u>	23
Section 9.01. <u>Purchase of Insurance</u>	23
Section 9.02. <u>Locations of Policies</u>	23
Section 9.03. <u>Copies to Eligible Security Interest Holder</u>	24
Section 9.04. <u>Authorization to do Business</u>	24
Section 9.05. <u>Coverage</u>	24
Section 9.06. <u>Individual Insurance</u>	26
Section 9.07. <u>Provisions</u>	26
Section 9.08. <u>Liabilities and Responsibilities of Owner</u>	27

Section 9.09. <u>Insurance Premiums</u>	27
Section 9.10. <u>Insurance Trustees; Shares of Proceeds</u>	28
Section 9.11. <u>Shares of Proceeds</u>	28
Section 9.12. <u>Distribution of Proceeds</u>	29
Article X	
<u>Reconstruction or Repair After Casualty</u>	29
Section 10.01. <u>Determination to Reconstruct or Repair</u>	29
Section 10.02. <u>Plans</u>	30
Section 10.03. <u>Responsibility</u>	30
Section 10.04. <u>Estimate of Cost</u>	30
Section 10.05. <u>Assessments</u>	30
Section 10.06. <u>Construction Funds</u>	31
Article XI	
<u>Eminent Domain</u>	31
Section 11.01. <u>Proceeds</u>	31
Section 11.02. <u>Disbursements of Funds</u>	32
Section 11.03. <u>Unit Reduced But Habitable</u>	32
Section 11.04. <u>Unit Made Unhabitable</u>	32
Section 11.05. <u>Taking of Common Elements</u>	34
Section 11.06. <u>Conflict With Act</u>	34
Article XII	
<u>Use Restrictions</u>	34
Section 12.01. <u>Restrictions on Use</u>	34
Section 12.02. <u>Unrestricted Right of Transfer</u>	40
Section 12.03. <u>Leases</u>	40
Section 12.04. <u>Rules and Restrictions</u>	41
Section 12.05. <u>No Restrictions on Encumbering Units with Security Interests</u>	41

Section 12.06. <u>Right of Access</u>	41
Section 12.07. <u>Limitation of Liability</u>	42
Section 12.08. <u>Abatement of Violations</u>	42
Section 12.09. <u>Failure of the Association to Insist on Strict Performance, No Waiver</u> ..	42
Article XIII	
<u>Amendment</u>	43
Section 13.01. <u>Amendment</u>	43
Section 13.02. <u>Amendment of Material Provisions</u>	43
Section 13.03. <u>Eligible Security Interest Holders</u>	44
Section 13.04. <u>Recording</u>	44
Article XIV	
<u>Purchase of Condominium Unit by Association</u>	44
Section 14.01. <u>Decision</u>	44
Section 14.02. <u>Limitation</u>	44
Article XV	
<u>Notice of Lien or Suit</u>	45
Section 15.01. <u>Notice of Lien</u>	45
Section 15.02. <u>Notice of Suit</u>	45
Section 15.03. <u>Failure to Comply</u>	45
Article XVI	
<u>Rules and Regulations</u>	45
Section 16.01. <u>Compliance</u>	45
Section 16.02. <u>Enforcement</u>	45
Section 16.03. <u>Negligence</u>	46
Section 16.04. <u>No Waiver of Rights</u>	46

Article XVII

General Provisions Pertaining to Eligible Security Interest Holders 46

Section 17.01. Notices to Eligible Security Interest Holders 46

Section 17.02. Blanket Security Interest 46

Article XVIII

Termination 47

Article XIX

Covenant Against Partition 47

Article XX

Miscellaneous 47

Section 20.01. Intent 47

Section 20.02. Covenants, Conditions, and Restrictions 48

Section 20.03. Severability 48

Section 20.04. Notice 48

Section 20.05. Governing Law 48

Section 20.06. Waiver 48

Section 20.07. Ratification 49

Section 20.08. Captions 49

Section 20.09. Costs and Attorney’s Fees 49

FIRST AMENDED DECLARATION
OF
MUSTIQUE, A CONDOMINIUM
(2023)

Article I
Definitions

The terms used in this **Declaration** and in the **By-Laws** shall have the meanings stated in **Ala. Code, §35-8A-101, et seq.** and in this **Declaration**, unless the context otherwise requires:

Section 1.01. “Act” means **Ala. Code, §35-8A-101, et seq.**, as the same may be amended from time to time.

Section 1.02. “Articles of Incorporation” means the Articles of Incorporation of Mustique Condominium Owners’ Association, Inc., an Alabama Nonprofit Corporation, recorded in the **Office of the Judge of Probate of Baldwin County, Alabama.**

Section 1.03. “Assessment” means a proportionate share of the funds required for the payment of the **Common Expenses** which from time to time may be levied against each **Owner** and **Unit**.

Section 1.04. “Association” means Mustique Condominium Owners’ Association, Inc., an Alabama Nonprofit Corporation, and the successors and assigns of the **Association**, and is the entity responsible for the administration and management of **Mustique, a Condominium**, and is the corporation organized pursuant to the **Act**.

Section 1.05. “Board of Directors” means the **Board of Directors** of the **Association** elected pursuant to the **By-Laws** of the **Association**. “**Director**” means the individual members of the **Board of Directors**.

Section 1.06. “Boat Slip” shall mean and refer to any **Boat Slip** which may be located in a **Private Marina** which may, or may not, be added to **Mustique, a Condominium** by amendment of this **Declaration**. There shall not be any **Boat Slips** or a **Private Marina** in **Mustique, a Condominium** unless the members elect to amend the **Declaration** to provide for same.

Section 1.07. “Building” means all structures or structural **improvements** located on the **Real Property** and forming part of **Mustique, a Condominium**.

Section 1.08. “By-Laws” means the duly adopted **By-Laws** of the **Association**, as amended, made a part of this **Declaration** as if set out fully.

Section 1.09. “Certification” means the **Certification** referred to in **Article V** of this **Declaration**.

Section 1.10. “Common Elements” means all portions of **Mustique, a Condominium** other than the **Units** and as further described in this **Declaration**.

Section 1.11. “Common Expenses” means expenditures made by or financial liabilities of the **Association**, together with allocations to reserves.

Section 1.12. “Common Surplus” means the excess of all receipts of the **Association** arising out of the **Common Elements** over the amount of the **Common Expenses**.

Section 1.13. “Condominium” means **Mustique, a Condominium**, as described in this **Declaration**.

Section 1.14. “Condominium Documents” means this **Amended Declaration**, the **By-Laws**, **Articles of Incorporation**, and **Rules and Regulations** and all exhibits attached to the **Condominium Documents** as the same may be amended from time to time.

Section 1.15. “Condominium Property” means all property, both real, personal, or mixed, which is submitted to **Mustique, a Condominium** as provided for in this **Declaration**, and includes the **Real Property**, all **Improvements** located on the **Real Property**, all easements, rights, riparian rights, interests or appurtenances to the **Real Property**, and all personal property used in connection with the **Condominium Property**.

Section 1.16. “Declaration” means this **Declaration of Condominium** and any amendments to this **Declaration** which may be made from time to time.

Section 1.17. “Eligible Security Interest Holder” means a holder of a first **Security Interest** or any insurer or guarantor of a holder of a first **Security Interest** which has notified the **Association** in writing of the name and address of said **Eligible Security Interest Holder** and status as a holder, insurer, or guarantor of a first **Security Interest**. Such notice will be deemed to include a request that the **Eligible Security Interest Holder** be given the notices and other rights described in this **Declaration**.

Section 1.18. “Improvements” means all **Buildings**, structures, structural **Improvements**, and all other permanent fixtures located on the **Real Property** and forming part of **Mustique, a Condominium**.

Section 1.19. “Limited Common Element” shall mean and include any area designated by this **Declaration** as **Limited Common Elements** and any areas defined in the **Act** as **Limited Common Elements** for the exclusive use of one or more, but not all of the **Owners of Units**. The **Limited Common Elements** include all property so

designated on the **Plans** and described in this **Declaration** including, but not limited to, patios, balconies, terraces, or porches, and certain parking spaces appurtenant to contain **Units**, all of which are more fully described in this **Declaration**.

Section 1.20. “Limited Common Expenses” shall mean the expenses arising out of the ownership of the **Limited Common Elements** and shall include, but not be limited to, the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation, and betterment of the **Limited Common Elements**; and expenses declared to be **Limited Common Expenses** by the provisions of the **Condominium Documents**, as the **Condominium Documents** may be amended, from time to time, in accordance with the provisions of this **Declaration**.

Section 1.21. “Majority” means those eligible votes of **Owners** or other groups as the context may indicate totaling more than **fifty percent (50%)** of the total eligible number.

Section 1.22. “Member” means a **Member** of the **Association**. Membership in the **Association** is confined to **Owners**.

Section 1.23. “Mustique, a Condominium” means and refers to **Mustique, a Condominium** and consists of all property, both real, personal or mixed, which is submitted to **Mustique, a Condominium** as provided for in this **Declaration** and includes the **Real Property**, all **Improvements** located on the **Real Property**, all easements, rights, interests, or appurtenances to the **Real Property**, and all personal property used in connection with **Mustique, a Condominium**.

Section 1.24. “Occupant” means a **Person** in possession of a **Unit**, regardless of whether that **Person** is the **Owner**.

Section 1.25. “Owner” means one or more **Persons** who hold the record title to any **Unit**, but excluding in all cases any **Person** holding a **Security Interest**.

Section 1.26. “Person” means a natural **Person**, a corporation, a partnership, a limited liability company, a limited partnership, the **Association**, a **Trustee** or other legal entity.

Section 1.27. “Plans” mean the site plan, floor plans, and elevations of **Mustique, a Condominium** prepared by an independent registered engineer or registered architect, which are attached as **Exhibit “A”** to the original **Declaration** as recorded by **Mustique, LLC**, and expressly made a part of this **Declaration** by reference as though fully set out in this **Declaration**. The **Plans** contain a **Certification** executed by an independent registered architect in accordance with this **Declaration** and the **Act**. The **Plans** contain a **Certification** that the **Plans** contain all information required by this **Declaration** and the **Act**.

Section 1.28. “Private Marina” shall mean and refer to the piers, bulkheads, mooring pilings, pilings, docks, docking facilities, extending into the navigable waters of **Little Lagoon** which may, or may not, be added to **Mustique, a Condominium** as provided for in this **Declaration**. There shall not be any **Boat Slips** or a **Private Marina** in **Mustique, a Condominium** unless the **Members** elect to amend this **Declaration** to provide for same.

Section 1.29. “Real Property” means the **Real Property** which is described in **Article III** of this **Declaration** and submitted to **Mustique, a Condominium** as provided for in this **Declaration** and shall include all **Buildings, Improvements**, and all other rights and privileges belonging or in any way pertaining to the **Real Property**.

Section 1.30. “Rules and Regulations” means the **Rules and Regulations** which may be adopted by the **Association** from time to time as provided for in this **Declaration**.

Section 1.31. “Security Interest” means an interest in real estate or personal property created by contract or conveyance, which secures payment or performance of an obligation and is secured by a **Unit** or an interest in **Mustique, a Condominium**. The term includes a lien created by a mortgage, vendor’s lien, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease, rents intended as security, or any similar security device, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.32. “Supplemental Plans” shall mean the site plan, floor plans, and elevations of **Mustique, a Condominium** prepared by an independent registered engineer or registered architect which may be attached to any amendment to this **Declaration**, the **Plans, Rules and Regulation**, and any other **Condominium Documents** for any purpose as provided for in this **Declaration**.

Section 1.33. “Unit” or “Private Element” shall have the same meaning as **Unit** as defined in the **Act** and as described in this **Declaration**. The **Units** are designated on the **Plans** as residential **Units**. A residential **Unit** is a *Unit* which will be used as a single-family residence as provided for in this **Declaration**. The residential **Units** shall be located on levels **three (3)** through **twenty-one (21)**, inclusive, in the **Building**. The **Units** enumerated in this **Declaration** and other matters pertaining to the **Units** will be further defined and described in this **Declaration**.

Section 1.34. “Utility Services” may include but not be limited to electrical power, water, gas, garbage collection, sewage disposal, telephone, and cable television.

Section 1.35. “Vessel” shall mean and refer to any craft for traveling on water including a boat, sailboat, or other watercraft which is motorized or self-propelled and in a seaworthy condition, together with any tender thereto. The term **Vessel** shall include, but

not be limited to, all **Vessels** kept on the **Condominium Property**, if permitted by the **Association**, and kept in the waters of **Little Lagoon** adjoining **Mustique, a Condominium**, if permitted by the Association.

Section 1.36. “Wharf” shall mean and refer to the piers, bulkheads, mooring pilings, and pilings and navigable waters of **Little Lagoon** which may, or may not, be added to **Mustique, a Condominium** by the action of the **Membership** as provided for in this **Declaration**.

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

Article II **Name**

The name of this **Condominium** is **Mustique, a Condominium**. **Mustique, a Condominium** is located at **2000 West Beach Boulevard, Gulf Shores, County of Baldwin, State of Alabama**.

