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**DECLARATION OF CONDOMINIUM**  
**OF**  
**SEA PINES AT BON SECOUR,**  
**A CONDOMINIUM**

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STATE OF ALABAMA  
COUNTY OF BALDWIN

**DECLARATION OF CONDOMINIUM  
OF  
SEA PINES AT BON SECOUR, A CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM OF SEA PINES AT BON SECOUR, A CONDOMINIUM (this "Declaration") is made as of the \_\_\_ day of \_\_\_\_\_, 2007, by SEA PINES, LLC (the "Developer"), pursuant to the provisions of the Act (as hereinafter defined), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the Land (as hereinafter defined).

**ARTICLE I**

**SUBMISSION OF PROPERTY**

1.01 **Property.** The Developer is the owner of the Land, on which certain buildings and other improvements are to be constructed as shown on the Plan and Plat (as hereinafter defined) which is attached hereto as Exhibit "C." It is the desire and intention of the Developer, by recording this Declaration, to submit the Land, together with all improvements, easements, rights and appurtenances thereunto belonging or otherwise appertaining, to the Act and create a condominium to be known as Sea Pines at Bon Secour, a Condominium (the "Condominium").

1.02 **Submission of Property.** The Developer, upon recording this Declaration, does submit the Land, together with the improvements thereon, owned by the Developer in fee simple, to the provisions of the Act, to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and in any other manner utilized subject to the provisions of the Act and subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration and any amendments hereto, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Land and the division thereof into condominium ownership and all of which shall run with the land and shall be binding on all parties (including Owners, as hereinafter defined) having or acquiring any right, title or interest in the Land or any part thereof, and shall be for the benefit of each Owner of any portion of the Property or any interest therein, and shall inure to the benefit of and be binding upon each successor-in-interest to the Owners thereof. The maximum number of Units which the Developer reserves the right to create by this Declaration is three hundred sixty four (364).

**ARTICLE II**

**DEFINITIONS**

2.01 **Definitions.** In addition to terms separately defined herein, certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor, and shall be consistent with the meanings stated in the Act:

(A) "Act" shall mean the Alabama Uniform Condominium Act of 1991, Ala. Code §§35-8A-101 to 35-8A-417 (1975), as the same may be amended from time to time.

(B) "Additional Land" shall mean that certain real property described on Exhibit A-1 attached to this Declaration.

(C) "Additional Phases" shall have the meaning ascribed to such term in Section 5.04 hereof.

(D) "Articles" shall mean the Articles of Incorporation of the Association that are filed of record in the Real Property Records.

(E) "Assessments" shall mean the assessments, charges, and services of various types imposed and/or allocable pursuant to Article VII hereof.

(F) "Association" shall mean Sea Pines Condominium Association, Inc., a nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, Ala. Code §§10-3A-1 to 10-3A-225 (1975).

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

(H) "By-Laws" shall mean the By-Laws of the Association providing for the self-government of the Condominium Property by the Association, a copy of which is attached hereto as Exhibit "B" and is hereby made a part hereof for all purposes.

(I) "Common Elements" shall mean all portions of the Condominium Property other than the Units which are held or designated for use and enjoyment by the Owners and shall include the following:

(1) the Land;

(2) the foundations and footings, load bearing walls, perimetrical walls, structural slabs, columns, beams and supports;

(3) the roofs, lobbies, mechanical equipment, and storage areas designated as Common Elements, ramps, handrails, sidewalks, elevators, stairways and entrances or communication ways;

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

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

(6) all common recreational facilities such as any game, entertainment, meeting or assembly rooms, exercise or fitness room, swimming pool and grounds, and surrounding areas, sun decks, yards and walkways;

(7) sidewalks, boardwalks, lawn areas, nature trails, natural habitat, fitness or exercise areas, landscaping, trees, curbs, roads, walkways, streets and parking lots;

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

(9) all furniture, appliances, equipment and any other personal property transferred or assigned by the Developer to the Association or from time to time owned or leased by the Association and held for use in common by the Owners; and

(10) all other elements (other than the Units) desirable or reasonably susceptible of common use or necessary to the existence, upkeep and safety of the Condominium Property.

(J) "**Common Expenses**" shall mean the expenses arising out of the operation and ownership of the Common Elements and shall include, but not be limited to, expenses of administration of the Common Elements; expenses of the insurance that the Association will maintain; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and any portion of a Unit maintained by the Association; any valid charge against the Condominium Property as a whole; and any expenses declared to be Common Expenses by the provisions of the Condominium Documents, as the same may be amended from time to time, in accordance with the provisions thereof.

(K) "**Condominium Documents**" shall mean this Declaration and all exhibits hereto, including the Articles of Incorporation and By-Laws of the Association, the Plan and Plat, and the Rules and Regulations, as the same may be amended from time to time.

(L) "**Declaration of Condominium**" or "**Declaration**" shall mean this Declaration of Condominium of Sea Pines at Bon Secour, A Condominium, as it may be amended from time to time.

(M) "**Developer**" or "**Declarant**" shall mean Sea Pines, LLC, an Alabama limited liability company, and its successors and assigns.

(N) "**Land**" shall mean the parcels or tracts of real estate described in Exhibit "A" to this Declaration, submitted to the provisions of this Declaration and the Act.

(O) "**Limited Common Elements**" shall mean and include any Common Element designated by this Declaration and the Condominium Documents, including the

Plan and Plat, as Limited Common Elements and any areas defined in the Act as Limited Common Elements for the exclusive use of one or more, but fewer than all, of the Units, including, without limitation, the Parking Spaces. The Limited Common Elements shall include, among any other property so designated, terraces appurtenant to particular Units, chutes, flues, ducts, wires, conduits, bearing walls, bearing columns, or any other fixture serving only a specific Unit. Should any Limited Common Element ever be determined not to be a Limited Common Element under the Act, the same shall be part of the Common Elements with an exclusive easement of use appurtenant to the Units to which it was originally assigned as a Limited Common Element.

(P) "**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 same may be amended from time to time in accordance with the provisions thereof.

(Q) "**Members**" shall mean and refer to the Association's members.

(R) "**Mortgage**" shall mean a first lien mortgage on one (1) or more Units.

(S) "**Mortgagee**" shall mean a holder of a Mortgage who has given notice to the Association that the Mortgagee is the holder of a Mortgage affecting all or any part of the Condominium Property as hereinafter provided, or any insurer or guarantor of such a Mortgage.

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

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

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

(W) "**Real Property Records**" shall mean the records in the Office of the Judge of Probate of Baldwin County, Alabama.

(X) "**Rules and Regulations**" shall mean the Rules and Regulations of Sea Pines, A Condominium, adopted by the Board provided they are not in conflict with the Act or the Condominium Documents.

(Y) "Unit" shall mean the parts of the Condominium Property as set forth herein and shown in the Plan or Plat as being intended for the exclusive ownership and possession by an Owner. Each Unit shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

(1) The upper and lower boundaries extended to their planer intersections with the perimetrical boundaries as follows:

(a) the upper boundary shall be the plane of the lower surface of the roof decking;

(b) the lower boundary shall be the plane of the upper surface of the supportive structure which serves as the Unit's floor, excluding any floor covering such as carpeting, vinyl, hardwood or ceramic tile, which are all deemed to be part of the Unit.

(2) The perimetrical boundaries shall be the vertical planes of the exterior surfaces of the exterior windows, glass doors and entry doors, and the unfinished interior surfaces of the exterior walls and any common walls separating the tenants (excluding gypsum board, paint, wallpaper and light fixtures) extended to their planer intersection with each other and with the upper and lower boundaries which are all deemed to be part of the Unit.

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

### ARTICLE III

#### DESCRIPTION OF IMPROVEMENTS

3.01 Identification of Units. A plat and plan of the Land and improvements thereon and a graphic description of the improvements in which the Units are located identifying each Unit by a number so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify the Common Elements, the Limited Common Elements and each Unit and their relative locations and approximate dimensions, are set forth in the Plan and Plat. The legal description of each Unit shall consist of the identifying number or letter for such as shown on the Plan and Plat, the name of the Condominium, the name of the county in which the Land is situated, the name of the

office in which this Declaration is recorded, and the deed book and page number where the first page of this Declaration is recorded.

3.02 **Patios.** Exterior patios as shown by the Plan and Plat are Limited Common Elements. Exterior patios shall be deemed to be a Limited Common Element appurtenant to the Unit from which it is directly accessible. Each Unit Owner shall be entitled to an exclusive easement for the use of any exterior patio directly accessible from such Owner's Unit, but such right shall not entitle an Owner to construct anything thereon nor to change any structural part thereof.

3.03 **Swimming Pool.** There shall be one (1) outdoor swimming pool as shown on the Plan and Plat. The swimming pool will be a Common Element available for use by Owners and their guests.

