

AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE COMMUNITIES OF SUNSET BAY FOR SUNSET BAY,
PHASE I

This Amendment to Declaration of Covenants, Conditions and Restrictions of the Communities of Sunset Bay for Sunset Bay, Phase I (this "Amendment"), is made effective on the Recording (as defined in this Amendment) of this Amendment, by Bon Secour Development, L.L.C., an Alabama Limited Liability Company (the "Declarant") as assignee of the rights of Tugboat Properties, L.L.C., a Mississippi Limited Liability Company, and the successors, grantees and assigns of the Declarant. This Amendment is joined into by Sunset Bay Owners Association, an Alabama Nonprofit Corporation for the purposes stated.

RECITALS

A. The Declarant did subdivide certain real property located in Baldwin County, Alabama, under the name Sunset Bay at Bon Secour, a Planned Unit Development ("Sunset Bay"), as per plat thereof recorded on Slide 2128-E and Slide 2128-F (the "Plat") and subjected the property described on the Plat to that certain Declaration of Covenants, Conditions and Restrictions of The Communities of Sunset Bay for Sunset Bay, Phase I, a Planned Unit Development, dated September 23, 2003 and recorded October 9, 2003 as Instrument Number 764204, Pages 1 through 45 (the "Master Declaration").

B. An Association of Owners for the operation of Sunset Bay was formed under the laws of the State of Alabama known as Sunset Bay Owners Association, an Alabama Nonprofit Corporation (the "Master Association").

C. The Declarant desires to amend the Master Declaration as provided for in this Amendment.

D. Sunset Bay shall be subject to the terms, conditions, provisions and restrictions contained in the Master Declaration as amended by this Amended Master Declaration.

E. This Amendment shall constitute a "Supplement" as defined in the Master Declaration.

The recording references referred to in this Amendment are to the Office of the Judge of Probate, Baldwin County, Alabama. The terms used in this Amendment shall have the same meaning as those contained in the Master Declaration, unless the context otherwise requires.

NOW THEREFORE, the Master Declaration is amended as follows:

1. Effective Date, General Description of Boat Slips and Annexation of Additional Property.

A. **Effective Date.** Unless otherwise specifically stated in this Amendment, this Amendment shall take affect on the date of the Recording (as defined in this Amendment) of this Amendment and shall apply to all matters that occur after the date of the Recording (as defined in this Amendment) of this Amendment. The Declarant does not contemplate the Recording (as defined in this Amendment) of this Amendment until the Declarant annexes Additional Property which may include Lots and/or condominium Units (as defined in this Amendment). However, the Declarant may elect to record this Amendment at any time either prior to or after annexation of said Additional Property.

B. **General Description of Boat Slips.** The Plat of Sunset Bay shows a total number of eighty (80) Boat Slips in Sunset Bay. The Master Declaration further provides that forty-eight (48) Boat

Slips are assigned to Lots in Sunset Bay, Phase I, and thirty (30) Boat Slips are reserved by the Declarant to be assigned as more specifically provided in the Master Declaration. The Rules and Regulations of the Master Association provide that Boat Slip Number 57 and Boat Slip Number 58 are reserved for guests. Boat Slip Number 57 and Boat Slip Number 58 shall be assigned by the Declarant to the Master Association to be used in accordance with the Rules and Regulations.

C. Annexation of Additional Property. The Master Declaration provides that the Declarant shall have the right, privilege and option to annex to the Property in Sunset Bay any Additional Property as described in the Master Declaration by the filing of an amendment or Supplemental Declaration in the records of the Office of the Judge of Probate of Baldwin County, Alabama. The Declarant has obtained approval from the City of Gulf Shores, Alabama to further develop Sunset Bay. The Declarant reserves the right to seek amendments to the approval or additional approvals from the City of Gulf Shores, Alabama pertaining to the further development of Sunset Bay. The Declarant shall submit Additional Property by the recording of an amendment or amendments or Supplemental Declaration or Supplemental Declarations as provided for in the Master Declaration and this Amendment. The Additional Property may include Lots and/or Units in a condominium created pursuant to Ala. Code 1975, §35-8A-101 et seq. and may include additional Boat Slips and docking facilities. No assurance is made by the Declarant concerning the following:

(i) Maximum or minimum number of Lots, Units or Boat Slips or the maximum number of Lots, Units or Boat Slips per acre that may be created.

(ii) No representations are made regarding use restrictions on any Lots, Units or Boat Slips that may be created.