Article III **The Real Property**

Section 3.01. The Real Property. The **Real Property**, which was submitted to **Mustique, a Condominium** by the original **Declaration** recorded by **Mustique LLC** is that parcel of **Real Property** located in **Baldwin County, Alabama**, and more particularly described as follows, to wit:

Parcel 1:

Lot 29, Block No. 1, of Lagoon Estates No. 2, Gulf Shores, Alabama, a Subdivision, as recorded in **Map Book 4, Page 149**, in the records in the **Office of the Judge of Probate of Baldwin County, Alabama** (the “**Parcel 1 Real Property**”).

Parcel 2:

The **West half of Lot 28, Block 1, Unit 2, Lagoon Estates, a Subdivision**, as per map thereof recorded in **Map Book 4, Page 149** in the records in the **Office of the Judge of Probate of Baldwin County, Alabama** (the “**Parcel 2 Real Property**”).

Parcel 3:

The West half of Lot 66 of a replat of Lots 40 through 67, Unit 6, Gulf Shores, Alabama, a Subdivision, according to map or plat thereof recorded in Map Book 4, Page 199 in the records in the Office of the Judge of Probate of Baldwin County, Alabama (the “Parcel 3 Real Property”).

(The Parcel 1 Real Property, Parcel 2 Real Property and Parcel 3 Real Property are sometimes collectively referred to as the “Real Property”)

Section 3.02. Encumbrances to Title. The Real Property is subject to the following:

- A. Reservation to the **Mustique, LLC** of all oil, gas, and other minerals, and all rights in connection therewith not previously reserved by or conveyed to other **Persons**.
- B. Interest created by or limitations and restrictions imposed on the use of the **Real Property** as established by the **Federal Coastal Zone Management Act**, or other federal, state, or local law or regulation.
- C. All ad valorem taxes and assessments.
- D. The rights of eminent domain or governmental rights of police power.
- E. Rights of parties in possession.
- F. The rights of the public, if any, to use any part of the beach, including any part of the land lying between the body of water of **Little Lagoon** and the **Gulf of Mexico** and the boundary line of the **Real Property** as granted by federal or **Alabama** law.
- G. The nature and extent of the riparian rights, shore rights, littoral rights, and accretions incident to the **Real Property** or title to that portion of the **Real Property**, if any, lying below the mean high tide line of **Little Lagoon** and the **Gulf of Mexico**.
- H. Easements or claims of easements shown or not shown by the public records.
- I. Encroachments, overlaps, boundary line disputes, and any other matter which would be disclosed by an accurate survey and inspection of the **Real Property**.

J. Terms and conditions of all permits and licenses of federal, state, and local government, including applicable agencies and departments and private and quasi-governmental agencies having jurisdiction over the **Real Property**.

K. Restrictive covenants, including minimum building setback lines, relating to the use and occupancy of the **Real Property** described in this instrument, as set forth on the recorded plat of said subdivision, as recorded in **Map Book 4, Page 149** in the records of the **Office of the Judge of Probate of Baldwin County, Alabama** and as amended by instrument dated **December 1, 1955** in **Miscellaneous Book 13, Page 400**; **BUT DELETING ANY COVENANT, CONDITION, OR RESTRICTION INDICATING A PREFERENCE, LIMITATION, OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN TO THE EXTENT SUCH COVENANTS, CONDITIONS, OR RESTRICTIONS VIOLATE 42 USC 3604(C).** (This applies to **Parcels 1 and 2.**)

L. Reservation of $\frac{1}{2}$ oil, gas, and other minerals, and all rights in connection therewith, as contained in deed from **Erie H. Meyer** to **Richard L. Moeller** dated **May 15, 1961** and recorded **October 5, 1961** in **Deed Book 310, Pages 199 through 200.** (This applies to **Parcel 1.**)

M. Reservation of $\frac{1}{2}$ interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from **Erie H. Meyer** to **Charles M. Heartsill** and **Una H. Heartsill** dated **March 27, 1974** and recorded **April 9, 1974** in **Deed Book 460, Pages 102 through 104.** (This applies to **Parcel 2.**)

N. Reservation of $\frac{1}{2}$ oil, gas, and other minerals, and all rights in connection therewith, as contained in deed from **Erie H. Meyer** to **Carl R. Green** and **Mary B. Green**, dated **June 4, 1966**, and recorded **June 17, 1966** in **Deed Book 338, Page 133.** (This applies to **Parcel 3.**)

O. **Electric Line- Right of Way Easement** from **Sharon A. Crutchfield** to **Baldwin County Electric Membership Corporation**, a **Rural Electric Cooperative** dated **January 23, 1997** and recorded **February 17, 1997** in **Real Property Book 736, Page 115.** (This applies to **Parcel 1.**)

P. Easement for **Placement, Construction, Maintenance**, and use of **Sand and Associated Sand Stabilization Structures**, **Vegetation**, **Vegetation Irrigation Systems**, and **Access Structures** granted the **City of Gulf Shores, Alabama** and the **State of Alabama** by and through the **Commissioner of the Department of Conservation and Natural Resources** dated **May 5, 2003** and recorded **July 29, 2003** as **Instrument Number 746267, Pages 1 through 3.** (This applies to **Parcel 3.**)

Q. Restrictive covenants relating to the use and occupancy of the property described as **Parcel 3** as described in this instrument as set forth on the recorded plat of said subdivision recorded in **Map Book 4, Pages 38 through 39, BUT DELETING ANY COVENANT, CONDITION, OR RESTRICTION INDICATING A PREFERENCE, LIMITATION, OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN TO THE EXTENT SUCH COVENANTS, CONDITIONS, OR RESTRICTIONS VIOLATE 42 USC 3604(C).**

R. Rights of other parties, the **United States of America** or **State of Alabama**, in and to the shore, littoral or riparian rights to the property described in this instrument which lies adjacent to Little Lagoon. (This applies to **Parcels 1 and 2.**)

S. Rights of the **United States of America, State of Alabama** or other parties in and to the bed, shore and water of **Gulf of Mexico**. Riparian rights, rights of accretion or reliction are neither guaranteed nor insured and title to no portion of the herein described land lying below ordinary mean high water mark is insured hereby. (This applies to **Parcel 3.**)

T. Rights, if any, of the public to use as a public beach or recreation area any part of the herein described land lying between the body of water abutting said land and the natural line of vegetation, dunes, extreme high water line or other apparent boundary lines separating the publicly used area from the upland private area. (This applies to **Parcel 1, 2, and 3.**)

U. Coastal Construction Line as shown on plat survey by **R. G. Jerry Perez** dated **July 20, 2004**. (This applies to **Parcel 3.**)

V. Violation of Coastal Construction Line by dock as shown on survey by **R. G. Jerry Perez** dated **July 20, 2004**. (This applies to **Parcel 3.**)

W. Encroachment of overhead power line as shown on plat of survey by **Givens Surveying & Engineering, Co., Inc.** dated **June 1, 1988**. (This applies to **Parcel 2.**)

X. Any claim arising as a result of the fence not being located on the property lines as shown on plat of survey **R. G. Jerry Perez** dated **July 20, 2004**. (This applies **Parcel 3.**)

Y. Encroachment of overhead power lines and power poles over the **West** line of the property as shown on the survey and site plan by **C. Michael Arnold**. (This applies to **Parcel 1.**)

Z. Encroachment of guy wire over the **Southeast** corner of the property as shown on survey and site plan by **C. Michael Arnold**. (This applies to **Parcel 1**.)

AA Amendment To Subdivision Regulations by the **City of Gulf Shores Planning Commission** dated **December 17, 1996** and recorded **May 27, 1997** in **Miscellaneous Book 93, Pages 1379 through 1381** and amended by **Certificate of Amendment** by **City of Gulf Shores** dated **May 14, 1999** and recorded **May 18, 1999** as **Instrument Number 493242, Pages 1 through 2** and further amended **October 26, 1999** and recorded **February 23, 2000** as **Instrument Number 534263, Pages 1 through 2** and further amended **October 26, 1999** and recorded **February 2000** as **Instrument Number 534264, Pages 1 through 3** and further amended **October 26, 1999** and recorded **February 23, 2000** as **Instrument Number 534265, Pages 1 through 5** and further amended **November 16, 1999** and recorded **February 23, 2000** as **Instrument Number 534266, Pages 1 through 5** and further amended **January 25, 2000** and recorded **February 23, 2000** as **Instrument Number 534267, Pages 1 through 3** and further amended **December 14, 1999** and recorded **March 3, 2000** as **Instrument Number 535644, Pages 1 through 5** and further amended **May 5, 2000** and recorded **May 16, 2000** as **Instrument Number 545891, Pages 1 through 2** and further amended **November 26, 2001** and recorded **December 5, 2001** as **Instrument Number 629528, Pages 1 through 4** and further amended **February 26, 2002** and recorded **March 25, 2002** as **Instrument Number 650108, Pages 1 through 2** and further amended **February 26, 2002** and recorded **March 25, 2002** as **Instrument Number 650109, Pages 1 through 2** and further amended **February 26, 2002** and recorded **March 25, 2002** as **Instrument Number 650111, Page 1** and further amended **May 28, 2002** and recorded **July 23, 2002** as **Instrument Number 672072, Pages 1 through 2** and further amended **December 17, 2002** and recorded **January 14, 2003** as **Instrument Number 704127, Pages 1 through 2** and further amended **October 28, 2003** and recorded **December 12, 2003** as **Instrument Number 778241, Page 1**. (This applies to **Parcels 1, 2 and 3**.)

BB. Zoning, if any, planning, subdivision regulations and other ordinances, laws, restrictions or regulations upon the use or division of the property described in this instrument as may be legally imposed by the **County of Baldwin, Alabama, City of Gulf Shores, Alabama** or **State of Alabama** or any other governmental authorities having jurisdiction over the property described in this instrument. (This applies to **Parcels 1, 2 and 3**.)

CC. Terms, conditions and provisions of the **Submerged Land Lease, Riparian Easement**, or other similar instrument, by and between the **State of Alabama** and the **Association**. See **Section 5.02.A.11** and **Section 5.14** of this **Declaration** for a more detailed explanation of the exceptions to title, limitations on the rights of the **Owners** to use the navigable waterways and submerged land, and of the obligations of the **Owners** and **Association** to comply with the provisions of the **Submerged Land Lease, Riparian Easement**, or other similar instrument.

Article IV
Purpose

The **Real Property**, together with all **Buildings and Improvements** on the **Real Property**, and all rights and privileges belonging or in any way pertaining to the **Real Property**, were submitted by **Mustique, LLC**, to **Mustique, a Condominium** in the manner provided for in this **Declaration** and the **Act**.

Article V
Property Access

Section 5.01. Plans. The **Building and Improvements** were substantially completed in accordance with the **Plans**, as evidenced by the **Certification** executed by an independent registered architect or registered engineer.

Section 5.02. Agreement. Each **Person** who shall acquire any **Unit**, interest, lien, or **Security Interest** in **Mustique, a Condominium** upon any such **Unit** shall be deemed, by accepting a **Deed** or conveyance of or otherwise acquiring such **Unit**, interest, lien or **Security Interest**, to have agreed and consented, within the meaning of this **Declaration** and of the **Act** to be bound by the terms and provisions of this **Declaration** and to have further agreed and consented that any amendment to this **Declaration**.

Section 5.03. Easements. There is reserved to the **Association**, a nonexclusive easement for ingress, egress and utilities on, over, under and across the **Common Elements** and common areas of **Mustique, a Condominium**.

Each of the following easements are reserved to the **Association** for the benefit of the **Units and Owners**, their guests and lessees and is a covenant running with the **Real Property**:

A. **Utilities and Drainage.** Easements are reserved throughout **Mustique, a Condominium** as may be required for **Utility Services** and drainage in order to adequately serve **Mustique, a Condominium**. Provided, however, such easements to a **Unit** shall be only in accordance with the **Plans** or as the **Improvements** are constructed, unless approved in writing by the **Owner** of the **Unit**. Each **Unit** shall have an easement as may be required to adequately drain **Mustique, a Condominium**. Each **Unit Owner** shall have an easement in common with the **Owners** of all other **Units** to use all pipes, wires, ducts, cables, conduits, public utility lines and other **Common Elements** located in any of the other **Units** and serving said **Unit**. Each **Unit** shall be subject to an easement in favor of the **Owners** of all other **Units** to use all pipes, ducts, cables, wires, conduits, public utility lines and other **Common Elements** serving such other **Units** and located in such **Unit**. The **Association** shall have a right of access to each **Unit** to inspect the **Unit**, to remove violations from the **Unit**, and to maintain, repair or replace the **Common Elements**; provided such right of access, except in the event of an emergency, shall not

unreasonably interfere with the **Owners** permitted use of the **Unit**, and except in the event of emergency, entries shall not be made without prior notice to the **Owner**.

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

C. 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 other **Units**, and the **Common Elements**.

D. Access. Each **Unit** shall have an easement for pedestrian traffic over, through and across sidewalks, paths, walks, lobbies, elevators, stairways, walkways and lanes and light passage ways, as the same may from time to time exist in the **Common Elements**; and 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, but said easement shall not give or create in any **Person** the right to park on any portion of **Mustique, a Condominium** not designated as a parking area nor shall said easement give or create in any **Person** the right to use or occupy a **Limited Common Element** designated for the exclusive use of others. This easement shall be nonexclusive and shall include the right of ingress and egress to a public street or highway upon and over **Common Elements** providing such access and as shown on the **Plans**.