3.04 **Ownership of Common Elements and Limited Common Elements.** Each Owner shall own an undivided interest in the Common Elements and Limited Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements and Limited Common Elements for all purposes incident to the use and occupancy of the Owner's Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run with the Unit. An Owner's undivided interest shall be a fraction, the numerator of which is 1 and the denominator of which is the total number of Units. The Owners of Units with Limited Common Elements which are appurtenant to such Unit as designated or described herein and/or shown upon the Plan and Plat shall have the exclusive right to use such Limited Common Elements so designated or described unless changed by the Developer as permitted herein or by the unanimous approval of the Owners and their respective Mortgagees. Each Owner of a Unit to which a Limited Common Element is appurtenant shall have the exclusive right to use such Limited Common Elements for all purposes incident to the use and occupancy of such Owner's Unit as herein provided without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run with the Units to which the Limited Common Elements are attached.

#### **ARTICLE IV**

#### **EASEMENTS; TITLE EXCEPTIONS**

4.01 **Easements and Restrictions.** The Units, Common Elements and Limited Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions and covenants prescribed and established in the Condominium Documents governing the use of the Units, Common Elements and Limited Common Elements in setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. Said Units, Common Elements and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the Condominium Property, which easements and restrictions are more particularly described in Section 4.11 hereof.

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

4.03 **Additional Utility Easement.** There may be utility equipment located in or on the Common Elements appurtenant to some Units. An easement is hereby reserved in favor of each Unit for the purpose of placement, maintenance, repair and replacement of said utility equipment by the Developer and the Owner of the appurtenant Unit; provided that no utility equipment shall be placed in any part of the Common Elements or Limited Common Elements other than its present location unless the written approval of the Association shall have first been obtained. The Association shall have the right to grant such permits, licenses and other easements over the Common Elements for utilities, roads and other purposes necessary for the due and reasonable operation of the Condominium.

4.04 **Easements for Ingress and Egress.** The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement of way over all roads, parking areas, walkways, halls, elevators, stairways, and other Common Elements in favor of all Owners and the Developer for all proper and nominal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners and the Developer, subject to all restrictions in the Condominium Documents. The Limited Common Elements shall be subject to a nonexclusive easement in favor of the Association for repair, service and other uses reasonably intended or required by the Association.

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

4.06 **Easements for Encroachments.** To the extent that any Unit, Common Element or Limited Common Element encroaches on any other Unit, Common Element, or Limited Common Element, whether by reason of any deviation from the Plan in the original construction, repair, renovation, restoration or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement shall exist for the encroachment and/or the maintenance of the same, so long as the encroaching Unit, Common Element or Limited Common Element stands. A valid easement shall not relieve an Owner of liability for such Owner's or such Owner's agent's negligence or intentional acts in cases of willful and intentional misconduct by an Owner or an Owner's agents or employees. In the event any Unit, any adjoining Unit, or any adjoining Common Elements or Limited Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and then constructed, reconstructed or repaired, encroachment by parts of the Common Elements or Limited Common Elements upon any Unit or of any Unit upon any of the other Units, Common Elements or Limited Common Elements resulting from such construction, reconstruction or repair shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the encroaching improvements shall stand.

4.07 **Easement of Support.** Each Unit, Common Element and Limited Common Element shall have an easement of support from every other Unit, Common Element, and Limited Common Element which provide such support.

4.08 **Easement for Pest Control Services.** The Association may, but shall not be obligated to, dispense chemicals for the extermination of insects and pests within the Units and



Common Elements. In the event the Association chooses to provide such pest control services, the Association and its duly authorized contractors, representatives and agents shall have an easement to enter Units for the purpose of dispensing chemicals for the exterminating of insects and pests within the Units and Common Elements. Unit Owners shall either provide a key to the Unit for purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry into the Unit for this purpose. The Association shall not be liable for any illness, damage or injury caused by the dispensing of these chemicals for this purpose.

4.09 **Easement for Exercising Development Rights**. As described in greater detail in Section 5.04 hereof, the Developer has reserved development rights to add Additional Land to the Condominium and construct Additional Phases thereon. Therefore, in addition to any easement rights granted in favor of the Developer by the Act, an easement is hereby reserved for the benefit of the Developer and its contractor and subcontractors over and across the Land for all purposes necessary to enable the Developer to construct and develop the Additional Phases.

4.10 **Easements Appurtenant to Units**. The easements and other rights created herein for the Unit Owners shall be appurtenant to the Unit of that Owner, and all conveyances of title to the Unit shall include a conveyance of the easements and rights as herein provided even though no specific reference to such easements and rights appear in such instrument. Any conveyance, encumbrance, judicial sale or other transfer (voluntarily or involuntarily) of an undivided interest in a Common Element shall be void unless the Unit to which that interest is allocated is also transferred to the same recipient as the undivided interest in the Common Element so transferred. The Owners do hereby designate the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

4.11 **Title Exceptions**. In addition to the items set forth in this Article IV, the Condominium Property, Units, Common Elements and Limited Common Elements are further declared to be subject to the following restrictions, easements, conditions and limitations:

(A) The terms, conditions, covenants, and provisions of the Condominium Documents;

(B) Sewer, water, electric, telephone, and other utility easements, if any, now or hereafter placed of record, including the right to erect, maintain and install all electrical, telephone and television wires, cables and conduits, sewers, water pipes and drains, and other improvements for public conveniences or utilities in, on, under, over, and through the Condominium;

(C) Easements existing and to be created for ingress and egress to the Condominium;

(D) Covenants, conditions, reservations, restrictions, and easements appearing of record now or hereafter recorded;

(E) Reservation of all oil, gas, and other minerals, together with all rights of ingress and egress for the use and enjoyment of same, which have heretofore been reserved or conveyed to others;

(F) Any encroachments or facts which might be revealed by an accurate survey or personal inspection of the Condominium;

(G) Ad valorem taxes which are a lien upon the Condominium, but are not yet due and payable;

(H) Any and all restrictive covenants, easements, rights of way, building setback lines, drainage and utility line easements, and reservations presently of record applicable to said Condominium;

(I) Building setback lines and drainage and utility line easements as shown on the Plat or Plan to be recorded, if any;

(J) A construction loan mortgage to finance the construction of the Condominium. Each Unit shall be released from this mortgage when the Unit is sold.

(K) Easement granted Baldwin County Electric Membership Corporation by W.C. Holmes, et ux, and Origen Holmes by instrument dated October 30, 1937, and recorded in Deed Book 63, Page 469;

(L) Right of way conveyed Baldwin County by W.C. Holmes, et ux, by instrument dated February 17, 1950, and recorded in Deed Book 149, page 359;

(M) Easement granted Baldwin County Electric Membership Corporation by W.C. Holmes, et ux, by instrument dated July 31, 1950, and recorded in Deed Book 285, Page 378;

(N) Oil, gas and mineral lease and all rights in connection therewith by Philomene B. Holmes, a widow, to Resources International dated September 1, 1976, and recorded in Deed Book 501, page 119 (carries 5 year primary term);

(O) Right of way of Bon Secour Road as it now exists along the North margin of the Land;

(P) Underground water line as shown on survey dated May 12, 2006, by Joseph T. Regan, Jr. (Ala. Reg. No. 14563);

(Q) Electric line and poles along the West line as shown on survey dated May 12, 2006, by Joseph T. Regan, Jr. (Ala. Reg. No. 14563);

(R) Subject to any claim arising by an inundated or avulsive movement of Boggy Creek;

(S) Any adverse claim arising by reason of rules or regulations being imposed upon the Land by any environmental agency of the State of Alabama or of the United States of America;

(T) Terms, conditions, provisions and restrictions 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, including but not limited to restrictions on construction of any areas delineated by governmental agencies as wetlands;

(U) Subject to any portion of the Land being designated as wetlands and being restricted as to the use thereof by the Army Corp of Engineers or other governmental authorities having jurisdiction over the same.

All recording references are to the Real Property Records of the Probate Court of Baldwin County, Alabama.

## ARTICLE V

### SPECIAL AND OTHER DECLARANT RIGHTS

5.01 **Amendment of Condominium Plan**. The Developer reserves the right to change the interior design and arrangement of all Units, including, without limitation, the erection or removal of interior walls, fixtures, plumbing, electrical wiring, doors, flooring, heating and air conditioning, ventilation, and ducts, to alter the boundaries between Units and to increase or decrease the number of Units so long as the Developer, or its affiliates or members, owns the Units so altered. Changes in the boundaries between Units, as hereinabove provided, shall be reflected by an amendment to the Plan and/or Plat and, if necessary, an amendment to this Declaration. An amendment to the Plan or this Declaration reflecting an alteration of the boundaries of the Units owned by the Developer must be signed and acknowledged only by the Developer and need not be approved by the Owners and Mortgagees, whether or not such approval may elsewhere be required herein; provided, however, that any change which shall result in a change in the undivided interest in the Common Elements or the Limited Common Elements or a change in the share of the Common Expenses or Limited Common Expenses with respect to Owners of Units other than the Developer at the time of such change or which shall result in the alteration of boundaries of Units (other than the common walls separating the Units owned by the Developer) may not be made without an amendment of this Declaration approved by the Owners and Mortgagees in the manner elsewhere required herein.

5.02 **Use for Sales Purposes**. All Units and the Common Elements shall be subject to the statutory right concerning sales and management offices and models in Units and the Common Elements in favor of the Developer allowed by §35-8A-215 of the Act. The Developer otherwise expressly reserves the right to use one (1) or more Units owned by the Developer for management offices and/or sales and leasing offices. The Developer reserves the right to relocate offices and/or models from time to time within the Property. The Developer further reserves the right to maintain on the Common Elements advertising signs in any location or locations and from time to time to relocate and/or remove the same, all in the sole discretion of the Developer.

5.03 **Use by the Developer**. Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board of Directors nor their use of the Condominium Property or application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the Condominium until the Developer has completed all of the Developer's contemplated improvements and closed the sales of all of such Units. Subject to the rights of the Mortgagees

hereunder, the Developer may make such use of the unsold Units and of the Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office, and model units, the showing of the Condominium Property and the Units therein, and the display of signs thereon and therein. These special declarant rights shall exist so long as the Developer owns any Unit in the Condominium, holds any Unit in the Condominium for sale in the ordinary course of business, or leases any Unit it owns. The Developer expressly reserves the right to lease any Unit which it may own in the Condominium Property on such terms as it may deem proper and desirable and may transfer Units subject to such lease, including leasing such Unit(s) to the Association for use as a management, sales, or leasing office.

5.04 **Development Right.** – Additional Phases. The Developer hereby reserves, in accordance with the Act, the absolute right (but does not commit or otherwise assume the duty) to add future Additional Land to the land comprising the Condominium, as, when and if the Developer determines, in its sole discretion, to construct Additional Phases of the Condominium beyond or additional to the original Units. All such Additional Land will be adjacent and contiguous to lands previously dedicated to and as the Condominium as of the date of each such addition. In the event Additional Land is added to the Condominium and Additional Phases are constructed thereupon, the allocated interest in the Common Elements and the Limited Common Elements, as is currently set forth in Section 3.04 hereof, shall be reallocated in accordance with the current method of such allocation that is based on each Unit having an equal interest. Nothing herein shall be construed as a commitment on the part of the Developer to construct Additional Phases, or to dedicate any Additional Land to the Condominium other than the lands originally dedicated by this Declaration.

## ARTICLE VI

### ORGANIZATION AND MANAGEMENT

6.01 **Management of the Condominium Property.** The operation and administration of the Common Elements and the Condominium Property shall be performed by the Association. The powers and duties of the Association shall include those set forth in the Act, the Alabama Nonprofit Corporation Act, Ala. Code §§10-3A-1 to 225 (1975), this Declaration, the Articles of Incorporation and the By-Laws.

6.02 **Members.** The Members of the Association shall be all record Owners of the Units. Change of membership in the Association shall be established by recording in the Real Property Records the deed or other instrument establishing record title to a Unit of the Condominium Property and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a record Owner and a Member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners, tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations. Votes on matters decided by vote of the Members shall be cast in the manner provided in the Articles and By-Laws of the Association. Each Unit shall be allocated one (1) vote.

6.03 **By-Laws.** The By-Laws of the Association shall be in the form attached as Exhibit "B" to this Declaration and made a part hereof for all purposes and may be amended from time to time as set forth therein.

6.04 **Voting Requirements**. Notwithstanding anything contained herein to the contrary, unless a specific voting requirement in excess of a simple majority is required for either a vote of the Board of Directors or a vote of the Members, any such voting requirements shall be construed to require only a simple majority vote.

## **ARTICLE VII**

### **ASSESSMENTS**

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

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

7.03 **Required Reserve Funds and Working Capital Fund**. Assessments levied by the Association shall include an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common Elements that must be replaced or repaired on a periodic basis and may be payable in regular installments rather than by special assessments. Also, a working capital fund shall be established, and each Unit Owner purchasing a Unit from the Developer shall pay a one (1) time assessment equal to Five Hundred and No/100 Dollars (\$500.00) at the time of closing the purchase by each Owner of a Unit to be used by the Association as working capital, the balance of which shall be transferred to a segregated fund upon Developer's transfer of control of the Association to the Unit Owners. The Developer is prohibited from using the working capital funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association. When unsold Units are sold by the Developer, the Developer may reimburse itself for funds it paid the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when such Unit is sold.

7.04 **Annual Budget**. Within sixty (60) days prior to the beginning of each fiscal year of the Association, the Board of Directors shall adopt a proposed annual budget for such fiscal year, and such budget shall project the amount of funds for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium Property, including reasonable allowances for contingencies and reserves therefor if the Board of Directors shall so

provide, in accordance with the Act and this Declaration. Said budget shall take into account any projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. Within thirty (30) days after adoption of such annual budget by the Board of Directors, copies of said budget shall be made available to each Member. The Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget not less than fourteen (14) days nor more than thirty (30) days after mailing or delivering the budget to the Members. Unless at such meeting a majority of the Members present in person or by proxy reject the budget, the budget shall be deemed ratified. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time as a new budget is ratified. If the budget is ratified, the assessment for said year shall be established based upon such budget. Should the Board of Directors at any time determine in the sole discretion of said Board of Directors that the assessments levied are or may prove to be insufficient for any reason, including emergencies and nonpayment of any Owner's assessment, the Board of Directors shall have the authority to levy such additional assessments as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents and the Act.

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

7.06 **Detailed Records.** The Association shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements and Limited Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements and Limited Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved, together with other books, records, and financial statements of the Association, shall be available for examination by any Member or Member's representative at convenient hours on weekdays in a location designated by the Board of Directors in Baldwin County, Alabama.

7.07 **Share of Common Expenses and Limited Common Expenses.** Each Unit Owner shall be assessed and is individually liable for a proportionate share of the Common Expenses and the Limited Common Expenses, with each Unit Owner's proportionate share of Common Expenses and Limited Common Expenses being the same fraction as the Unit Owner's ownership interest in the Common Elements.

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

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

**7.09 Default in Payment of Assessments.** The payment of any assessment or installment thereof due the Association shall be in default if such assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the rate established by the Board of Directors, not to exceed the maximum interest rate per annum allowed by law, until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall have a lien against Units for delinquent assessments. Said lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Owner of each Unit, and such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association and all costs and expenses, including late penalties and reasonable attorneys' fees and court costs, incurred by the Association in collecting delinquent assessments and enforcing the same upon said Unit and its appurtenant undivided interest in the Common Elements and the Limited Common Elements. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages with a power of sale in the State of Alabama. The lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest, at the maximum legal rate on judgments or the rate established by the Board of Directors, whichever is less, on any such advance made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien, or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association, and such interest in any Unit shall be acquired expressly subject to the lien. The lien herein granted to the Association shall be effective from and after the time of the recording of this Declaration in the Real Property Records, and no further recordation of any claim of lien for assessment under this section is required. Such lien shall include only assessments which are due and payable when the action to enforce the lien is commenced plus late penalties and penalties imposed by the Association for Rules and Regulations violations, interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided.

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

the lien enforced.

## ARTICLE VIII

### MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY

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

- (A) the Common Elements;
- (B) incidental damage caused to a Unit by any work done by the Association; and
- (C) portions of all Units contributing to the support of the building, the outside walls, and load bearing columns.

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

8.02 **Owner's Obligation to Repair.**

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

(1) fixtures and equipment in or for the exclusive use of such Owner's Unit, including the refrigerator, stove and all other appliances within the Unit; drains, sinks, plumbing and plumbing fixtures and connections within or for the exclusive use of the Unit; electrical panels, wiring, outlets, and electrical fixtures within or for the exclusive use of the Unit; interior doors, window frames, screening and glass; all exterior doors; all interior and exterior wall coverings, including paint, wallpaper and light fixtures; all flooring, including carpeting, vinyl and ceramic tile, within a Unit; and

(2) plumbing, hot water heater, heating, air conditioning and electrical systems serving only that Unit, including the fuse boxes, wiring, flues, and all other plumbing, electrical, gas or mechanical systems.

In the event any such system or a portion thereof is within another Unit or requires access to another Unit, the repair, maintenance or replacement thereof shall be performed by the Association, and the cost thereof shall constitute an assessment against the Unit Owner responsible therefor.