Section 5.04. General Description of Improvements.

A. General Description of Improvements in Initial Development. **Mustique, a Condominium** shown on the **Plans** attached to the **Declaration** consists essentially of one (1) **Building**, together with automobile parking areas, lawn and landscaping and other facilities and other **Common Elements** and **Limited Common Elements** as more particularly set forth in this **Declaration** and in the **Plans**. The **Building** in **Mustique, a Condominium** contains twenty-one (21) levels (stories), including one ground level. The ground level (story) consists of uncovered automobile parking spaces, six (6) covered parking spaces, outdoor swimming pool and elevators. The next level (story) consists of a meeting room, fitness room, indoor swimming pool, steam room,

sauna, restrooms, elevators and various storage and equipment rooms. The next levels (stories) three (3) through twenty-one (21), inclusive, contains thirty-eight (38) **Units**. There is one (1) type of **Unit** which is more specifically described in the **Declaration** and on the **Plans**. The **Building of Mustique, a Condominium** contains a total of thirty-eight (38) **Units**. Not all **Units** shall be assigned the exclusive right to use a covered parking space. Subject to the terms and conditions of this **Declaration**, only **Club Level Unit 2001, Club Level Unit 2002, Club Level Unit 2101, Club Level Unit 2102, Penthouse Unit 1** and **Penthouse Unit 2** have been assigned the exclusive right to use one (1) covered parking space each, which shall be **Limited Common Elements** appurtenant to these **Units**.

Section 5.05. Units. (Private Elements). Each **Unit** is assigned a number or letter or a combination of numbers or letters, which is indicated on the **Plans** so that no **Unit** bears the same designation as any other **Unit**. The legal description of each **Unit** shall consist of the identifying number or letter or a combination of numbers or letters as shown on the **Plans**, the name of **Mustique, a Condominium**, and shall refer to **Baldwin County, Alabama** and the **Judge of Probate of Baldwin County, Alabama**, and the recording reference of this **Declaration**. The description and location of the particular **Units** and the appurtenances are determined with the aid of the **Plans**. The **Unit** boundaries are determined as follows:

A. **Horizontal Boundaries (Planes).** The upper and lower boundaries extended to their planer intersections with the vertical boundaries of each **Unit** shall be:

1. **Upper Boundary.** The horizontal plane of the unfinished lower interior surface of the uppermost ceiling.

2. **Lower Boundary.** The horizontal plane of the unfinished upper interior surface of the floor.

B. **Vertical Boundaries (Planes).** The vertical boundaries of each **Unit** shall be the vertical planes of the interior surfaces of exterior windows and glass doors bounding a **Unit** and the unfinished interior surfaces of the walls and entry doors bounding the **Unit**, excluding paint, wall coverings and light coverings, extended to their planer intersections with each other and with the upper and lower boundaries.

Section 5.06. Type of Units. **Mustique, a Condominium** contains one (1) type of **Unit**. All **Units** in the development of **Mustique, a Condominium** are more specifically shown on the **Plans** and are generally described as follows:

The **Units** are single-family residential **Units** as described in the **Declaration** and as designated on the **Plans**. Each residential **Unit** has three (3) bedrooms, four and one-half (4 ½) bathrooms, a multi-purpose room, a living area, a dining area and a kitchen and

contains approximately two thousand five hundred eleven (2,511) square feet of living area. There are thirty-eight (38) residential **Units** in the **Building**.

Section 5.07. Unit Ownership. Each **Owner** shall be entitled to the exclusive ownership and possession of the **Unit** of said **Owner**. Each **Owner** shall have the unrestricted right of ingress and egress to the **Unit** of said **Owner**, which right shall be an appurtenance to such **Unit**. The **Private Elements** of each **Unit** shall consist of the following:

A. **Air Space.** The air space of the area of the **Building** lying within the **Unit** boundaries.

B. **Surfacing Materials.** The surfacing materials on the interior of the exterior walls and on interior walls separating one **Unit** from another **Unit**. This is not intended to include the sheetrock on any common party walls falling between **Units**. Such sheetrock is a **Common Element**.

C. **Interior Walls.** The structural components and surfacing materials of all interior walls located within the boundaries of the **Unit**.

D. **Floors and Ceilings.** The structural components and surfacing materials of the floors and ceilings of the **Unit**.

E. **Hardware and Fixtures.** 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 **Mustique, a Condominium**, and the power meter and appurtenances.

F. **Finishing Materials.** All interior trim and finishing materials.

Section 5.08. Surfaces. An **Owner** is not deemed to own the structural components of the perimeter wall and/or load-bearing walls, nor the windows and doors bounding the **Units**. An **Owner**, however, shall be deemed to own and shall have the exclusive right and duty to repair and maintain, paint, repaint, tile, wax, paper or otherwise finish and decorate the surfacing materials on the interior of exterior walls and on interior walls separating a **Unit** from other **Units**, and the surfacing materials of the floors of the **Unit** of said **Owner**; all window screens; and all appurtenant installations, including all pipes, ducts, wires, cables and conduits used in connection with said installations and said **Unit** for services such as power, light, telephone, sewer; water, heat and air conditioning, whether located in the boundaries of the **Unit** or in common areas, which are for the exclusive use of the **Unit**; and all ceilings and partition walls. An **Owner** shall have the exclusive right and duty to wash and keep clean the interior and exterior surfaces of windows and doors bounding the **Unit** of said **Owner**.

Section 5.09. Common Elements. Any right, title or interest in a **Unit** shall automatically carry with said **Unit** as an appurtenance and without the necessity of specific reference to the respective undivided share of said **Unit** in the **Common Elements** and a right to use the **Common Elements** (subject to the right to possess **Limited Common Elements** as described in this **Declaration**) in conjunction with the other **Owners**. The **Common Elements** of **Mustique, a Condominium** are all portions of **Mustique, a Condominium** other than the **Units** and will include the common areas and facilities located substantially as shown on the **Plans**. Such common areas and facilities will include the following:

- A. **Real Property.** All of the **Real Property**.
- B. **Improvements.** All **Improvements** and parts of the **Real Property** which are not a **Unit** or **Private Element**.
- C. **Parking Areas.** All parking areas (except as assigned to the exclusive use of a **Unit** herein), driveways and other means of ingress and egress. The six (6) covered parking areas located under the **Building** are **Limited Common Elements**. The **Association** shall have the right, but shall not be obligated, to assign the exclusive use of one (1) uncovered parking space to each **Unit**. See **Section 12.01, L.** of this **Declaration** for restrictions on parking.
- D. **Mechanical Systems.** The mechanical systems and installations providing service to the **Building**, or to any **Unit**, such as electrical power, gas, light, hot and cold water, heating and air conditioning, fireplace, sanitary and storm sewer facilities and including all lines, pipes, ducts, flues, chutes, conduits, cables, wires and all other apparatus and installations in connection with said mechanical systems and installations, whether located in the **Common Elements** or in the **Units**, except when situated entirely within a **Unit** for service only of that **Unit**.
- E. **Personal Property.** All tangible personal property required for the maintenance and operation of **Mustique, a Condominium** and for the common use and enjoyment of the **Owners**.
- F. **Recreation Areas.** Recreation areas and facilities, including, but not limited to, a **Private Marina** or **Wharf**, extending into **Little Lagoon**.
- G. **Foundations.** 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 in this **Declaration** as **Private Elements**.
- H. **Lawn Areas.** Lawn areas, landscaping, walkways, sidewalks, curbs and steps.

- I. **Exterior Steps.** Exterior steps, ramps, handrails, stairs and stairwells.
- J. **Equipment.** All tanks, pumps, pump houses, wells, motors, fans, compressors and control equipment, firefighting equipment, elevator equipment and garbage equipment not reserved for the use of certain **Owners**.
- K. **Lights.** All area outdoor and exterior lights not metered to individual **Units** and supports and all entrance and related type signs.
- L. **Patios, etc.** The patios, balconies (both front and rear), terraces, porches and doorsteps or stoops affixed to each **Unit**, if any, even though designated as a **Limited Common Elements**.
- M. **Lot Adjoining Gulf of Mexico.** The **Parcel 3 Real Property** described in **Section 3.01** of this **Declaration** is a **Common Element** and shall be used only in accordance with the **Rules and Regulations** established by the **Association**.
- N. **Common Use.** All other parts of **Mustique, a Condominium** existing for the common use or necessity of the existence, maintenance and safety of **Mustique, a Condominium**.
- O. **Other Items.** All other items listed as **Common Elements** in the **Act**.

Section 5.10. Limited Common Elements.

A. **General Description of Limited Common Elements.** **Mustique, a Condominium** is as shown on the **Plans** attached to this **Declaration** consists of the **Limited Common Elements** described in this **Declaration** and in this **Section 5.10.A**. The **Limited Common Elements** located on the **Condominium Property**, the **Unit** to which they are assigned and the obligation to maintain said **Limited Common Elements** are as follows:

The balconies (both front and rear) abutting each **Unit** are **Limited Common Elements** appurtenant to those **Units** to which they attach and whose use is restricted to the **Units** to which they are appurtenant. The maintenance, repair, upkeep and replacement of each balcony (both front and rear) providing access thereto shall be the exclusive responsibility of the **Association**. Each **Unit Owner** shall have the responsibility to maintain, repair, and keep clean all tile located on a balcony serving such **Owner's Unit**. The boundaries of each balcony (both front and rear) attached to a **Unit** are the vertical painted surfaces of the walls, the exterior faces of the sliding glass doors bounding the balcony and the inside plane of the finished surface of the perimeter railings abutting the balcony (both front and rear). The **six (6)** covered parking spaces are **Limited Common Elements** appurtenant to specific **Units** to which they are assigned.

Section 5.11. Navigable Waterways and Submerged Land. All activities on or over and all uses of navigable waterways and submerged land are subject to the jurisdiction of the **State of Alabama, the United States Department of Army Corps of Engineers**, and other governmental agencies having jurisdiction. Each **Unit Owner** shall be responsible to the extent of his or her ownership for any damages to, any illegal or uses not permitted of, and any duties or responsibilities concerning, the use of navigable waterways, submerged lands, coastal areas, and any other critical area. The rights of a **Unit Owner** to use the **Common Elements, Limited Common Elements** or the waterways is subject to **State, Federal** and local law and further subject to rules and regulations imposed by any governmental entity having jurisdiction.

Article VI **Common Elements**

Section 6.01. Ownership of the Common Elements.

A. Mustique, a Condominium. Each **Unit** will be responsible for paying an equal share of the total **Assessments** imposed by the **Association** pertaining to the **Common Elements**. The percentage of undivided interest of each **Unit** in the **Common Elements** is determined by dividing the total number of square feet of interior area of each **Unit** by the total number of square feet of interior area in all **Units**.

B. Ownership of the Common Elements. For the purpose of this **Section 6.01**, the total number of square feet of interior area of any **Unit** shall be conclusively presumed to be as shown on the **Plans**. For purposes of percentage of ownership in the **Common Elements**, percentage of **Common Expenses** and percentage of **Common Surplus**, and voting on all matters requiring action by the **Owners**, each **Unit** shall be equal in percentage interest in ownership in the **Common Elements, Common Expenses** and **Common Surplus**. The ownership interest in the **Common Elements** shall be an undivided interest, and except as provided in the **Act** and this **Declaration** shall remain undivided. No **Owner** shall bring any action for partition or division of the **Common Elements**. 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.

Section 6.02. Use. Each **Owner** shall have the right to use the **Common Elements** (except any portions of the **Common Elements** designated as a **Limited Common Element** and restricted to the exclusive use of and as an appurtenance to a **Unit** and subject to any portion subject to leases made by or assigned to the **Board of Directors** and the exclusive and (**Limited Common**) semi-exclusive parking spaces and areas) 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 **Mustique, a Condominium**. The right to use the **Common Elements** shall be subject

to and governed by the provisions of the **Act, Condominium Documents** and the **Rules and Regulations**. In addition, the **Association** shall have the authority to lease, grant concessions, or grant easements with respect to parts of the **Common Elements** subject to the provisions of the **Declaration** and **By-Laws**.

Section 6.03. Share of Common Expenses and Limited Common Expenses.

Each **Owner** shall be assessed and is individually liable for a proportionate share of the **Common Expenses** and the proportionate share of the **Common Expenses** shall be the same ratio as the percentage ownership of a **Unit** in the **Common Elements** as the case may be. Each **Owner** shall be assessed and is individually liable for the **Limited Common Expenses** in connection with the patio, balcony (both front and rear), terrace or porch and the doorsteps or stoops, if any, as set out in **Section 5.12** of this **Declaration**. Payment of **Common Expenses** and **Limited Common Expenses** shall be in such amounts and at such times as determined by the **Association** and by the **By-Laws**. **Assessments** shall be collected by the **Association** on a monthly basis or as otherwise determined by the **Board of Directors**. No **Owner** shall be exempt from payment of the proportionate share of the **Common Expenses** or **Limited Common Expenses** by waiver or nonuse or non-enjoyment of the **Common Elements** or **Limited Common Elements**, or by abandonment of the **Unit** of said **Owner**. **Common Expenses** and **Limited Common Expenses** shall include but shall not necessarily be limited to expenditures made or liabilities incurred by the **Association**, together with payments or obligations to reserve accounts.

Section 6.04. Late Payment of Assessments. **Assessments** for **Common Expenses** and **Limited Common Expenses**, and installments of said **Assessments**, paid on or before **fifteen (15)** days after the date when due shall bear no interest, but all sums not paid on or before **fifteen (15)** days after the date when due shall bear such late charges, penalties, interest and other costs and expenses, at a rate set by the **Board of Directors**, but not to exceed the maximum legal rate, together with all expenses, including attorney's fees incurred by the **Association** in any undertaking to collect 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 attorney's fees, and then to the **Assessment** payment due. The **Association** may, in the manner provided for in the **By-Laws**, after notice and an opportunity to be heard, levy reasonable fines for violations of this **Declaration**, the **By-Laws** and **Rules and Regulations**.

Section 6.05. Liens for Assessments. The **Association** is granted a lien upon each **Unit** and the appurtenant undivided interest of the **Unit** in the **Common Elements** and **Limited Common Elements** and upon the goods, furniture and effects belonging to the **Owner** and located in such **Unit**, which lien shall secure and does secure the moneys due for all **Assessments** levied against the **Owner** and/or **Unit** which lien shall also secure such late charges, penalties and interest, if any, which may be due on the amount of any delinquent **Assessment** owing to the **Association**, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the

Association in enforcing this lien upon said **Unit** and the appurtenant undivided interest of said **Unit** in the **Common Elements** or **Limited Common Elements**.

Section 6.06. Priority of Lien. The **Association** shall have a lien for nonpayment of **Common Expenses** and **Limited Common Expenses** as is provided by the **Act**. In any suit for the foreclosure of a lien for **Assessments**, the **Association** shall be entitled to rental from the **Unit** and **Owner** from the date on which the payment of any **Assessment** or installment becomes delinquent and shall be entitled to the appointment of a receiver for said **Unit**, without notice to the **Owner**. The rental required to be paid shall be equal to the rental charged on comparable types of dwellings in the area in which **Mustique, a Condominium** is located. The lien granted to the **Association** shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the **Association** in order to preserve and protect the lien of the **Association**, and the **Association** shall further be entitled to interest at a rate set by the **Board of Directors** but in no case shall said interest exceed the maximum legal rate on any such advances made for such purposes. All **Persons** who shall acquire, by whatever means, any interest in the ownership of any **Unit**, or who may be given or acquire a **Security Interest**, lien or other encumbrance on any **Unit**, are placed on notice of the lien granted to the **Association**. A lien for **Common Expenses** or **Limited Common Expenses** shall not be affected by any sale or transfer of a **Unit**, except as provided in this **Declaration**. A sale or transfer of a **Unit** pursuant to a foreclosure of a first **Security Interest** held by an **Eligible Security Interest Holder** shall extinguish a subordinate lien for **Assessments** which became payable prior to such sale or transfer.

Provided, However, a sale or transfer pursuant to a foreclosure of a first **Security Interest** held by an **Eligible Security Interest Holder** shall not extinguish the lien of the **Association** to the extent of the **Common Expense 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. However, any such delinquent **Assessments** which were extinguished pursuant to the foregoing provision may be reallocated and assessed to all of the **Units** as a **Common Expense**. Any such sale or transfer of a **Unit** pursuant to foreclosure does not relieve the purchaser or transferee of a **Unit** from liability for, nor the **Unit** from the lien of, any **Assessments** made after such sale or transfer.

Section 6.07. Disposition of Surplus. Each **Unit** shall carry with said **Unit** a proportionate share of **Common Surplus** or **Limited Common Surplus**, as the case may be, and the proportionate share of **Common Surplus** or **Limited Common Surplus** shall be the same ratio as the percentage ownership of that **Unit** in the **Common Elements** or **Limited Common Elements**; or, in the alternative, such surplus or any portion of said surplus may be added to a reserve fund for maintenance, repair and replacement of the **Common Elements** or the **Limited Common Elements**, as the case may be, at the sole discretion of the **Association**.

Article VII
The Association

Section 7.01. Powers and Duties. The operation and administration of **Mustique, a Condominium** shall be by the **Association** of the **Owners**, pursuant to the provisions of the **Act**. The **Association** shall be an **Alabama Nonprofit 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 the powers of the **Association**. The **Association** shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of **Owners of Mustique, a Condominium** with reference to the **Common Elements** or the **Limited Common Elements**, the roof and structural components of a **Building** or other **Improvement**, and mechanical, electrical and plumbing elements serving an **Improvement** or a **Building** as distinguished from mechanical elements serving only a **Unit**; and with reference to any and all other matters in which all the **Owners** have a common interest. 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 on the **Association** under the **By-Laws** and other **Condominium Documents** as they may be amended from time to time. The **Association** is specifically authorized to enter into agreements by which the powers and duties of the **Association**, or some of them, may be exercised or performed by some other **Person**. 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 **Mustique, a Condominium** and further, shall have the right to grant permits, licenses and easements over the common areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of **Mustique, a Condominium**. The **Board of Directors** shall have the authority and duty to levy and enforce the collection of general and specific **Assessments** for **Common Expenses** and **Limited Common Expenses** and is further authorized to provide adequate remedies for failure to pay such **Assessments**.

Section 7.02. Name. The name of the **Association** is **Mustique Condominium Owners' Association, Inc.**

Section 7.03. Members. Each **Owner** shall be a **Member** of the **Association** so long as said **Member** is an **Owner**. A membership of an **Owner** shall immediately terminate when said **Member** ceases to be an **Owner**. The membership of an **Owner** cannot be assigned or transferred in any manner except as an appurtenance to the **Unit** of said **Owner**.

Section 7.04. Voting Rights. Each **Unit** shall be entitled to one (1) vote, which vote is not divisible, the numerical value of which shall be the percentage of undivided interest in the **Common Elements** assigned to the **Unit** of which the **Member** is the **Owner**. The vote for a **Unit** shall be cast by the **Owner** of said **Unit** in the manner provided for in this **Declaration** and in the **By-Laws**. However, should the **Association** be an **Owner**, the **Association** shall not have the voting right for that **Unit**.

Section 7.05. Designation of Voting Representative. In the event a **Unit** is owned by one (1) **Person**, the right to vote of said **Owner** shall be established by the record title to the **Unit** of said **Owner**. 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, limited liability company, partnership or limited partnership, the officer, employee or individual entitled to cast the vote for the **Unit** shall be designated by a certificate of appointment signed by the **President or Vice President** and attested by the **Secretary or Assistant Secretary** of the corporation (in the case of a corporation), or by the member or members, if more than one (1), (in the case of a limited liability company) or by the general partner or partners if more than one (1) (in the case of a partnership or limited partnership), which certificate shall be filed with the **Secretary of the Association**. If such a certificate is not on file with the **Secretary of the Association** for a **Unit** owned by more than one (1) **Person** or by a corporation, limited liability company, partnership or limited partnership, the membership or vote of the **Unit** concerned may not be cast, although the presence of one (1) **Owner**, but less than all **Owners** of a **Unit** at any meeting shall not prevent the counting of such **Unit** to establish a quorum. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the **Unit** concerned is effected. A certificate designating the **Person** entitled to cast the vote of a **Unit** may be revoked by any **Owner** named in said certificate.

Section 7.06. Restraint upon Assignment of Shares in Assets. The share of a **Member** in the funds and assets of the **Association** cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the **Unit** of said **Owner**.

Section 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 the number, from time to time, as shall be determined and fixed by a vote of a **Majority** of the voting rights present at any meeting of the **Members**.

Section 7.08. Indemnification. Every **Director** and every officer of the **Association** shall be indemnified by the **Association** against all expenses and liabilities, or any settlement, including counsel fees, reasonably incurred by or imposed upon said **Director** or officer in connection with any proceeding to which said **Director** or officer may be a party, or in which said **Director** or officer may become involved, by reason of said **Director** or officer being or having been a **Director** or officer of the **Association**,

whether or not said **Director** or officer is a **Director** or officer at the time such expenses are incurred, except in such cases wherein the **Director** or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of the duties of said Director or officer duties; provided that in the event of a settlement, the indemnification provided for in this **Declaration** shall apply only when the **Board of Directors** approves such settlement and reimbursement as being in the best interest of the **Association**. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such **Director** or officer may be entitled.

Section 7.09. Limitation of Liability. Notwithstanding the liability of the **Association** to maintain and repair parts of **Mustique, a Condominium, the Association** shall not be liable for injury or damage caused by a latent condition of **Mustique, a Condominium** to be maintained and repaired by the **Association** nor for injury or damage caused by the elements, or other **Owners** or **Persons**.

Section 7.10. By-Laws. The **Association** and the **Members** shall be governed by the **By-Laws**.

Section 7.11. Availability of Records. The **Association** shall keep financial records sufficiently detailed to enable the **Association** to comply with the **Act**. The **Association** shall make reasonably available in **Baldwin County, Alabama** for examination by **Owners**, prospective purchasers, **Eligible Security Interest Holders**, or their authorized agents, current copies of this **Declaration**, the **By-Laws, 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 or under reasonable circumstances.

Section 7.12. 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**.

Article VIII **Maintenance**

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

Section 8.02. Maintenance by Owner. Each **Owner** is responsible for the maintenance, repair, and replacement of the **Unit** of said **Owner**. Each **Owner** is responsible for keeping clean the **Limited Common Elements**, if any, appurtenant to the

Unit of said **Owner** as provided for in **Section 5.12** of this **Declaration**, and shall be responsible for the maintenance, repair and replacement of all tile covering balconies, terraces or porches appurtenant to such **Unit**.

Section 8.03. Addition, Alteration, and Improvement of the Common Elements. Except as may be permitted by the **Act**, there shall be no addition, alteration, change or further **Improvement** of **Common Elements** or **Limited Common Elements** without prior written approval of the **Association**.

Section 8.04. Covenants of Owner. Each **Owner** covenants and agrees as follows:

A. Maintenance. To perform all maintenance, repairs and replacements that are the obligations of the **Owner** under this **Declaration** and the **Act**.

B. Utilities and Taxes. To pay for all the utilities, including electricity, gas, if any, and telephone of the **Owner** used within the **Unit** and all taxes levied against the **Unit** of the **Owner**.

C. Repairs. Not to make, or cause to be made, any repairs to any plumbing, heating, ventilation, or air conditioning systems located outside the **Unit** of the **Owner** but required to be maintained by the **Owner** pursuant to the provisions of this **Declaration**, except by licensed plumbers or electricians authorized to do such work by the **Association** or the agent of the **Association**.

D. No Alterations to Unit. Not to make any addition or alteration to a **Unit** or to the **Common Elements** or to the **Limited Common Elements** or to do any act that would impair the structural soundness or safety of any part of **Mustique, a Condominium**. Structural alterations within a **Unit** may be made only with the written consent of the **Association**.

E. No Alterations to Common Elements. To make no alterations, additions, **Improvements**, repairs, replacements or changes to the **Common Elements** or the **Limited Common Elements** or to any outside or exterior portion of the **Building**, specifically including, but-not limited to screening or enclosing balconies (both front and rear), installing garage or other exterior doors or affixing out shutters to windows, without the prior written consent of the **Association**. If consent is granted by the **Board of Directors** to make **Improvements**, the **Owner** shall use only a licensed contractor who shall comply with the **Rules and Regulations** with respect to the work which may be approved by the **Association**. The **Owner** shall be liable for all damages to another **Unit** and to the **Common Elements** or **Limited Common Elements** caused by any contractor employed by such **Owner** or by the subcontractor or employees of such contractor, whether said damages are caused by negligence, accident or otherwise.

F. Right of Association to Enter Unit. To allow the **Association**, the

delegates, agents or employees of the **Association** at all reasonable times to enter into any **Unit** or **Limited Common Element** for the purpose of maintaining, inspecting, repairing or replacing **Common Elements** or **Limited Common Elements** or for repairing, maintaining or replacing any plumbing, heating, ventilation or air conditioning system located within such **Unit** but serving other parts of **Mustique, a Condominium**; or to determine, in case of emergency, the circumstances threatening **Units** or **Common Elements** or **Limited Common Elements** and to correct the same; or, to determine compliance with the provisions of the **Condominium Documents**.

G. Promptly Report. To promptly report to the **Association** any defects or needed repairs for which the **Association** is responsible.

H. Reimburse Association. To reimburse the **Association** for any repairs or replacements which are made necessary because of abuse or negligent use by an **Owner of Mustique, a Condominium**, the cost of such repair or replacement may be assessed against such **Owner**.

I. Obligations of Owner. To comply with all of the obligations of an **Owner** under the **Act**.

Section 8.05. Contracts for Maintenance. The **Association** may enter into a contract with any firm, **Person** or corporation, or may join with other entities in contracting for the maintenance and repair of **Mustique, a Condominium**, and 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**. This **Section 8.05** shall be subject to the provisions of **Section 7.12** of this **Declaration**.

Section 8.06. Exterior Surface. The **Association** shall determine the exterior color scheme of **Mustique, a Condominium** and shall be responsible for the maintenance of the exterior of **Mustique, a Condominium**, except as may be otherwise provided for in this **Declaration**. No **Owner** shall paint any exterior surface or add or replace or affix anything to said exterior surface without the written consent of the **Association**.