(B) Each Unit Owner agrees as follows:



(1) to perform all maintenance, repairs and replacements which are the Unit Owner's obligations under subparagraph (A) of this Section and subparagraph (A) of Section 8.03;

(2) to pay all utilities as herein provided and all taxes levied against the Owner's Unit;

(3) not to make or cause to be made repairs to any plumbing, heating, ventilation or air conditioning system located outside the Owner's Unit, but required to be maintained by such Unit Owner elsewhere herein, except by licensed plumbers or electricians authorized to do such work by the Association or its delegate;

(4) not to make any addition or alteration to such Unit Owner's Unit or to the Common Elements or Limited Common Elements or to do any act that would impair the structural soundness, safety or overall design scheme of any part of the Condominium Property or that would impair any easement or right of a Unit Owner or Developer without the prior written consent of the Association and all Unit Owners affected thereby.

(5) not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, the Limited Common Elements, or to any outside or exterior portion of the Unit, excluding any alteration or addition made pursuant to the procedure described in subparagraph (4) above and including, but not limited to, altering in any way exterior doors, windows, or the exterior faces of the exterior doors or windows, affixing outside shutters to windows or painting any part of the exterior of an Owner's Unit without the prior written consent of the Association; provided that if such consent is granted, the Unit Owner and any contractor hired by the Unit Owner shall comply with all Rules and Regulations with respect to the work which may be adopted by the Association, and the Unit Owner shall be liable for all damages to another Unit or to the Common Elements or Limited Common Elements caused by any contractor employed by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and

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

(C) The Association shall be obligated to answer any request by a Unit Owner for any required approval of a proposed addition, alteration or improvement (by painting or otherwise) within forty-five (45) days after such request, but its failure to do so within the stipulated time shall not constitute the consent of the Association to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Association without, however, its incurring any liability on the part of the Board of Directors or any one (1) of them or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement or to any person having any claim of injury to a person or damage to property arising therefrom. The review by the Association under this Section shall in no way make the Association liable for any alterations, additions,

or improvements by any Unit Owner. Rather, such review is for purposes of aesthetics and control only. The provisions of this section shall not apply to Units owned by the Developer until a deed for such Unit has been delivered to a purchaser other than the Developer.

(D) In the event that any Owner fails to perform all maintenance, repairs and replacements which are the Unit Owner's obligations under subparagraph (A) of this Section and such failure to perform adversely affects the value, safety or integrity of the Condominium or of any Unit in the Condominium, any other Owner may, after giving the non-performing Owner not less than thirty (30) days notice within which the non-performing Owner may perform said maintenance, repairs and replacements, perform the necessary maintenance, repairs and replacements, shall be entitled to recover from the non-performing Owner the costs of such maintenance, repairs or replacements plus interest thereon at the rate of twelve percent (12%) per annum, and shall have a lien upon the Unit of the non-performing Owner for the cost of such maintenance, repairs or replacements, provided however, that if the non-performing Owner disputes, within thirty (30) days after receipt of any such notice, the necessity of such repairs, the dispute shall be resolved in accordance with Article XVII hereof.

**8.03 Maintenance of Limited Common Elements.** The Limited Common Elements shall be maintained in accordance with the following:

(A) Each Unit Owner shall keep the Limited Common Elements appurtenant to his Unit, if any, in a neat and presentable appearance and shall not allow such area to be used for anything other than its intended use; and

(B) The Association shall perform all other maintenance and repair of the Limited Common Elements, the expense of which shall be a Limited Common Expense.

**8.04 Alterations, Additions and Improvements by the Association.** Except in the case of loss or damage to the Common Elements or Limited Common Elements as contemplated by Article XI of this Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements or Limited Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements or Limited Common Elements which is in accordance with this Declaration and which do not require an expenditure of more than One Hundred Thousand and No/100 Dollars (\$100,000.00), exclusive of any funds applied from the reserves maintained hereunder) unless the same is authorized by the Board of Directors and ratified by the affirmative vote of the voting members casting not less than sixty percent (60%) of the total votes of the Members of the Association present at any regular or special meeting of the Members called for that purpose at which a quorum is present and approved by a majority of the Mortgagees eligible to vote therefor. The cost of the foregoing shall be assessed against the Owners of Units as provided herein except as otherwise provided in this Section. Where any alterations or additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners exclusively, or substantially exclusively, benefiting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alterations and additions shall be made only when authorized by the Board of Directors, ratified by not less than sixty percent (60%) of the total votes of the Members of the Association present at any regular or special meeting

of the Members called for that purpose at which a quorum is present, approved by a majority of the Mortgagees eligible to vote therefor and also ratified by not less than sixty percent (60%) of the total votes of the Members exclusively, or substantially exclusively, benefiting therefrom. Alterations, improvement, or repairs of an emergency nature may be made upon authorization by a vote of a majority of the Directors available for consultation if the same is necessary and in the best interests of the Members

8.05 **Utilities.** Each Unit Owner shall be required to pay all charges for utilities, including but not limited to electricity, natural gas, cable television (should television feed not be provided by the Association and assessed as a Common Expense to all Owners, the determination of which shall be in the sole and absolute discretion of the Association) and telephone service, used or consumed in an Owner's Unit. The utilities serving the Common Elements only, for example, water, sewer, garbage and trash collection, together with any other utilities, alarm services, cable or other television service or similar services determined by the Board, from time to time, to be provided to all Unit Owners shall be separately metered or charged and paid by the Association as a Common Expense. The Association shall have authority to pay the cost of the utilities used or consumed in the Units and have the costs thereof apportioned among the Units based upon use of the utility or any other formula the Association may deem appropriate.

## **ARTICLE IX**

### **RESTRICTIONS ON USE**

9.01 **Rules and Regulations.** The Association is authorized to promulgate, amend and enforce the Rules and Regulations concerning the operation and use of the Condominium provided that such Rules and Regulations are not contrary to or inconsistent with the Act and the Condominium Documents. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners, tenants, occupants, and any other persons who use 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 person shall constitute such person's agreement to be subject to and bound by the provisions of the Condominium Documents and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions for violation of any Rule or Regulation by an Owner, an Owner's family members, guests, invitees, lessees or renters, including the payment of penalties for such violations.

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

- (A) Each Residential Unit is hereby restricted to residential use, and the parking spaces located upon the Common Elements shall be used exclusively for the parking of passenger automobiles (including sport utility vehicles, pick-up trucks and similar vehicles).

(B) 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 the Limited Common Elements (except that outdoor furniture appropriate to the character and appearance of the Condominium may be utilized by Owners on the patios appurtenant to their Units even though such constitutes Limited Common Elements), nor shall anything be constructed on or planted in or removed from the Common Elements or the Limited Common Elements, nor shall the Common Elements or the Limited Common Elements in any other way be altered without the prior written consent of the Association. Blinds or shutters located on the exterior of a Unit, if any, may not be painted or altered by the Unit Owner.

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

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

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

(F) 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.

(G) Except as specifically allowed by this Declaration, no Owner shall cause or permit anything to be placed on the outside walls of an Owner's Unit, and no sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to or placed upon the exterior walls or roof of any building or any part thereof without the prior written consent of the Board of Directors.

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

(I) No waterbed shall be placed or utilized in any Unit.

(J) No radio or television antenna or satellite dish shall be attached to or hung from the exterior of any Unit, except in strict accordance with the Rules and Regulations.

(K) No one shall use or permit to be brought into any Unit or upon any of the Common Elements and facilities any flammable oils or fluids such as gasoline, kerosene, naphtha or benzene, or other explosives or articles deemed extra hazardous to life, limb or property without the written consent of the Board of Directors of the Association.

(L) No Owner or occupant residing within a Unit may conduct any business, trade, garage sale, moving sale, rummage sale, or similar activity at or about the Condominium, whether within a Unit or otherwise, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all zoning and other legal requirements for the Condominium; (iii) the business activity does not involve door-to-door solicitation of residents of the Condominium; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked at the Condominium which is noticeably greater than that which is typical of Units in which no business activity is being conducted; (v) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. Leasing or rental of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Developer with respect to its development and sale of the Condominium or its use of any Units which it owns within the Condominium, including the operation of a rental or leasing program to which certain Units within the Condominium may be subject. This subsection shall not apply to any activity conducted by the Association with respect to its operation of any of the Common Elements.

(M) No animal or pet 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 Condominium Property within seven (7) days from the date the Owner receives written notice from the Board of Directors to remove such animal or pet. 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 Condominium Property. Notwithstanding the foregoing, no pot-bellied pigs, venomous snakes, pit bull dogs, Rotweillers, or Doberman Pinschers may be brought onto or kept on the Condominium Property at any time. In addition, other animals determined in the Board's sole discretion to be dangerous shall not be brought onto or kept on the Condominium Property at any time. Only Owners shall be entitled to have a pet at the Condominium. Guests and tenants of Owners shall not have or bring onto the Condominium Property any animal or pet.

(N) No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner, other than the Developer, on any portion of the Condominium Property, at any time, either temporarily or permanently, without the prior written approval of the Board.

(O) The display or discharge of firearms or fireworks on the Common Elements or the Limited Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements or the Limited Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Elements or Limited Common Elements to or from an Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

9.03 **Lease of Units.** Entire Units may be leased by the Unit Owners; provided, however, that any such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Units and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including eviction. No individual rooms may be rented. Further, all leases must be in writing, with a copy provided to the Association upon request by the Association. This restriction on use shall be a covenant running with each Unit, creating a burden on each single Unit and Unit Owner for the benefit of every other Unit and Unit Owner. Notwithstanding anything contained in this Section 9.03 to the contrary, each Owner shall be responsible for the actions of his tenants, and nothing herein or in any such lease shall relieve an Owner of his obligations under the Condominium Documents. Each Unit Owner who has or who shall lease his Unit irrevocably empowers and authorizes the Association or its managing agent to enforce the Rules and Regulations and to terminate the lease of and evict any tenant who fails to comply with said rules or who provides other sufficient cause for termination of the lease and eviction in accordance with the laws of the State of Alabama, this Declaration, the By-laws, the Rules and Regulations, or any contract for lease. The Association, the Board or its managing agent shall not become liable to any Unit Owner or sublessor or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this Section. The provisions of this Section shall not be applicable to the Developer, who is irrevocably empowered without any limitation at all times, whether for permanent or temporary occupancy, to sell, lease or rent Units for any period and under any terms to any lessees or purchasers or transferees with the right to take any action necessary to consummate the sale or rental of said Units, including, but not limited to, the right to maintain model Units, post signs, have employees in the offices maintained in the Condominium buildings, use the Common Elements and show Units to prospective tenants. Sales and rental office signs and all items pertaining to the rental or sale of Units shall not be considered Common Elements and shall remain the property of the Developer.

9.04 **No Right to First Refusal.** The right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restriction.

9.05 **Right of Access.** Each Unit Owner grants a right of access to such Owner's 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 an Owner's Unit and threatening other Units or 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 or Limited Common Elements within an Owner's Unit, if any, or to correct any condition which violates the provisions of any Mortgage covering another Unit, or to enforce any provision of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not. Each Unit Owner further grants a right of access to such Owner's Unit to the Developer and/or the Developer's agent for the purpose of making all repairs required by any warranty delivered to the Unit Owner at the closing of an Owner's Unit. To the extent that damages are inflicted on the 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.

9.06 **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 or 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 that 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 in accordance with the By-Laws.

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

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

breach, and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors.

## ARTICLE X

### RIGHTS OF MORTGAGEES

10.01 **Notification of Mortgagees Required.** Any Mortgagee which properly notifies the Association in accordance with the terms of Section 10.04 hereof shall have the right to be given written notification by the Association of (a) any sixty (60) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements or Limited Common Elements if such loss or taking exceeds Ten Thousand and No/100 Dollars (\$10,000.00); (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds Ten Thousand and No/100 Dollars (\$10,000.00); (d) any condemnation of all or a portion of the Condominium Property; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Mortgagees.

10.02 **Right of Inspection.** Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property and to receive annual reports and other financial data upon request.

10.03 **Priority of Mortgagees.**

(A) Any lien which is or may be created hereunder upon any Unit, including, but not limited to, the lien created for assessments herein and the right to foreclose the same is and shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such Mortgage there may be a lien created pursuant to this Declaration on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein.

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

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



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

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

10.05 **Blanket Mortgages.** The entire Condominium Property, or some or all of the Units included therein, may be subjected to a single or blanket mortgage constituting a first lien thereon created by a recordable instrument executed by all of the Owners of the Condominium Property or Units covered thereby. Any Unit included under the lien of such mortgage may be sold or otherwise conveyed or transferred subject thereto. Any such mortgage shall provide a method whereby any Unit Owner may obtain a release of his Unit from the lien of such mortgage and a satisfaction and discharge in recordable form upon payment to the holder of the mortgage of a sum equal to the reasonable proportionate share attributable to his Unit of the then outstanding balance of unpaid principal and accrued interest, and any other charges then due and unpaid. The proportionate share of the mortgage required to be paid for release shall be determined by provisions pertaining thereto stated in the mortgage, or, if the mortgage contains no such provisions, then according to the proportionate share of the Common Elements of the Condominium attributable to such Unit or Units.

## **ARTICLE XI**

### **CASUALTY LOSS AND INSURANCE**

#### **11.01 Responsibility of Owners; Separate Insurance Coverage.**

(A) The Owner of each Unit shall, at the Unit Owner's expense, obtain insurance coverage for loss of or damage to the Owner's Unit and/or Limited Common Elements serving his Unit, any furniture, furnishings, personal effects, and other property belonging to such Owner and also shall obtain, at the Unit Owner's expense, insurance coverage against personal liability for injury to the person or property of another while within such Owner's Unit or upon the Common Elements or the Limited Common Elements, which insurance coverage shall, if such Unit is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, include insurance under the National Flood Insurance Act of 1968 and acts amendatory thereto against the perils of flood. Risk of loss of or damage to any furniture, furnishings and personal property belonging to or carried on any person, or which may be stored in any Unit or in or upon Common Elements or Limited Common Elements, shall be borne by the Owner of such Unit. All furniture, furnishings and personal property, if any, constituting a portion of the Common Elements and held for the joint use and benefit of all Owners of Units shall be covered by insurance as the same shall be maintained in force and effect by the Association as hereinafter provided.

All insurance obtained by the Owner of each Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or the Developer and their respective servants, agents, employees and guests.

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

#### 11.02 Insurance to be Maintained by the Association.

(A) **Hazard Insurance.** The Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design, location and use, insuring the Condominium Property against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements. If the Condominium Property is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Board shall, to the extent obtainable, insure the insurable property included in the Condominium Property against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than one hundred percent (100%) of the then current replacement cost of the improvements, including fixtures, equipment and other personal property of the Association (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association, as trustee, for the use and benefit of the individual Owners (without naming them) in the proportionate shares equal to their respective percentage ownership of the Common Elements and Limited Common Elements. Periodically, prior to the renewal of any such policy or policies of insurance, the Association shall either obtain an opinion or an appraisal from a qualified insurance appraiser for the purpose of determining the full replacement cost of the Common Elements, the Limited Common Elements and the Units for the amount of insurance to be obtained pursuant hereto. The cost of any such opinion or appraisal shall be a Common Expense. All such policies of insurance shall comply with the provisions of this Article and shall (i) contain a standard mortgagee loss payable clause endorsement in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interests may appear; and (i) provide that the insurance shall not be invalidated by any act or neglect of any Owner.

(B) **Public Liability and Property Damage Insurance.** The Association shall obtain and maintain at all times a comprehensive policy or policies of public liability and property damage insurance in such amount, but not less than One Million Dollars (\$1,000,000.00), and in such form as shall be required by the Association to protect the Association and the Owners of all Units, which provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements and Limited Common Elements and for legal liability resulting from employment contracts to which the Association is a party, and for claims against the officers and members of the Board of Directors for claims arising out of the negligent performance of their duties.

(C) **Worker's Compensation Insurance.** The Association shall obtain and maintain at all times a policy or policies of worker's compensation insurance to meet the requirements of the laws of the State of Alabama, if applicable.

(D) **Fidelity Bonds.** The Association shall obtain and maintain fidelity bonds for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the obligee. The amount of the fidelity bond shall cover the maximum funds that will be in the custody of the Association, but not less than the sum of three (3) months' assessments on all Units plus the reserve funds of the Association, if any.

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

11.03 **Governing Provisions.** All insurance obtained and maintained by the Association as provided above shall be governed by the following provisions:

(A) All policies shall (i) comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association as they shall apply to condominium loans; and (ii) be written with a company licensed to do business in the State of Alabama and holding a financial rating of "A" or better by Best's Insurance Reports or other then comparable rating. To the extent that the provisions of this Declaration with respect to the maintenance of insurance shall conflict with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, then the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association shall control, and such requirements shall be complied with by the Association.