Article IX **Insurance**

Section 9.01. Purchase of Insurance. The **Association** shall maintain insurance upon **Mustique, a Condominium** to the extent reasonably available as provided for in the **Act** and in this **Declaration**.

Section 9.02. Locations of Policies. The **Association** shall retain the originals of all insurance policies in a place of safekeeping such as a safe or a safety deposit box.

Section 9.03. Copies to Eligible Security Interest Holder. One (1) copy of each

insurance policy and of all endorsements to said insurance policies shall be furnished by the **Association** to any **Eligible Security Interest Holder** requesting a copy.

Section 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.

Section 9.05. Coverage. The **Association** is required to maintain the following insurance coverage:

A. Property and Casualty. The **Association** must obtain, maintain, and pay the premiums upon, as a **Common Expense**, the property insurance required by the **Act** and as follows. The type of policy shall be a "master" or "blanket" type policy of property insurance covering all of the **Common Elements** and **Limited Common Elements** (except land, foundation, excavation and other items usually excluded from coverage) including fixtures, to the extent they are part of the **Common Elements** or **Limited Common Elements** of **Mustique, a Condominium**, building service equipment and supplies, and other personal property belonging to the Association. All references in this **Declaration** 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 an **Eligible Security Interest Holder** (regardless of whether or not such property is a part of the **Common Elements**) must be covered by such "master" or "blanket" policy, if required by said **Eligible Security Interest Holder**. 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 co-insurance provision at any renewal date, exclusive of land, foundation, excavation and other items normally excluded from property policies. The policy shall include an "**Agreed Amount Endorsement**" or equivalent endorsement and, if available, an "**Inflation Guard Endorsement**". If there shall be a construction code provision that requires changes to undamaged portions of **Mustique, a Condominium** even when only part of **Mustique, a Condominium** is destroyed by an insured hazard, the policies shall include construction code endorsements. The property insurance policy shall provide, as a minimum coverage and protection against:

1. Loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement;
2. All other perils which are customarily covered with respect to condominiums similar in construction in order to meet the requirements of the **Act**.

B. Liability Insurance. The **Association** must obtain, maintain, and

pay the premiums upon, as a **Common Expense**, a comprehensive general liability insurance policy, including medical payments insurance, as required by the **Act** and covering all the **Common Elements** and **Limited Common Elements**, commercial space owned and leased by the **Association**, and public ways of **Mustique, a Condominium**. Coverage limits shall be in amounts generally required by **Eligible Security Interest Holder** investors for projects 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** or **Limited Common Elements**, and legal liability arising out of lawsuits 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, elevator collision and garage keepers' liability. If required by any **Eligible Security Interest Holder** and, if reasonably available, the policy shall include protection against such other risks as are customarily covered with respect to condominiums similar in construction, location and use, including but not limited to host liquor liability, employers' liability insurance, contractual and all written contract insurance and comprehensive automobile liability insurance.

C. Flood Insurance. If any part of **Mustique, a Condominium** 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 upon, as a **Common Expense**, a "master" or "blanket" type of flood insurance policy. The policy shall cover the **Common Elements** and **Limited Common Elements** falling within the designated flood hazard area. The insurance shall be in an amount deemed appropriate by the **Association**, but not less than an amount equal to the lesser of:

1. **Eighty percent (80%)** of the actual cash value of the insured property located within the flood hazard area; or

2. The maximum coverage available for **Mustique, a Condominium** under the **National Flood Insurance Program**. The policy shall be in a form which meets the criteria set forth in the most current guidelines issued on the subject by the **Federal Government**.

D. Personnel Coverages. Should the **Association** employ personnel, all coverage required by law, including workers' compensation, shall be obtained so as to meet the requirements of the law and the premiums for such insurance shall be a **Common Expense**.

E. Fidelity Bonds. The **Association**, if reasonably available, shall

obtain, maintain, and pay the premiums upon, as a **Common Expense**, a fidelity bond to protect against loss of money by dishonest acts on the part of all **Officers, Directors** and employees of the **Association** and all other **Persons** handling, or 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 shall be required to maintain fidelity bond coverage for the officers, employees, and agents of the **Association** handling or responsible for funds of, or administered on behalf of, the **Association**. The fidelity bond shall name the **Association** as the obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than one hundred fifty percent (150%) of the estimated annual **Common Expenses**. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of **Persons** serving without compensation from the definition of "employees" or similar terms or expressions. The premiums on all bonds required in this **Declaration** to be maintained by the management agent shall be paid by the management agent. The bond shall provide that any **Eligible Security Interest Holder** shall receive notice of cancellation or modification of the bond.

F. **Other Insurance.** The **Association** shall obtain other insurance required by the **Act** and shall have authority to obtain such other insurance as the **Association** deems desirable, 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**. If the insurance described in this **Declaration** which is required to be maintained is not reasonably available, the **Association** promptly shall give notice of that fact to be hand delivered or sent prepaid by **United States Mail** to all **Owners**.

Section 9.06. Individual Insurance. Nothing contained in this **Declaration** shall be construed to prevent an **Owner** from obtaining insurance for the benefit of said **Owner**.

Section 9.07. Provisions. Insurance coverage, if reasonably available, must comply with the requirements of the **Act** and this **Declaration** and shall in substance and effect:

A. **Policy Primary.** Provide that the policy shall be primary, even if the **Owner** has other insurance that covers that same loss, and further provide that the liability of the insurer under said policy shall not be affected by, and that 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** or **Owner**.

B. **Liability of Insurer.** Contain no provision relieving the insurer from liability for a loss occurring because the hazard to such **Building** is increased, whether or not 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

Owner or any other **Persons** under either of them.

C. **No Cancellation of Policy.** Provide that such policy may not be canceled or substantially modified and the insurer may not refuse to renew said policy (whether or not requested by the **Association**) except by the insurer giving at least thirty (30) days prior written notice to the **Association**, the **Owner**, each **Eligible Security Interest Holder** on an individual **Unit**, and every other **Person** in interest who shall have requested such notice of the insurer.

D. **Waiver.** 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**.

E. **Standard Clause.** Contain a standard clause which shall:

1. Provide that any reference to an **Eligible Security Interest Holder** in such policy shall mean and include all **Eligible Security Interest Holders** on any **Unit**, whether or not named in this **Declaration**; and,

2. Provide that such insurance as to the interest of any **Eligible Security Interest Holder** shall not be invalidated by any act or neglect of the **Association** or **Owners** or any **Persons** under any of them; and,

3. Waive any provisions invalidating such clause by reason of the failure of the **Eligible Security Interest Holder** to notify the insurer of any hazardous use or conveyance, any requirement that the **Eligible Security Interest Holder** pay any premium, and any contribution clause.

Section 9.08. Liabilities and Responsibilities of Owner. An **Owner** shall be liable for any claim, damage or judgment entered as a result of the use or operation of the **Unit** of said **Owner** caused by the conduct of said **Owner**, his family members, guests, and/or tenants. Each **Owner** shall be responsible for obtaining liability insurance for the benefit of said **Owner**.

Section 9.09. Insurance Premiums. Insurance premiums maintained by the **Association** shall be paid by the **Association** as a **Common Expense**. Should the **Association** fail to pay such insurance premiums when due, or should the **Association** fail to comply with other insurance requirements of an **Eligible Security Interest Holder**, the **Eligible Security Interest Holder** shall have the right, at the option of the **Eligible Security Interest Holder**, to order insurance policies and to advance such sums as are required to maintain or procure such insurance. To the extent of any money so advanced, the **Eligible Security Interest Holder** shall be subrogated to the **Assessment** and the lien rights of the **Association** as against the individual **Owners** for the payment of such item of **Common Expense**.

Section 9.10. Insurance Trustee; Shares of Proceeds. All insurance policies

purchased by the **Association** shall be for the benefit of the **Association** and the **Owners** and the **Eligible Security Interest Holders** 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 **Owners** in the percentages as established by the **Declaration**, which said **Association**, for the purpose of these provisions, is referred to in this **Declaration** as the **Insurance Trustee**. The duty of the **Insurance Trustee** shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this **Declaration** and for the benefit of the **Owners** and **Eligible Security Interest Holders**. The **Insurance Trustee** shall have the power to adjust all claims arising under insurance policies purchased by the **Association**; to bring suit in the name of the **Insurance Trustee** and/or in the name of other insured; to deliver releases on payment of claims; to compromise and settle such claims; and otherwise to exercise all the rights, powers and privileges of the **Association** and each **Owner** and any other holder of an insured interest in **Mustique, a Condominium** under such insurance policies, however, the actions of the **Insurance Trustee** shall be subject to the approval of any **Eligible Security Interest Holder** if the claim shall involve more than one (1) **Unit**, and if only one (1) **Unit** is involved, such actions shall be subject to approval of any **Eligible Security Interest Holder** encumbering such **Unit**.

Section 9.11. Shares of Proceeds. The **Association**, as **Insurance Trustee**, shall receive such insurance proceeds as are paid to the **Association** and shall hold the same in trust for the purposes stated in this **Declaration** and for the benefit of the **Owners** and the **Eligible Security Interest Holders** in the following shares:

A. **Common Elements.** An undivided share of the proceeds on account of damage to **Common Elements** shall be held for each **Owner**, with the share of such portion of the total proceeds being the same percentage as the share of the **Common Elements** appurtenant to said **Unit**.

B. **Units and Limited Common Elements.** Except as provided elsewhere in this **Declaration**,

1. When **Mustique, a Condominium** is to be restored, the proceeds shall be held for the **Owners** of damaged **Units** and damaged **Limited Common Elements**, with the share of each in the total proceeds being in the proportion that the cost of repairing the damage suffered by such **Owner** bears to the total cost of repair, which cost shall be determined by the **Board of Directors**.

2. When **Mustique, a Condominium** is not to be restored, the proceeds shall be held for the **Owners** in the undivided shares that are the same as their respective shares in the **Common Elements**.

C. **Security Interests** In the event a **Security Interest** endorsement

has been issued with respect to a **Unit**, the share of the **Owner** of that **Unit** shall be held in trust for the **Eligible Security Interest Holder** and the **Owner** as their interest may appear. Provided, however, that no **Eligible Security Interest Holder** shall have any right to determine or participate in the determination of whether or not any damaged property shall be reconstructed or repaired except as may be specifically provided to the contrary elsewhere in this **Declaration**.

Section 9.12. Distribution of Proceeds. Proceeds of insurance policies received by the **Association** as **Insurance Trustee** shall be distributed to or for the benefit of the beneficial **Owners**:

A. Reconstruction or Repair After Casualty. First, if the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost of said repair or reconstruction. Any proceeds remaining after defraying such costs shall be distributed to the beneficial **Owners**, or, at the discretion of the **Board of Directors**, credited to reserves. If payments are determined by the **Board of Directors** to be made to the **Owners**, such payments shall be made to **Owners** and **Eligible Security Interest Holders** being payable jointly to them. This is a covenant for the benefit of any **Eligible Security Interest Holder** of a **Unit** and may be enforced by any such **Eligible Security Interest Holder**.

B. Failure to Reconstruct or Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial **Owners** with remittances to **Owners** and the **Eligible Security Interest Holders** being payable jointly to them. This is a covenant for the benefit of a **Eligible Security Interest Holder** of a **Unit** and may be enforced by any such **Eligible Security Interest Holder**.

Article X

Reconstruction or Repair After Casualty

Section 10.01. Determination to Reconstruct or Repair. Any portion of **Mustique, a Condominium** for which insurance is required under this **Declaration** which is damaged or destroyed must be repaired or replaced promptly by the **Association** unless:

A. Act. Mustique, a Condominium is terminated in accordance with the provisions of this **Declaration** or the **Act**;

B. Health or Safety. Repair or replacement would be illegal under any state or local statute or ordinance covering health or safety; or

C. Vote of Owners. **Eighty percent (80 %)** of the **Owners**, including

every **Owner** of a **Unit** or assigned **Limited Common Element** which will not be rebuilt, vote 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 in this **Declaration**.

Section 10.02. Plans. Any reconstruction or repair must be substantially in accordance with the **Act** and in accordance with the **Plans** for the original **Improvements** or as **Mustique, a Condominium** was last constructed; or if not, then according to **Plans** approved by the **Board of Directors** and by **one hundred percent (100%)** of the **Owners**.

Section 10.03. Responsibility. If the damage is only to those parts of a **Unit** for which the responsibility of maintenance and repair is that of the **Owner**, then the **Owner** shall commence reconstruction and repair within **thirty (30) days** after casualty and shall complete reconstruction and repair within a reasonable time period thereafter. If, for any reason, the **Owner** is unable to complete the reconstruction and repair of the **Unit** for which the responsibility of maintenance and repair is that of the **Owner**, within a reasonable time period after casualty, then, in that event, the **Association** shall reconstruct and repair the **Unit** at the sole expense of the **Owner** of said **Unit**. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the **Association**.

Section 10.04. Estimate of Cost. Immediately after a casualty causing damage to **Mustique, a Condominium** 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.

Section 10.05. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair of the **Units** by the **Association**, **Assessments** shall be made against the **Owners** who own the damaged property, and against all **Owners** in the case of damage to **Common** or **Limited Common Elements** in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of said reconstruction or repair are insufficient, **Assessments** shall be made against the **Owners** who own the damaged **Unit**, and against all **Owners** in the case of damage to **Common** or **Limited Common Elements** in sufficient amounts to provide funds for the payment of such costs. Such **Assessments** against **Owners** for reconstruction and/or repair of damage to **Units** shall be in proportion to the cost of reconstruction and repair of their respective **Units**. Such **Assessments** for reconstruction and/or repair of damage to common areas and facilities shall be in proportion to the share of the **Owner** in the **Common and Limited Common Elements**. **Assessments** for reconstruction and repair may be collected, and the collection enforced, in the same manner as provided for **Assessments** elsewhere in this **Declaration**.

Section 10.06. Construction Funds. The funds for payment of costs of

reconstruction and repair after casualty for which the **Association** is responsible, which shall consist of proceeds of insurance held by the **Association** as **Insurance Trustee** and funds collected by the **Association** from **Assessment** against **Owners** on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the following manner and order:

A. **Disbursement.** The construction fund shall be disbursed in payment of such costs on the order and in the manner determined by the **Board of Directors**.

B. **Owner.** If there is a balance of insurance proceeds after the payment of the cost of reconstruction and repair that is the responsibility of the **Association**, this balance shall be distributed to **Owners** of damaged **Units** who are responsible for the reconstruction and repair of the damaged portions of their **Units**, or, in the sole discretion of the **Board of Directors**, credited to reserves. In the event the **Board of Directors** should determine to make distribution to the **Owners**, such distribution shall be made in the proportion that the estimated costs of reconstruction and repair of such damage to said **Unit** bears to the total of such estimated costs in all damaged **Units**. However, no **Owner** shall be paid an amount in excess of such estimated cost for the **Unit** of said **Owner**. If there is an **Eligible Security Interest Holder**, any distribution determined by the **Board of Directors** shall be paid to the **Owner** and to the **Eligible Security Interest Holder** jointly.

C. **Surplus.** It shall be presumed that the first monies distributed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial **Owners** of the fund, or credited to reserves, as determined by the **Board of Directors**.

Article XI **Eminent Domain**

Section 11.01. Proceeds. The taking of a portion of a **Unit** or of the **Common** or **Limited Common Elements** by eminent domain shall be deemed to be a casualty and the determination as to whether **Mustique, a Condominium** will be reconstructed or repaired or continued after condemnation will be determined in the manner provided for in the **Act** and under this **Declaration** and the awards for such taking shall be deemed proceeds from insurance on account of the casualty and shall be deposited with the **Association** as **Insurance Trustee**. Even though the awards may be payable to an **Owner**, the **Owner** shall deposit the awards with the **Association** as **Insurance Trustee**; and in the event of failure to do so, in the discretion of the **Board of Directors** an **Assessment** shall be made against a defaulting **Owner** in the amount of the award, or the amount of such award shall be set off against the sums made payable to such **Unit Owner**.

Section 11.02. Disbursement of Funds. If **Mustique, a Condominium** is terminated after condemnation, the proceeds of the condemnation awards shall be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in this **Declaration** for the distribution of insurance proceeds if **Mustique, a Condominium** is terminated after damage to the **Common Elements**. If **Mustique, a Condominium** is not terminated after condemnation, the size of **Mustique, a Condominium** will be reduced and **Mustique, a Condominium**, as damaged by the taking will be made usable in the manner provided by the **Act** and as provided in this **Declaration**. The proceeds of such award shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the **Association** after damage to the **Common Elements**.

Section 11.03. 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 of a portion of the **Unit** shall be used for the following purposes in the order stated, and the following changes shall be effected in **Mustique, a Condominium**:

A. **Restoration of Unit.** The **Unit** shall be made habitable. If the cost of the restoration exceeds the amount of the award, and the **Owner** of the **Unit** does not within a reasonable period of time provide the additional funds required for restoration, such additional funds may, in the discretion of the **Board of Directors**, be extended for restoration by the **Association** and be assessed against the **Unit** and **Owner** as an **Assessment**.

B. **Distribution of Surplus.** The balance of the award, if any, shall be distributed to the **Owner** of the **Unit** and to any **Eligible Security Interest Holder** of a **Unit**, the remittance being made payable jointly to the **Owner** and any such **Eligible Security Interest Holder**.

C. **Adjustment of Shares in Common Elements.** If the floor area of the **Unit** is reduced by the taking, the percentage representing the share in the **Common Elements**, the **Common Expenses** and the **Common Surplus** appertaining to the **Unit** shall be reduced in accordance with the **Act**.

Section 11.04. Unit Made Unhabitable. If the taking is of the entire **Unit**, or so reduces the size of the **Unit** so that the **Unit** cannot be used practically or lawfully for any purpose permitted by this **Declaration**, the award for the taking of the **Unit** shall be used for the following purposes in the order stated, and the following changes shall be effected in **Mustique, a Condominium**:

A. **Payment of Award.** The award shall be paid first to any **Eligible Security Interest Holder** in an amount sufficient to pay off the first **Security Interest** held by said **Eligible Security Interest Holder** on such **Unit**; and then jointly to the **Owner** and any other holders of a **Security Interest** in the **Unit** in an amount not to exceed the market value of the **Unit** immediately prior to the taking as diminished by any

sums from the award previously reserved for any **Eligible Security Interest Holder**; and the balance, if any, to the repairing and replacing of the **Common Elements** damaged by the taking.

B. Addition to Common Elements. 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 **Owners** in the manner approved by the **Board of Directors**; provided that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner elsewhere required in this **Declaration** for further **Improvement** of the **Common Elements**.

C. Adjustment of Shares in Common Elements, Common Expenses and Common Surplus. The shares in the **Common Elements**, the **Common Expenses**, and the **Common Surplus** appurtenant to the **Units** that continue as part of **Mustique, a Condominium** shall be adjusted to distribute the ownership of the other shares among the reduced number of **Owners**. This adjustment shall be done by restating said share of the continuing **Owners** as percentages aggregating **one hundred percent (100%)** so that the shares appurtenant to the **Units** of the continuing **Owners** shall be in the same proportions to each other as before the adjustment.

D. Assessments. If the balance of the award (after payments to the **Owner** and to the **Eligible Security Interest Holder** of said **Unit** as provided in this **Declaration**) for the taking is not sufficient to finance the alteration of the remaining portion of the **Unit** for use as a part of the **Common Elements**, the additional funds required for such purposes shall be raised by **Assessments** against all the **Owners** who will continue as **Owners** of **Units** after the changes in **Mustique, a Condominium** effected by the taking. Such **Assessments** shall be made in proportion to the shares of those **Owners** in the **Common Elements** after the changes effected by the taking.

E. Arbitration. If the market value of a **Unit** prior to the taking cannot be determined by agreement between the **Owners**, holders of a **Security Interest** in the **Unit**, and the **Association** within **thirty (30) days** after notice by either party, the value shall be determined by arbitration in accordance with the then existing rules of the **American Arbitration Association**, except that arbitrators shall be **two (2)** appraisers appointed by the **American Arbitration Association** who shall base their determination on an average of their appraisals of the **Units**; and a judgment of specific performance on the decision rendered by the arbitrators may be entered into any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all **Owners** of **Units** prior to the taking in proportion to the shares of the **Owners** in the **Common Elements** as they exist prior to the changes affected by the taking.

Section 11.05. Taking of Common Elements. Awards for the taking of

Common Elements shall be used to make the remaining portion of the **Common Elements** usable in the manner approved by the **Board of Directors**; provided that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner required elsewhere in this **Declaration** for further **Improvement** of the **Common Elements**. The balance of the awards for the taking of the **Common Elements**, if any, shall be credited to reserves as may be determined by the **Board of Directors**, or distributed to the **Unit Owners** in the shares in which they own the **Common Elements**, after adjustment of these shares on account of the condemnation, except that if a **Unit** is encumbered by an **Eligible Security Interest Holder**, the distribution shall be paid jointly to the **Owner** and the **Eligible Security Interest Holder** of the **Unit**.

Section 11.06. Conflict With Act. If there is any conflict with the provisions of this **Article XI** and the **Act**, the provisions of the **Act** shall control.

Article XII
Use Restrictions

Section 12.01. Restrictions on Use. The use of the **Condominium Property** is subject to the following restrictions:

A. Single-Family Residential Use. Each **Unit** shall be occupied and used by a single-family, their employees and guests only as a single-family residence and for the furnishing of services and facilities provided for the enjoyment of such single-family residence. The foregoing restrictions as to single-family residence, however, shall not be construed in such manner as to prohibit an **Owner** or **Occupant** from:

1. Maintaining the personal professional libraries of the **Owner** or **Occupant**;
2. Keeping the personal business or professional records or accounts of said **Owner** or **Occupant**;
3. Handling the personal business or professional telephone calls or correspondence of said **Owner** or **Occupant**. Such uses are declared expressly customarily incidental to the principal single-family residential use and not in violation of said restrictions.

B. Condominium Documents. Each **Owner** shall comply with, and shall require the **Occupants** of the **Unit** of said **Owner** to comply with, all provisions of the **Condominium Documents** that apply to such **Owner** or the **Unit** of said **Owner**.

C. Storage and Common Elements. There shall be no obstruction of the **Common Elements** or **Limited Common Elements**, nor shall anything be kept or

stored in the **Common Elements** or stored in the **Limited Common Elements** except in approved storage areas, nor shall anything be constructed on or planted in or removed from the **Common Elements** or **Limited Common Elements**, nor shall the **Common Elements** in any other way be altered without the prior written consent of the **Association**.

D. **Insurance Rate Increase or Termination** Nothing shall be done or kept in any **Unit** or in the **Common Elements** or **Limited Common Elements** which will increase the rate of insurance for **Mustique, a Condominium** without the prior written consent of the **Board of Directors**. No **Owner** shall permit anything to be done or kept in the **Unit** of said **Owner** or in or on the **Common Elements** or **Limited Common Elements** which will result in the cancellation of insurance of any **Unit** or any part of the **Common Elements** or **Limited Common Elements** or which will be in violation of any law.

E. **Waste**. No waste shall be committed in or on the **Condominium Property**.

F. **Clean and Sanitary Conditions**. All parts of **Mustique, a Condominium** shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. Each **Owner** agrees that all deliveries and all trash removal services, and other such services to that **Owner** or the **Unit** of the **Owner** shall be effected at a central location or locations designated by the **Association** from time to time for such purposes. The **Owners** shall not, and shall not permit the guests of the **Owners**, to litter. No burning of trash, garbage or other waste materials will be permitted at the **Condominium Property**.

G. **Nuisance**. No noxious or offensive activities shall be carried on, nor shall any outside lighting or sound speakers or other sound producing devices be used, nor shall anything be done, on any part of the **Condominium Property** which, in the judgment of the **Board of Directors**, may be or become an unreasonable annoyance or nuisance to the other **Owners**, or be in violation of all valid laws, ordinances or regulations of any governmental bodies having jurisdiction.

H. **Signs, etc.** No **Owner** shall cause or permit anything to be placed on the outside walls of any **Unit** of said **Owner**, and no sign, awning, canopy, window air conditioning unit, shutter or other fixture shall be affixed to or placed upon the exterior walls or roof of any building or any part thereof, or in any **Common Element** or **Limited Common Element** without the prior written consent of the **Board of Directors**.

I. **Alterations**.

1. Except as otherwise expressly provided in this **Declaration**, an **Owner** of a **Unit** may not make any **Improvement** or alteration to a **Common Element**,

a **Limited Common Element**, or any **Improvement** or alteration to the **Unit** of said **Owner** that affects any **Common Element**, **Limited Common Element** or any other **Unit**, without the prior written consent of the **Association** and then only in strict accordance with the terms and conditions of the **Condominium Documents**.

2. Without limiting the generality of this **Section 12.01.1**, an **Owner** of a **Unit** may not, without the prior written consent of the **Association**, install or erect any **Improvement**, mechanical system or fixture that either:

a. protrudes beyond the boundaries of a **Unit**; or

b. is located wholly outside a **Unit** (even if located within a **Limited Common Element** that is assigned solely to that **Unit** if exposed to view to the outside).

J. No Structure, etc. No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on **Mustique, a Condominium** at any time temporarily or permanently, except with the prior written consent of the **Board of Directors**. Provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of any **Improvement**.

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

L. Parking. Parking of vehicles in driveways and parking areas shall be subject to the **Rules and Regulations** applicable to parking. There are **six (6)** covered parking spaces underneath the **Building**. The exclusive use of **one (1)** covered parking space has been assigned as **Limited Common Elements** to each of the following **Units: Club Level Unit 2001, Club Level Unit 2002, Club Level Unit 2101, Club Level Unit 2102, Penthouse Unit 1 and Penthouse Unit 2**. The **Board of Directors** may or may not, in the discretion of the **Board of Directors**, assign specific uncovered parking spaces which are not located under the **Building** to **Unit Owners**. If such assignment is made, such assignment shall not be recorded in the public records. A **Unit Owner** may not lease or otherwise grant a license or use right for the parking rights provided for in this **Declaration**.