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

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

(D) The Association shall be required to utilize its best efforts to secure insurance policies that will provide for the following:

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

(2) An agreement by the insurer that the insurance coverage cannot be terminated or materially changed without thirty (30) days prior written notice to the Association, each Unit Owner, and the Mortgagee of each Unit to whom a certificate of insurance has been issued at such Mortgagee's last known address; and

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

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

11.05 **Loss to Common Elements Only.** In the event of the loss of or damage to only Common Elements, real or personal, by reason of fire or other casualties, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such Common Elements, then such excess insurance proceeds shall be paid to the Owners of all Units, the distribution to be separately made to the Owner of each Unit and Unit Owner's respective Mortgagee, as their interests may appear, to be in the same proportion as the undivided interest in the Common Elements appurtenant to each Unit bears to the total undivided interest in the Common Elements appurtenant to all Units. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Association shall pay for the repair, replacement or reconstruction of any loss or damage. The monies to be so paid may be paid by the Association out of its reserve or replacement fund, and if the amount in such reserve or replacement fund is not sufficient, or if the Board of Directors determines not to use such fund for said purpose, then the Association shall levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

11.06 **Loss to all Elements.** In the event of loss of or damage to Common Elements, Limited Common Elements and/or any Unit by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association to cover such loss or damage shall be first applied to the repair, replacement or reconstruction of the Common Elements, then to the repair, replacement or reconstruction of the Units and the Limited Common Elements sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed to the Owners of all Units and to their Mortgagees, as their respective interests may appear. Such distributions are to be made in the manner and in the proportions as are provided for

the distribution of insurance proceeds under this Article. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Board of Directors shall, based on reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the Common Elements, the Limited Common Elements and the Units sustaining any loss or damage. If the proceeds of said fire and casualty insurance, if any, are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to the Common Elements, but are not sufficient to repair, replace or reconstruct any loss of or damage to the Limited Common Elements or the Units sustaining damage, then the Association shall levy and collect an assessment from the respective Owners of the Units and/or the Owners to whom Limited Common Elements have been allocated which sustained any loss or damage so that the sum shall be on deposit for the repair, replacement or reconstruction of all Common Elements, Limited Common Elements, if any, and Units. In said latter event, the assessment to be levied and collected from the Owner of each Unit sustaining loss or damage shall be apportioned between such Owners in such manner that the assessment levied against each Owner of a Unit shall bear the same proportion to the total assessment levied against all of said Owners of Units sustaining loss or damage as the cost of repair, replacement or reconstruction of each Owner's Unit bears to the cost applicable to all of said Units sustaining loss or damage. If the fire and casualty insurance proceeds, if any, payable to the Association in the event of the loss of or damage to Common Elements, the Limited Common Elements and the Units are not an amount which will pay for the complete repair, replacement or reconstruction of the Common Elements, it being recognized that such insurance proceeds are to be first applied to the payment for repair, replacement or reconstruction of said Common Elements before being applied to the repair, replacement or reconstruction of any Limited Common Element or Unit sustaining loss or damage, then the cost to repair, replace, or reconstruct said Common Elements in excess of available fire and casualty insurance proceeds shall be levied and collected as an assessment from the Owners of all Units in the same manner as would be levied and collected had the loss or damage sustained been solely to the Common Elements and the fire and casualty insurance proceeds been not sufficient to cover the cost of repair, replacement or reconstruction. The cost of repair, replacement or reconstruction of the Limited Common Elements and each Unit sustaining loss or damage shall then be levied and collected by assessment of the Owners of the Units sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of Limited Common Elements and Units sustaining loss or damage.

**11.07 Estimates of Repair; Plans and Specifications; Payment of Assessments.** In the event of loss or damage to Condominium Property, the Association shall, within sixty (60) days after any such occurrence, if reasonably possible, obtain reliable and detailed estimates of the cost of restoring damaged property to a condition as good as that which prevailed before such loss or damage. The estimate of repair shall be based upon the plans and specifications of the original building as improved to the date of formation of the Condominium, or such other plans and specifications as may be approved by the Board of Directors, by all of the Owners of the damaged Units, and by not less than sixty percent (60%) of the Members of the Association including Owners of damaged Units. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Condominium Property. Such estimates are to contain and include the cost of any professional fees and premiums for such bonds as the Board of

Directors may deem to be in the best interest of the membership of the Association. Whenever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of repair, replacement or reconstruction thereof, the additional money required to completely pay for such repair, replacement or reconstruction of said loss or damage, whether to be paid by all of the Owners of Units or only by the Owners of Units sustaining loss or damage, or both, as herein provided, shall be paid to the Association. The Association shall give such Owners notice of such obligation as soon as the Association becomes aware of such obligation, and such money shall be paid to the Association in accordance with the foregoing sentence not later than thirty (30) days from the date on which the Association shall receive the monies payable from the policies of fire and casualty insurance.

## ARTICLE XII

### CONDEMNATION

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

12.02 **Partial Condemnation.** In the event that the Condominium Property is not to be terminated in accordance with Article XIII below and one or more Units are taken in part, the taking shall have the following effects:

(A) If the taking reduces the size of a Unit and the remaining portion of that Unit can be made tenantable, the award for the taking 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 the Condominium Property:

- (1) The Unit shall be made tenantable.
- (2) The balance of the award, if any, shall be distributed to the Owner of the Unit and the Mortgagee of the Unit, as their respective interests may appear.
- (3) If there is a balance of the award distributed to the Owner and the Mortgagee, the share of the Common Elements or Limited Common Elements, if any, appurtenant to the Unit shall be equitably reduced. This shall be done by reducing such share by the proportion which the balance of the award so distributed

bears to the market value of the Unit immediately prior to the taking, and then re-computing the shares of all Owners in the Common Elements and the Limited Common Elements as percentages of the total of their shares as reduced by the taking.

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

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

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

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

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

(B) If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner, the Mortgagee and the Association within thirty (30) days after notice by any such party that an agreement cannot be reached, such value shall be determined by three (3) independent qualified appraisers, with one (1) appraiser to be selected by the Association, one (1) appraiser to be selected by the Owner and Mortgagee, and the third (3<sup>rd</sup>) appraiser to be selected by the two (2) appraisers so appointed, and the fair market value of the Unit shall be deemed to be the average of the two (2) appraisals of the fair market value of the Unit made by said appraisers having the least difference amount. The cost of such appraisal shall be assessed against all Owners in the shares of the Owners in the Common Elements as they existed prior to the changes effected by the taking.

(C) Changes in the Units, in the Common Elements and/or Limited Common Elements, in the ownership of the Common Elements and/or Limited Common Elements and in the shares of liability for Common Expenses and/or Limited Common Expenses which are effected by eminent domain shall be evidenced by an amendment of this Declaration which

is approved by the Board of Directors in accordance with this Declaration and the Association's By-Laws.

12.03 **Association Appointed as Attorney-In-Fact for Unit Owners.** The Association is hereby appointed as attorney-in-fact, coupled with an interest, for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the condemnation or taking by eminent domain of the Condominium Property or any portion thereof.

### **ARTICLE XIII**

#### **TERMINATION**

##### **13.01 Destruction of the Condominium Property.**

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

(1) two-thirds (2/3) or more of the Units in the Condominium Property shall have been destroyed or substantially damaged by fire, wind, water, or other natural causes, or a combination of such (including condemnation); or

(2) the Condominium Property has been in existence in excess of fifty (50) years after the date this Declaration shall have been executed and substantially all of the Units in the structure have substantially deteriorated and have been rendered substantially obsolete;

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

(B) In the event that the Circuit Court of Baldwin County, Alabama, shall grant the petition for termination of this Declaration and the plan of condominium ownership as provided in subparagraph (A) above, all of the Owners of Units shall be and become tenants in common as to ownership of the Land and any then remaining improvements thereon. The undivided interest in the Land and remaining improvements held by the Owner of each Unit shall be the same as the undivided interest in the Common Elements which were formerly appurtenant to such Unit, and the lien of any Mortgage or other encumbrance upon each Unit shall attach to the percentage of undivided interest of the Owner of a Unit in the Land and then remaining improvements as above provided. The Owners of Units to which Limited Common Elements have been allocated in this Declaration shall own each such Limited



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

13.02 **Termination by Consent.** Except in the event this Declaration and the plan of condominium ownership established hereby is terminated as provided above, this Declaration may only be otherwise terminated by the consent of eighty percent (80%) of the Owners of all Units and all parties holding Mortgages, liens or other encumbrances against any of said Units, in which event the termination of the Condominium Property shall be by such plans as may be then unanimously adopted by said Owners and parties holding any Mortgages, liens or other encumbrances. Such election to terminate this Declaration and the plan of condominium ownership established herein shall be evidenced by a termination agreement executed in writing by all of the aforesaid parties in recordable form in accordance with the Act, and such instruments shall be recorded in the Real Property Records.

#### **ARTICLE XIV**

##### **GENERAL PROVISIONS**

14.01 **Covenant against Partition.** There shall be no judicial or other partition of the Condominium Property or any part thereof, nor shall any person acquiring any interest in the Condominium Property or any part thereof seek any such partition unless the Condominium Property has been removed from the provisions of the Act.