M. Vehicles.

1. Motorcycles, motor bikes, motor scooters, recreational vehicles or other similar vehicles shall not be operated within **Mustique, a Condominium** except for the purpose of transportation, it being intended that said vehicles shall not be operated within **Mustique, a Condominium** so as to annoy or disturb **Persons** or endanger

Persons or property.

2. No motor vehicle classed by manufacturer rating as exceeding three-quarter ton and no mobile home, trailer, detached camper or camper shell, boat, **Vessel** or other similar equipment or vehicle may be kept or parked at the **Condominium Property** unless approved in writing by the **Board of Directors** of the **Association**.

3. No motor vehicle shall be constructed, repaired or serviced at the **Condominium Property** except to the extent necessary to be able to remove the **Vehicle** from the **Condominium Property**.

4. An **Owner** shall not sell, lease or otherwise convey all or any part of the parking rights said **Owner** has by virtue of the ownership of a **Unit**.

N. **Planting, Gardening, Fences, Etc.** Except within individual **Units**, no planting, transplanting, or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon **Mustique, a Condominium**, except as approved by the **Board of Directors**.

O. **Animals or Pets.** No animals or pets of any kind shall be kept in any **Unit** or on the **Condominium Property** except with the written consent of by the **Board of Directors**, and subject to the **Rules and Regulations** adopted for keeping such pets by the **Board of Directors** of the **Association**; provided that such consent may be terminated without cause at any time by the **Board of Directors** of the **Association**. A total of no more than **two (2)** pets not exceeding a weight of **one hundred (100) pounds** each, may be kept by **Unit Owners**, or visitors, guests and invitees of **Unit Owners**, but only as personal pets and not for any commercial purpose. All non-Owner tenants renting, using, or leasing a **Unit** are prohibited from keeping and maintaining pets or animals of any kind on the **Real Property**. No animals shall be kept for commercial purposes nor be allowed to create or cause any disturbance or nuisance of any kind, and if an animal or pet does cause or create a nuisance or an unreasonable disturbance, said animal or pet shall be permanently removed from the **Real Property** within **three (3) days** from the day the **Owner** receives the written notice from the **Board of Directors** of the **Association**. The **Owner** of any pet or animal shall be liable for any and all damage caused by such animal or pet to any part of the **Real Property** or to any other **Real Property** operated by the **Association**.

P. **Employees.** No employee, customer or patron of an **Owner** shall be allowed either to use any of the facilities which are **Common Elements of Mustique, a Condominium** or to use any of the property owned or operated by the **Association**.

Q. **Subdivision, Rezoning and Timesharing.**

1. No **Unit** may be subdivided, unless the record **Owner** of such **Unit** and all record owners of liens on such **Unit** join in an amendment to this **Declaration** and unless at least **eighty percent (80%)** of the total voting interests of **Mustique, a Condominium** approve such subdivision amendment.

2. No application for rezoning any portion of the **Units**, and no applications for variances or use permits, shall be filed with any governmental or quasi-governmental authority, unless the proposed rezoning has been approved by the **Owner** of such **Unit** and all record holders of liens on such **Unit** and **eighty percent (80%)** of the votes allocated to all memberships and the uses that would be permitted under the rezoning comply with this **Declaration** and the other **Condominium Documents**.

3. No **Owner** shall offer or sell any interest in any **Unit** under a "timesharing" or "interval ownership" plan or similar plan.

R. Fuel Burning Devices. No fuel burning devices shall be used, kept, or stored on the **Condominium Property** and no propane gas or charcoal grills may be maintained in or outside any **Unit**.

S. Hard Surface Floors. Installation of hard surface floor coverings such as tile, marble, wood and the like in any portion of the **Unit** (or **Limited Common Elements** appurtenant thereto including, without limitation, on any patio or balcony) other than foyers, living areas, bathrooms, and kitchens must be submitted to and approved by the **Board of Directors**, and if approved, meet all sound installation standards as established by the **Board of Directors** from time to time and also meet applicable structural requirements. Further, approval shall only be granted if appropriate materials are used in the installation of the flooring so as to minimize sound transmission. The installation of any **Improvement**, or heavy object must be submitted to and approved by the **Board of Directors** and must be compatible with the overall structure and design of the building. The **Board of Directors** may require a structural engineer to review certain of the proposed **Improvements** with such review to be at the sole cost and expense of the **Owner**. In addition, the **Board of Directors** shall have the right to specify the exact material to be used on balconies. **Owners** will be held strictly liable for all violations of these restrictions and for all damages resulting therefrom and the **Association** has the right to require immediate removal of such violations. Each **Owner** by acceptance of a deed or other conveyance for its **Unit** hereby acknowledges and agrees that sound transmission in a multi-story building such as the **Condominium** is very difficult to control and that the noises from adjoining or nearby **Units**, the **Limited Common Elements** or mechanical equipment can often be heard in another **Unit**.

T. Hurricane Shutters. The **Board of Directors** may from time to

time establish hurricane shutter or laminated glass or window film specifications which comply with the applicable building code and which establish permitted color/tints, styles and materials for hurricane shutters or such laminated glass or indoor window film. The **Association** shall approve the installation or replacement of hurricane shutters or laminated glass or window film as applicable, conforming with the specifications of the **Board of Directors**. The **Board of Directors** may, with the approval of a **Majority** of those eligible votes of **Owners of Units in Mustique, a Condominium**, install hurricane shutters or laminated glass or other indoor window film and may, without regard to approval of the **Owners**, maintain, repair, or replace such approved shutters or glass whether on or within the **Common Elements, Limited Common Elements or Units**. Provided, However, that if laminated glass or indoor window film in accordance with the applicable building code and standards are architecturally designed to serve as hurricane protection is installed, the **Board of Directors** will not install hurricane shutters in accordance with this provision. If shutters are permitted, all shutters shall not cover a window opening and shall comply with all of the **Rules and Regulations** established by the **Board of Directors** of the **Association** until a storm watch or storm warning is announced by the **National Weather Center** or other recognized weather forecaster. A **Unit Owner** or **Occupant** who plans to be absent during all or any portion of the hurricane season must prepare a **Unit** prior to departure by designating a responsible firm or individual to care for the **Unit** should a hurricane threaten the **Unit** or should the **Unit** suffer hurricane damage and furnishing the **Association** with the names of such individuals or firms.

U. **Window Coverings.** The window coverings of all **Units** shall be white or off white when viewed from the exterior of the **Unit** or such other color as approved by the **Board of Directors**.

V. **Parcel 3 Real Property.** The **Parcel 3 Real Property** described in **Section 3.01** of this **Declaration** is a **Common Element** and shall be used only in accordance with the **Rules and Regulations** established by the **Association**.

W. **Use of Common Elements.** The **Common Elements** shall be used in accordance with this **Declaration** and only by the **Owners** and their agents, tenants, family members, invitee and licensees for access, ingress to and egress from the respective **Units** and for such other purposes incidental to the use of the **Units**. However, other areas designated for a specific use shall be used for the purposes approved by the **Board of Directors**. The use, maintenance and operation of the **Common Elements** shall not be obstructed, damaged, or unreasonably interfered with by any **Owner**, and shall be subject to any lease, concession, or easement, presently in existence or entered into by the **Board of Directors** at some future time, affecting any part or all of said **Common Elements**. All persons using the swimming pool and the waters known as **Little Lagoon** or the waters known as the **Gulf of Mexico** do so at their own risk and neither the **Declarant** nor the **Association** is responsible for any accident or injury in connection with use of the swimming pool or the waters of **Little Lagoon** or the waters

of the **Gulf of Mexico** or for any loss or damage to personal property. **Persons** using the swimming pool area or the waters of **Little Lagoon** or the waters of the **Gulf of Mexico** agree not to hold the **Association**, nor the officers, employees, partners, members or agents of the **Association** liable for any actions of whatever nature occurring within the swimming pool area or the waters of **Little Lagoon** or the waters of the **Gulf of Mexico**. The swimming pool area and the waters of **Little Lagoon** or the waters of the **Gulf of Mexico** shall be used in accordance with such **Rules and Regulations** as shall from time to time, be promulgated by the **State of Alabama, Board of Health of Baldwin County, Alabama, U.S. Government** and/or by the **Board of Directors** of the **Association**. Neither an **Owner** nor a guest may use any **Common Element** in any manner that unreasonably interferes with the rights of other **Owners** in and to the **Common Elements**. No **Owner** shall cause, or permit the guests of said **Owner** to cause, waste to any **Common Element**. The rights of the **Owners** to use the **Common Elements** are subordinate and subject to all of the rights and powers of the **Association** with respect to the **Common Elements**, including, without limitation, the right and power of the **Association** to adopt **Rules and Regulations** regulating the use of the **Common Elements**.

X. **Governmental Authority.** Nothing shall be done or kept at the **Condominium Property** in violation of any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of **Mustique, a Condominium** shall be the same as the responsibility for the maintenance and repair of **Mustique, a Condominium**.

Y. **Unlawful Discrimination.** Neither the **Board of Directors** nor the **Association** shall take or permit to be taken any action that unlawfully discriminates against any **Owners**.

Section 12.02. Unrestricted Right of Transfer. The right of an **Owner** to sell, transfer, or otherwise convey said **Unit** shall not be subject to any right of first refusal or similar restriction.

Section 12.03. Leases. Each **Unit** may be leased by the **Owner**. Provided, however, that such lease and the rights of any tenant under said lease are made expressly subject to the power of the **Association** to prescribe reasonable **Rules and Regulations** relating to the lease and rental of **Units** (including a minimum or maximum rental period) and to enforce the same directly against such tenant or other **Occupant** by the exercise of such remedies as the **Board of Directors** deems appropriate, including eviction. No individual rooms may be rented. Each **Unit Owner** who shall lease or rent the **Unit** of said **Owner** irrevocably empowers the **Association** or the managing agent of the **Association** to enforce the **Rules and Regulations** and to terminate the lease and evict any tenant or occupant who fails to comply with the **Rules and Regulations**. The

Association, the Board of Directors, or any agent thereof, shall not become liable to any **Unit Owner** or any person who sublets a **Unit**, or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this paragraph. Nothing to the contrary withstanding, a **Unit Owner** is primarily responsible for the acts or omissions of the family, tenants, quests, invitees, or **Occupants** of the **Unit of the Owner**.

Section 12.04. Rules and Regulations. The **Association** is authorized to promulgate, amend, and enforce the **Rules and Regulations** concerning the operation and use of the **Condominium Property** provided that such **Rules and Regulations** are not contrary to or inconsistent with the **Act** and the **Condominium Documents**. A copy of the **Rules and Regulations** shall be furnished by the **Board of Directors** to each **Unit Owner** prior to the time they become effective. All present and future **Unit Owners, Tenants, Occupants**, and any **Person** who uses any part of the **Condominium Property** in any manner, are subject to, and shall comply with the provisions of the **Condominium Documents** and the **Rules and Regulations**. The acquisition, rental or occupancy of a **Unit** or the use of any part of the **Condominium Property** by any **one (1) Person** shall constitute the agreement of such **Person** to be subject to and bound by the provisions of the **Condominium Documents** and the **Rules and Regulations**, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any **Person** having at any time any interest or estate in such **Unit**, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The **Association** may promulgate enforcement provisions for violation of any **Rule or Regulation** by an **Owner**, the family members, guests, invitees, lessees, or renters of the **Owner**, including the payment of penalties for such violations. Copies of **Rules and Regulations** shall be furnished by the **Association** to all **Owners** and **Occupants of Mustique, a Condominium** upon request.

Section 12.05. No Restrictions on Encumbering Units with Security Interests. Anything construed in any of the **Condominium Documents** to the contrary, there shall be no restrictions on the right of an **Owner** to encumber a **Unit** with a **Security Interest**.

Section 12.06. Right of Access. Each **Unit Owner** grants a right of access to such **Unit** to the **Association**, and to any other person authorized by the **Association** for the purpose of making inspections and for the purpose of correcting any condition originating in the **Unit** of the **Owner** and threatening other **Units, Common Elements** or **Limited Common Elements**, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other **Common Elements** within a **Unit**, if any, or to correct any conditions which violate the provisions of any **Mortgage** covering another **Unit** or to enforce any provisions of the **Condominium Documents**, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the **Unit Owner**. In case of an emergency such right of entry shall be immediate whether the **Unit Owner** is present at the time or not. To the extent that damages are inflicted on the **Common Elements, Limited Common Elements** or any

Unit through which access is taken, the **Unit Owner** or the **Association**, if it causes the same, shall be liable for the prompt repair thereof.

Section 12.07. Limitation of Liability. The **Association** shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service to be obtained by the **Association** or paid for out of the **Common Expense** funds or problems resulting from the operation or lack of operation of sewer lines servicing the **Condominium Property**, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the **Common Elements, Limited Common Elements** or from any wire, pipe, drain, conduit, appliance or equipment. The **Association** shall not be liable to the **Owner** of any **Unit** for the loss or damage, by theft or otherwise, of articles which may be stored upon any of the **Common Elements or Limited Common Elements**. No diminution or abatement of the **Common Expense** assessments, as herein elsewhere provided, shall be claimed, or allowed for any reason, except by action taken by the **Board of Directors** of the **Association** in accordance with the **By-Laws**.

Section 12.08. Abatement of Violations. The violation of any **Rule** or **Regulation** adopted by the **Board of Directors** or breach of the provisions of the **Condominium Documents**, shall give the **Association**, or any **Unit Owner** the right, in addition to any other right or remedy elsewhere available, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting **Unit Owner**, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting **Owner**, and the **Association** shall have a lien for all of the same upon the **Unit** of such defaulting **Owner**, and a lien upon all of such defaulting additions and **Improvements of Owner** thereto and a security interest under the **Alabama Uniform Commercial Code** upon all of such defaulting personal property of the **Owner** in the **Unit** of the **Owner** or located elsewhere on the **Condominium Property**. Nothing contained in this **Declaration** shall prevent an **Owner** from maintaining such an action or proceeding against the **Association** and the expense of any action to remedy a default of the **Association** shall be a **Common Expense** if a court of competent jurisdiction finds the **Association** to be in default as alleged in such action or proceeding.

Section 12.09. Failure of the Association to Insist on Strict Performance; No Waiver. Failure of the **Association** to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this **Declaration** or to exercise any right or option contained in this **Declaration**, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment from the future performance of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the **Association** of any assessment from an **Owner** with knowledge of the breach of any

covenant hereof shall not be deemed to be a waiver of such breach and no waiver by the **Association** of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the **Board of Directors** of the **Association**.

Article XIII
Amendment

Section 13.01. Amendment. Subject to the provisions of this **Article XIII**, this **Declaration** and the **By-Laws** of the **Association** may be amended as provided in the **Act**.

Section 13.02. Amendment of Material Provisions. No amendment of any material provision of this **Declaration** described in this **Section 13.02** may be effective without the vote or agreement of **Owners** of **Units** to which at least **two-thirds (2/3)** of the votes in the **Association** are allocated and the approval by vote or agreement of at least **fifty-one percent (51%)** of the **Eligible Security Interest Holders**. "Material" provisions include any provision affecting the following:

- A. Voting rights.**
- B. Increases in Assessments** if such **Assessment** will increase the then existing amount of **Assessments** by more than **twenty-five percent (25%)**, **Assessment** liens or subordination of **Assessment** liens.
- C. Reduction in reserves for maintenance, repair, and replacement of the Common Elements.**
- D. Insurance or fidelity bonds.**
- E. Rights to use the Common Elements.**
- F. Responsibility for maintenance and repairs.**
- G. Boundaries of a Unit** subject to a first **Security Interest** held by an **Eligible Security Interest Holder**.
- H. Leasing of Units.**
- I. Imposition of any restrictions on the right of an Owner to sell, lease or transfer the Unit of said Owner.**
- J. Establishment of self-management by the Association** if professional management had been required by an **Eligible Security Interest Holder**.
- K. Conversion of Units into Common Elements** or conversion of

Common Elements into Units.

L. Restoration or repair of **Mystique, a Condominium** after hazard damage or partial condemnation in a manner other than that specified in this **Declaration**.

M. Any provisions included in this **Declaration** which are for the express benefit of **Eligible Security Interest Holders**.

Section 13.03. Eligible Security Interest Holders. Any **Eligible Security Interest Holder** who receives a written request from the **Board of Directors** to respond to or consent to any action shall be deemed to have approved such action if the **Association** does not receive a written response from the **Eligible Security Interest Holder** within **thirty (30)** days of the date of the request of the **Association**, provided such request is delivered to the **Eligible Security Interest Holder** by certified or registered mail, return receipt requested.

Section 13.04. Recording. Any **Amendment** to the **Condominium Documents** shall become effective when recorded in the **Office** of the **Judge of Probate of Baldwin County, Alabama** in accordance with the **Act**.

Article XIV

Purchase of Condominium Unit by Association

Section 14.01. Decision. The decision of the **Association** to purchase a **Unit** shall be made by the **Board of Directors** without the approval of the **Members** except as provided in this **Article XIV**.

Section 14.02. Limitation. If at any time the **Association** is already the **Owner** of or has agreed to purchase **one (1)** or more **Units**, the **Association** may not purchase any additional **Units** without the prior written approval of **Members** holding **seventy-five percent (75%)** of the votes of those **Members** eligible to vote, except as provided in this **Declaration**. A **Member** whose **Unit** is the subject matter of the proposed purchase shall be ineligible to vote. Notwithstanding the foregoing, however, the foregoing limitations shall not apply to **Units** either to be purchased at public sale resulting from a foreclosure of the lien of the **Association** for delinquent **Assessments** where the bid of the **Association** does not exceed the amount found due the **Association**, or to be acquired by the **Association** in lieu of foreclosure of such lien if the consideration does not exceed the cancellation of such lien. In any event, the **Board of Directors** or a designee of the **Board of Directors**, acting on behalf of the **Association**, may only purchase a **Unit** in accordance with this **Article XIV** or as the result of a sale pursuant to the foreclosure of:

- A. A lien on the **Unit** for unpaid taxes;

- B. a lien of a **Security Interest**;
- C. the lien for unpaid assessments;
- D. or any other judgment lien or lien attaching to such **Unit** by operation of law.

Article XV
Notice of Lien or Suit

Section 15.01. Notice of Lien. An **Owner** shall give notice in writing to the **Secretary** of the **Association** of every lien on said **Unit**, other than liens for a **Security Interest**, taxes and special Assessments, within **five (5)** days after said **Owner** receives notice of the lien.

Section 15.02. Notice of Suit. An **Owner** shall give notice in writing to the **Secretary** of the **Association** of every suit or other proceeding that may affect the title to the **Unit** of said **Owner**, with such notice to be given within **five (5)** days after the **Owner** obtains knowledge of said suit or proceeding.

Section 15.03. Failure to Comply. Failure to comply with this **Article XV** will not affect the validity of any judicial proceeding.

Article XVI
Rules and Regulations

Section 16.01. Compliance. Each **Owner** and the **Association** shall be governed by and shall comply with the terms of the **Condominium Documents** and the **Rules and Regulations** applicable to **Mustique, a Condominium. Ownership** of a **Unit** subjects the **Owner** to compliance with provisions of the **Declaration**, the **Articles of Incorporation**, the **By-Laws**, the **Rules and Regulations** and any contracts to which the **Association** is a party, as well as to any amendments to any of the foregoing. Failure of the **Owner** to comply shall entitle the **Association** or other **Owners** to an action for damages or injunctive relief, or both, in addition to other remedies provided in the **Condominium Documents** and the **Act**.

Section 16.02. Enforcement. The **Association**, through the **Board of Directors**, is 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 (after reasonable notice and opportunity to be heard) from time to time as set forth in the **By-Laws**. In the event an **Owner** fails to maintain the **Unit** of said **Owner** in the manner required in the **Condominium Documents** and any **Rules and Regulations**, the **Association**, through the **Board of Directors**, shall have the right to

assess the **Owner** and the **Unit** for the sums necessary to do the work required to effect compliance and to collect, and enforce the collection of, a special **Assessment** as provided in this **Declaration**. In addition, the **Association** shall have the right, for the **Association** and the employees and agents of the **Association**, to enter the **Unit** of an **Owner** and perform the necessary work to effect compliance.

Section 16.03. Negligence. An **Owner** shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the act, neglect or carelessness of said **Owner** or by that of any member of the family of said **Owner**, or the lessees, guests, invitees, employees or agents of an **Owner**, but only 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** or **Limited Common Elements**. The liability for such increases in insurance rates shall equal five times the first resulting increase in the annual premium rate for such insurance.

Section 16.04. No Waiver of Rights. The failure of the **Association** or any **Owner** to enforce any covenant, restriction or other provision of the **Act**, the **Condominium Documents**, or any **Rules and Regulations** shall not constitute a waiver of the right to do so.

Article XVII

General Provisions Pertaining to Eligible Security Interest Holders

Section 17.01. Notices to Eligible Security Interest Holders. Any **Eligible Security Interest Holder** will be entitled to timely written notice of:

A. Condemnation or Casualty Loss. Any condemnation or casualty loss that affects either a material portion of **Mustique, a Condominium** or the **Unit** securing the first **Security Interest** held by the **Eligible Security Interest Holder**.

B. Sixty Day Delinquency. Any **sixty (60)** day delinquency in the payment of **Assessments** or charges owed by the **Owner** of any **Unit** on which there is a first **Security Interest** held by an **Eligible Security Interest Holder**.

C. Insurance Policy. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the **Association**.

D. Consent. Any proposed action that requires the consent of a specified percentage of **Eligible Security Interest Holders**.

Section 17.02. Blanket Security Interest. The entire **Condominium Property**, or some or all of the **Units** included in **Mustique, a Condominium**, may be subjected to a single or blanket **Security Interest** constituting a lien on **Mustique, a Condominium**

or **Units** created by a recordable instrument executed by all of the **Owners** of **Mustique, a Condominium** or **Units** covered by said **Security Interest**. Any **Unit** included under the lien of such **Security Interest** may be sold or otherwise conveyed or transferred subject to said **Security Interest**. Any such **Security Interest** shall provide a method whereby any **Owner** may obtain a release of the **Unit** of said **Owner** from the lien of such **Security Interest** and a satisfaction and discharge in recordable form upon payment to the holder of the **Security Interest** of a sum equal to the reasonable proportionate share attributable to the **Unit** of said **Owner** of the then outstanding balance of unpaid principal and accrued interest, and any other charges then due and unpaid. The proportionate share of the **Security Interest** required to be paid for release shall be determined by provisions pertaining to said release stated in the **Security Interest**, or, if the **Security Interest** contains no such provisions, then according to the proportionate share of the **Common Elements of Mustique, a Condominium** attributable to such **Unit** or **Units**.

Article XVIII **Termination**

The termination of **Mustique, a Condominium** may be effected in accordance with the provisions of the **Act** and by agreement of **Owners** of **Units** to which at least **ninety percent (90%)** of the votes in the **Association** are allocated. The agreement shall be evidenced by a written instrument executed in the manner required for a deed and recorded in the public records of **Baldwin County, Alabama**. After termination of **Mustique, a Condominium** the **Owners** shall own **Mustique, a Condominium** and all assets of the **Association** as tenants in common in undivided shares.

Article XIX **Covenant Against Partition**

There shall be no judicial or other partition of **Mustique, a Condominium** or any part of **Mustique, a Condominium**, nor shall any **Person** acquiring any interest in **Mustique, a Condominium** or any part of **Mustique, a Condominium** seek any such partition unless **Mustique, a Condominium** has been removed from the provisions of the **Act**.

Article XX **Miscellaneous**

Section 20.01. Intent. It was the intent of the original **Declarant, Mustique, LLC**, to create a condominium pursuant to the **Act**. In the event that the **Declaration of Mustique, a Condominium** shall fail 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, and **Mustique, a Condominium** shall be governed in accordance with the laws of the **State of Alabama**, the **By-Laws**, the **Articles of Incorporation** and all other instruments and exhibits attached to or made a part of this **Declaration**.

Section 20.02. Covenants, Conditions and Restrictions. All provisions of the **Condominium Documents** shall, to the extent applicable and unless otherwise expressly provided in the **Condominium Documents** to the contrary, be perpetual and be construed to be covenants running with the land and with every part of the land and interest in the land; 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 of the land, or interest in the land, and their 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 **Owners** and **Occupants** shall be subject to and shall comply with the provisions of the **Condominium Documents** and any **Rules and Regulations**.

Section 20.03. Severability. The invalidity in whole or in part of any covenant or restriction or any paragraph, subparagraph, sentence, clause, phrase, word or other provision of this **Declaration**, the **Articles of Incorporation**, the **By-Laws**, any **Rules and Regulations** and any exhibits attached to the **Condominium Documents**, as the same may be amended from time to time, or the **Act**, or the invalidity in whole or in part of the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase, word or other provision shall not affect the remaining portion.

Section 20.04. Notice. The following provisions shall govern the construction of the **Condominium Documents**, except as may be specifically provided to the contrary in this **Declaration**. All notices required or desired under the **Condominium Documents** to be sent to the **Association** shall be sent by certified mail, return receipt requested, to the **Secretary** of the **Association**, at such address as the **Association** may designate from time to time by notice in writing to all **Owners**. Except as provided specifically to the contrary in the **Act**, all notices to any **Owner** shall be delivered in person or sent by first class mail to the address of such **Owner** at **Mustique, a Condominium**, or to such other address as said **Owner** may have designated from time to time, in a writing to the **Association**. Proof of such mailing or personal delivery to an **Owner** by the **Association** may be provided by the affidavit of the **Person** or by a post office certificate of mailing. All notices to the **Association** or an **Owner** shall be deemed to have been given when delivered to the addressee in person or by a post office certificate of mailing.

Section 20.05. Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by the **Condominium Documents** or any **Rules and Regulations** adopted pursuant to such documents, such dispute or litigation shall be governed by the laws of the **State of Alabama**.

Section 20.06. Waiver. No provisions contained in the **Condominium Documents** shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches of the **Condominium Documents** which may occur.

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

Section 20.08. Captions. The 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**.

Section 20.09. Costs and Attorney's Fees. In any proceeding arising because of an alleged default by an **Owner**, the Association, if successful, shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be awarded by the court.