14.02 **Unit Keys.** At the request of the Association, each Unit Owner, by acceptance of a deed to a Unit, agrees to provide the Association with a key to the Unit (and the security alarm code, if any) to be used by the Association for maintenance, emergency, security or safety purposes. Neither the Developer nor the Association shall be liable for any loss or damage due to it holding such key, or use of such key for the purposes described above, and each Unit Owner shall indemnify and hold harmless the Developer, the Association and its officers and directors against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon the Developer, the Association or its officers and directors in connection with any action, suit or other proceeding (including settlement of any such action, suit or proceeding) brought by the Unit Owner or the Unit Owner's family, tenants, guests, employees, invitees, lessees or licensees against the Developer, the

Association, or its officers or directors arising out of or relating to its holding or use of such key for the purposes described above.

14.03 **Disclosures.** Each Owner and each Owner's family, tenants, guests, employees, invitees, lessees or licensees acknowledge the following:

(A) The Condominium is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

(B) The views from an Owner's Unit may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.

(C) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(D) No representations are made regarding the schools that currently or may in the future serve the Unit.

(E) Because in every neighborhood there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside the Condominium Property that an Owner may find objectionable and that it shall be the sole responsibility of the Owners to become acquainted with neighborhood conditions that could affect the Unit.

(F) No representations are made that the Unit is or will be soundproof or that sound may not be transmitted from one Unit to another.

(G) The floor plans and the dimensions and square footage calculations shown on the Plans, if any, are only approximations. Any Unit Owner who is concerned about any representations regarding the plans should perform his own investigation as to the dimensions, measurements and square footage of his Unit.

(H) The Developer will be constructing portions of the Condominium and engaging in other construction activities related to the construction of Common Elements, the Limited Common Elements and improvement of Units as well as the potential construction and development of Additional Phases. Such construction activities may, from time to time, produce certain conditions on the Condominium, including, without limitation: (1) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (2) smoke; (3) noxious, toxic, or corrosive fumes or gases; (4) obnoxious odors; (5) dust, dirt or flying ash; (6) unusual fire or explosion hazards; (7) temporary interruption of utilities; and/or (8) other conditions that may threaten the security or safety of persons on the Condominium Property. Notwithstanding the foregoing, all Owners agree that such conditions on the Condominium Property resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause the Developer and its agents to be deemed in violation of any provision of this Declaration.

(I) Exposed concrete surfaces in portions of the Condominium which are not heated and cooled are subject to cracking due to (1) water penetration, (2) expansion and contraction of the concrete with temperature changes, and (3) building settlement.

(J) Concrete surfaces in heated and cooled portions of the Condominium are subject to cracking due to building settlement.

(K) A Unit may trap humidity created by everyday living (cooking, bathing, laundering, etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially mildew and/or mold.

(L) Mold and/or mildew can grow in any portion of the Condominium that is exposed to elevated levels of moisture. The Association and each Unit Owner agree to: (1) regularly inspect the parts of the Condominium that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion and/or damage; (2) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that they respectively maintain; (3) remediate or replace any building material located in the parts of the Condominium that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (4) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that they respectively maintain in accordance with current industry-accepted methods. In addition, each Unit Owner agrees to notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in their respective Units.

(M) The Condominium Property is situated in a location that may be subject to hurricanes, strong winds, tropical storms, erosion, flooding, and other forces of nature that may cause damage or casualty losses to the Condominium Property.

14.04 **Hurricane Preparations.** Each Unit Owner who is absent from his or her Unit during hurricane season shall prepare his/her Unit prior to departure by:

(A) Removing all furniture and plants and any other item not permanently affixed from the patios; and,

(B) Designating a responsible firm or individual to care for the Unit during his/her absence (including removal of furniture and plants not affixed to patios) in the event of a hurricane or severe storm, and in the event the Unit suffers hurricane or storm damage, each Unit Owner shall furnish the Board, or manager, if any, with the name of such firm or individual.

## **ARTICLE XV**

### **AMENDMENT**

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

(A) The Developer reserves the right to amend the Articles and the By-Laws until such time as Developer relinquishes control of the Association as provided below.

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

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

(D) The Developer reserves the right at any time to amend this Declaration without the consent of the owners to cause Additional Phases to be made a part of the Condominium in accordance with Section 5.04 hereof.

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

(A) A proposal to amend this Declaration may be considered at any meeting of the Members of the Association called for that purpose in accordance with the provisions of the By-Laws; provided that the Association provides prior written notice of such meeting to the Mortgagees as provided above.

(1) The proposal to amend this Declaration must be approved by the affirmative vote of the Members representing not less than sixty-seven percent (67%) of the total allocated votes of the Association and by the affirmative vote of the Mortgagees representing not less than sixty-seven percent (67%) of the total allocated votes of the Units subject to the Mortgages; or

(2) In the event the proposed amendment seeks to amend a voting requirement that requires greater than sixty-seven percent (67%) approval for the action contemplated by such provision (the "Approval Requirement"), then the amendment of such provision must be approved by the affirmative vote of not less than the relevant Approval Requirement of the total allocated votes of the Association and the affirmative vote of the Mortgagees representing not less than the relevant Approval Requirement of the total allocated votes of the Units subject to the Mortgages; or

(B) By unanimous consent or agreement of the Unit Owners and the Mortgagees as evidenced by their signatures to the amendment.

**15.03 Prohibited Amendments.** Notwithstanding the foregoing Section 15.02, no amendment to this Declaration made pursuant to Section 15.02 shall:

(A) change a Unit, including the ownership in Common Elements and responsibility for Common Expenses and voting rights, without the prior written approval of

the Unit Owner or Unit Owners so affected and prior written approval of the holders of record of any Mortgage or other liens on the Unit or Units so affected; or

(B) eliminate, modify, change, impair, abridge, prejudice or otherwise adversely affect any rights, benefits, privileges or priorities granted to the Developer without the written consent of the Developer.

15.04 **Effectiveness of Amendments.** A copy of each amendment so adopted shall be certified by the President or Vice President and Secretary or Assistant Secretary of the Association as having been fully adopted and shall be effective when recorded in the Real Property Records.

## **ARTICLE XVI**

### **CONTROL OF THE ASSOCIATION**

16.01 **Election of Board of Directors.** The Developer, its successors or assigns, may appoint and remove the members of the Board of Directors, and in the event of vacancies, the Developer shall fill the vacancies, until no later than the earlier of either (i) sixty (60) days after seventy-five percent (75%) of the total number of Units have been conveyed to purchasers of Units, or (ii) two (2) years have elapsed from the date the Developer has ceased to offer Units for sale in the ordinary course of business, or (iii) two (2) years have elapsed from the date that any development right to add new Units was last exercised, or (iv) the Developer elects by written notice to the Association, at the Developer's option, to terminate such control of the Association, whichever first occurs. Notwithstanding the foregoing, within ninety (90) days after conveyance by Developer of twenty-five percent (25%) of the Units, the Unit Owners other than Developer shall be entitled to elect twenty-five percent (25%) of the members of the Board of Directors. No later than ninety (90) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than Developer, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board shall be elected by the Unit Owners. The Developer shall be entitled to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units and such right is not contrary to the other provisions hereof.

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

16.03 **Status of Unsold Units.**

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

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

(C) Notwithstanding the provisions above, no assessments shall be imposed by the Association against the Developer as the Owner of unsold Units until the date sixty (60) days after the conveyance of the first Unit by the Developer. During such period, Developer shall be responsible for the Common Expenses and Limited Common Expenses of the Condominium Property, except that the Developer shall be entitled to use and apply to the payment of such Common Expenses and Limited Common Expenses any and all assessments made against the Unit Owners other than Developer and collected by the Association for Common Expenses and Limited Common Expenses. The Developer shall be solely responsible for the maintenance, repair and operation of the unsold Units.

16.04 **Association Contracts**. Any agreement entered into by the Association prior to the passage of control of the Association from the Developer that is subject to the provisions of §35-8A-305 of the Act shall be terminable in accordance with said §35-8A-305.

## **ARTICLE XVII**

### **DISPUTE RESOLUTION**

#### **17.01 Agreement to Encourage Resolution of Disputes Without Litigation.**

(A) Developer, the Association and its officers, directors, and committee members, all Owners, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Party") agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Condominium, the Association and/or the Owners without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim (hereinafter defined) unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 17.02 in a good faith effort to resolve such Claim.

(B) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

(1) the interpretation, application, or enforcement of the Condominium Documents; or

(2) the rights, obligations and duties of any Bound Party under the Condominium Documents;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 17.02:

(1) any suit by the Association to collect Assessments or other amounts due from any Owner;

(2) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem

necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;

(3) any suit between Owners which does not include Developer or the Association as a party if such suit asserts a Claim which would constitute a cause of action independent of the Condominium Documents;

(4) any suit in which any indispensable party is not a Bound Party;

(5) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 17.02(A), unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article; and

(6) any suit relating to or arising out of any alleged defect (hereinafter defined).

#### 17.02 Dispute Resolution Procedures.

(A) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") to each Respondent and to the Board stating plainly and concisely:

(1) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(3) the Claimant's proposed resolution or remedy; and

(4) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(B) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(C) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice described in Section 17.02(A) (or within such other period upon which the parties may agree), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency or individual providing dispute resolution services in the State of Alabama. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the

Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(D) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

**17.03 Initiation of Litigation by Association.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial, arbitration or administrative proceedings unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, except that no such approval shall be required for actions or proceedings:

- (A) initiated during the period that the Developer controls the Association;
- (B) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (C) initiated to challenge property taxation or condemnation proceedings;
- (D) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (E) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section 17.03 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

**17.04 Developer's Right to Cure Alleged Defects.** Due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the Developer's responsibility therefor. It is the Developer's intent to resolve all disputes and claims regarding any Alleged Defect (as defined below) amicably and without the necessity of time-consuming and costly litigation. Accordingly, the Association and all Unit Owners shall be bound by the following claim resolution procedure with respect to Alleged Defects:



(A) Developer's Right to Cure. In the event that the Association, Board or any Unit Owner or Unit Owners (a "Complaining Party") claim, contend or allege that any portion of the Condominium, including, without limitation, the Common Elements, the Limited Common Elements, any Unit, and/or any improvements constructed on the Condominium Property, are defective or that the Developer or its agents, consultants, contractors or subcontractors (collectively, the "Developer's Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), the Developer hereby reserves the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

(B) Notice to Developer. In the event that a Complaining Party discovers any Alleged Defect, such Complaining Party shall, within a reasonable time after discovery, notify the Developer, in writing, at such address as the Developer may from time to time provide to the Association, or such other address at which the Developer maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(C) Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Developer of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by the Developer, the Developer shall have the right, upon reasonable notice to the Complaining Party and during normal business hours, to enter onto or into, as applicable, the Common Elements, the Limited Common Elements, any Unit, and/or any improvements or other portion of the Condominium Property for the purposes of inspecting and, if deemed necessary by the Developer, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, the Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(D) Legal Actions. No Complaining Party shall initiate any legal action, cause of action, proceeding, or arbitration against the Developer alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, unless and until the Complaining Party has (i) delivered to the Developer a Notice of Alleged Defect and (ii) the Developer has, within ninety (90) days after its receipt of such Notice of Alleged Defect, either (a) failed to repair or replace such Alleged Defect or (b) if such Alleged Defect cannot reasonably be repaired or replaced within such ninety (90) days period, failed to commence such repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion.

(E) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section 17.04 shall be construed to impose any obligation on the Developer to inspect, repair, or replace or pay for any item or Alleged Defect for which the Developer is not otherwise obligated to do under applicable law or other agreement to which the Developer is a party. The right of the Developer to enter, inspect, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing in recordable form executed and recorded by the Developer in the Real Property Records. This provision does not create any warranties, express or implied, on the part of the Developer or the Association.

(F) **Arbitration.** Any disagreement between an Owner, Owners, the Board, and/or the Association, on the one hand, and the Developer, on the other, concerning Developer's efforts to remedy or repair any Alleged Defect (a "Dispute") after compliance with the foregoing provisions of this Section 17.04, shall be resolved by binding arbitration conducted in Baldwin County, Alabama, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Without limiting the foregoing, it is expressly agreed that this agreement to arbitrate also covers any and all claims that Purchaser may assert against the construction contractor(s) and/or design-builder(s) for the Condominium, and its/their subcontractors, sub-consultants and affiliates (sometimes herein referred to as "Contractor Parties"). At the option of the Developer, any other person or entity with whom or which the Developer has an agreement for binding arbitration may be joined in an arbitration proceeding hereunder. The award rendered by the arbitrators shall be final and binding upon the parties to the arbitration, and judgment upon the award may be entered in any court having jurisdiction over any of the parties hereto. Arbitration proceedings pertaining to a Dispute shall be transcribed verbatim by a competent court reporting company selected by the American Arbitration Association. The initial fee of the American Arbitration Association shall be borne by the party initiating the Dispute, and all other costs of the arbitration, including the costs and fees of the arbitrators and the expense of transcription, shall be borne in equal shares by (a) the Owner or Owners and/or Association, (b) Developer, and (c) any Contractor Parties and/or other parties to the arbitration joined at Owner's option. Notwithstanding anything herein to the contrary, the respective parties to the arbitration shall each be responsible for their own costs incurred in the arbitration with respect to third party expenses, including but not limited to costs of discovery, attorneys' fees, accountants' fees, investigation expenses, and expert's fees.

## **ARTICLE XVIII**

### **MISCELLANEOUS**

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

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

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

18.04 **Exhibits.** The Exhibits attached to this Declaration are an integral part of this Declaration.

18.05 **Invalidity and Severability.** It is the intention of the Developer that the provisions of this Declaration are severable so that if any provision is invalid or void under any applicable

federal, state or local law or ordinance, decree, order, judgment or otherwise, the remainder shall be unaffected thereby.

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

18.07 **Notice.** All notices required or desired under this Declaration or the Condominium Documents to be sent to the Association shall be sent 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 Unit Owners. Except as specifically provided to the contrary in the Act, all notices to any Unit Owner shall be delivered in person or sent by first (1<sup>st</sup>) class mail to the address of such Unit Owner at the Condominium, or to such other address as he may have designated from time to time, in a writing duly received, to the Association.

18.08 **Governing Law.** This Declaration shall be governed by and is to be construed according to the laws of the State of Alabama.

18.09 **Conflict Between Documents.** If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules, the terms and conditions of the Bylaws shall control.

IN WITNESS WHEREOF, the Developer has caused these presents to be executed on its behalf by its duly authorized representative on the day and year first above written.

SEA PINES, LLC

By: Keith Clay  
Name: Keith Clay  
At Its: Manager

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned notary public in and for said state and county, hereby certify that Keith Clay, whose name as Manager of SEA PINES, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Manager and with full authority, executed the same voluntarily on the day set forth below.

GIVEN under my hand and seal this 6<sup>th</sup> day of September, 2007.

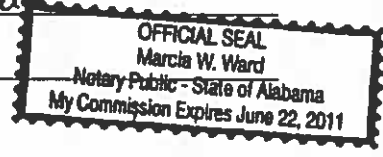
[NOTARY SEAL]



*Marcia W. Ward*

NOTARY PUBLIC

My commission expires:



**CONSENT OF MORTGAGEE**

This Declaration of Condominium of Sea Pines, a Condominium, is consented to and acknowledged by Superior Bank, a Federal Savings Bank, as mortgagee.

Superior Bank

By: [Signature]  
As Its: [Signature]

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned notary public in and for said state and county, hereby certify that SCOTT MARTIN, whose name as SR. VICE PRESIDENT of SUPERIOR BANK, a FEDERAL SAVINGS BANK, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day set forth below.

GIVEN under my hand and seal this 28TH day of AUGUST, 2007.

[NOTARY SEAL]



Aina Venerable  
NOTARY PUBLIC  
My commission expires: 05/19/2010

**HARRISON FRENCH**  
**& ASSOCIATES, LTD.**

August 16, 2007

**Statement of Substantial Completion**

Club House and Building no.2  
Sea Pines at Bon Secour  
Foley, AL

As the architect for the Club House and Building no. 2 at Sea Pines at Bon Secour, I can state that to the best of my knowledge that these two buildings are substantially complete and constructed in general accordance with the plans and specifications prepared by me.



Harrison French, Architect

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**Clark, Geer, Latham & Associates, Inc.** *Engineer • Architect • Planner*

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762 Downtowner Loop West • Mobile, Alabama 36609 • 251/344-7073 • FAX 251/343-9179

*J. M. Clark, P.E., Chairman*  
*T. E. Latham, P.E., President*  
*T. B. Clark, P.E., Exec. V. Pres.*  
*Linda G. Snapp, A.I.A., V. Pres.*  
*E. J. Adams, P.E., V. Pres.*

*V. R. Geer, Jr., P.E. (1916 - 1994)*  
*D. A. Lippold, P.E.*  
*J. E. Nall, P.E.*  
*R. A. Cummings, P.E.*  
*D. S. Carrier, P.L.S.*  
*P. S. Wilson, A.I.A.*

May 30, 2007

Keith Clay  
6211 Gardendale Drive  
Nashville, TN 37215

Re: Sea Pines at Bon Secour - Foley, AL  
OGL Project No. 06105

Dear Mr. Clay,

This letter is to inform you I have performed a final inspection on the above referenced project and found the site improvements to be substantially complete and constructed in general accordance with the approved plans and specifications.

Sincerely,

Clark, Geer, Latham & Associates, Inc.

  
Robert A. Cummings, P.E.