(iii) If the Declarant elects to annex Additional Property as provided for in the Declaration, the Additional Property may contain a maximum percentage of one hundred percent of the real estate areas of the Additional Property, and a maximum percentage of one hundred percent of the Lot areas, Boat Slip areas or floor areas of all Units that may be created within the Additional Property that are not restricted exclusively to residential use.

(iv) In the event of, and upon, the submission of any Additional Property to Sunset Bay in accordance with the provisions of the Master Declaration, as amended by the Amended Master Declaration, or any Supplemental Declaration, there shall be allocated to each Lot, Unit or Boat Slip in said Additional Property, assessments and voting rights to be determined in the manner provided for in the amendment or Supplemental Declaration to the Amended Master Declaration by which the Additional Property is submitted to Sunset Bay.

(v) No assurances are made that any Lot, Unit, Boat Slip, Building or other Improvements that may be erected pursuant to any rights reserved to the Declarant in any part of the Additional Property will be compatible or will not be compatible with any existing Lot, Unit, Boat Slip, Buildings and Improvements in Sunset Bay in terms of architectural style, quality of construction and size.

(vi) No assurances are made concerning other Improvements that may be created and Common Areas or Common Elements that may be created within any part of the Additional Property pursuant to any right reserved by the Declarant.

(vii) No assurances are made as to the locations of any Lot, Unit, Boat Slip, Building or other Improvement that may be made within any part of the Additional Property pursuant to any rights reserved by the Declarant.

(viii) No assurances are made that any Common Areas or Common Elements created pursuant to any rights reserved to the Declarant will be of the same general types and sizes as the

Common Areas within other parts of **Sunset Bay**.

(ix) No assurance is made that the proportion of the **Common Areas** to **Lots** or **Boat Slips** or **Common Elements** to **Units** created pursuant to any rights reserved by the **Declarant** will be approximately equal to the proportion existing within other parts of **Sunset Bay**.

(x) No assurances are made that all restrictions in the **Master Declaration**, as amended by the **Amended Master Declaration**, or any **Supplemental Declaration**, affecting the use, occupancy and sale or lease of the **Lots**, **Units** or **Boat Slips** will apply to any **Lots**, **Units** or **Boat Slips** created pursuant to any rights reserved by the **Declarant**.

(xi) Any assurances made by the **Declarant** do not apply in the event that any rights reserved by the **Declarant** are not exercised by the **Declarant**.

(xii) No assurance is made concerning whether or not any **Additional Property** or any portion of any **Additional Property** will be or will not be submitted to **Sunset Bay** nor is any assurance made concerning the boundaries of any **Additional Property**.

(xiii) No assurance is made that any **Boat Slip** may or may not be included in any **Additional Property** annexed into **Sunset Bay** nor whether or not, if said **Boat Slip** is included in any **Additional Property**, whether or not the **Boat Slip** will or will not be defined the same as a **Boat Slip** in the **Master Declaration**, as amended by the **Amended Master Declaration**, or whether or not the **Owner** of a **Boat Slip** shall be entitled to the same vote, or be obligated to pay the same assessment, in the **Master Association** as an **Owner** of a **Boat Slip** included in any **Additional Property**.

2. Amendment of Certain Definitions Provided for in the Master Declaration.

A. The definition of "**Assessment**" contained in the **Master Declaration** is amended to read as follows:

"**Assessment**" shall mean a "**Lot or Unit Assessment**" (as defined in this **Amendment**) or a **Boat Slip Assessment**.

B. The definition of "**Boat Slip**" contained in the **Master Declaration** is amended to read as follows:

"**Boat Slip**" shall mean each **Boat Slip** which is shown and designated as a numbered **Boat Slip** on the **Plat of Sunset Bay** filed for record in the **Office of the Probate Judge of Baldwin County, Alabama**, and is improved with a **Boat Slip**, and includes the land described below contiguous to each **Boat Slip** over which the boardwalk and eight (8) foot wide paved cart path are located and which are shown on the **Plat of Sunset Bay**. One **Boat Slip** will be assigned to each **Lot** in **Sunset Bay, Phase I**. The remaining **Boat Slips** may be sold by the **Declarant** to any **Owner** of a **Lot** or **Unit** in any portion of the **Additional Property** annexed to the **Property** as herein provided. (See **Section 9.02**.) A **Boat Slip** must be assigned as an appurtenance to a **Lot** or **Unit** as elsewhere provided for in the **Master Declaration**, as amended by this **Amendment**. The term "**Boat Slip**" shall include that part of the land lying contiguous to each **Boat Slip** located under the boardwalk and eight (8) foot wide paved cart path as shown on the **Plat** and as described in this paragraph. There is reserved to the **Master Association** a non-exclusive easement of ingress, egress, drainage and utilities over and across the boardwalk and eight (8) foot wide paved cart path shown on the **Plat of Sunset Bay** which easement constitutes **Common Area**. Each **Boat Slip** is described as follows:

Boat Slip Number 1 is described as that parcel bounded as follows:

(i) on the **South** by a line which is located **ten (10) feet North** of and parallel to a **Westward** extension of the **North** line of **Lot 4 of Sunset Bay at Bon Secour, Phase I, a Planned Unit Development;**

(ii) on the **North** by a line which is located **fifty (50) feet North** of and parallel to the **South** line described immediately above;

(iii) on the **East** by a **fifty (50) foot** long portion of the **West** line of **Lots 3 through 19 of Sunset Bay at Bon Secour, Phase I, a Planned Unit Development;** and

(iv) on the **West** by a line which is **twenty (20) feet West** of the **West** line of the **Lot** lying **East** of and adjacent to said **Boat Slip**.

Boat Slip Number 2 is described as that parcel bounded as follows:

(i) on the **South** by a **Westward** extension of the **South** line of **Lot 4 of Sunset Bay at Bon Secour, Phase I, a Planned Unit Development;**

(ii) on the **North** by a line which is located **fifty-five (55) feet North** of and parallel to the **South** line described immediately above;

(iii) on the **East** by the **West** line of a portion of **Lots 3 through 19 of Sunset Bay at Bon Secour, Phase I, a Planned Unit Development;** and

(iv) on the **West** by a line which is **twenty (20) feet West** of the **West** line of the **Lot** lying **East** of said **Boat Slip**.

Boat Slip Number 3 through Boat Slip Number 17 are described as those parcels bounded as follows:

(i) on the **North** by a **Westward** extension of the **North** line of the **Lot** lying immediately **East** of and adjacent to the appropriate **Boat Slip;**

(ii) on the **South** by a **Westward** extension of the **South** line of the **Lot** lying immediately **East** of and adjacent to the appropriate **Boat Slip;**

(iii) on the **East** by the **West** line of the **Lot** located **East** of and adjacent to the appropriate **Boat Slip;** and

(iv) on the **West** by a line which is **twenty (20) feet West** of the **West** line of the **Lot** lying **East** of and adjacent to the appropriate **Boat Slip**.

Boat Slip Number 18 is described as that parcel bounded as follows:

(i) on the **North** by a **Westward** extension of the **South** line of **Lot 19 of Sunset Bay at Bon Secour, Phase I, a Planned Unit Development;**

(ii) on the **South** by a line which is located **fifty (50) feet South** of and parallel to the **North** line described immediately above;

(iii) on the **East** by the **West** line of a portion of **Lot 20** and the **forty (40) foot** right-of-way lying immediately **North** of **Lot 20** of **Sunset Bay at Bon Secour, Phase I, a Planned Unit Development**; and

(iv) on the **West** by a line which is **twenty (20) feet West** of the **West** line of **Lot 20** of **Sunset Bay at Bon Secour, Phase I, a Planned Unit Development**.

Boat Slip Number 19 is described as that parcel bounded as follows:

(i) on the **North** by a line which is **ten (10) feet South** of and parallel to a **Westward** extension of the **North** line of **Lot 20** of **Sunset Bay at Bon Secour, Phase I, a Planned Unit Development**;

(ii) on the **South** by a line which is located **fifty (50) feet South** of and parallel to the **North** line described immediately above;

(iii) on the **East** by the **West** line of **Lot 20** of **Sunset Bay at Bon Secour, Phase I, a Planned Unit Development**; and

(iv) on the **West** by a line which is **twenty (20) feet West** of the **West** line of **Lot 20** of **Sunset Bay at Bon Secour, Phase I, a Planned Unit Development**.

Boat Slip Number 20, Boat Slip Number 22, Boat Slip Number 24, Boat Slip Number 26, Boat Slip Number 28, Boat Slip Number 30, Boat Slip Number 32, Boat Slip Number 34, Boat Slip Number 36, Boat Slip Number 38, Boat Slip Number 40, Boat Slip Number 42, Boat Slip Number 44, Boat Slip Number 46, Boat Slip Number 48 and Boat Slip Number 50 are described as those parcels bounded as follows:

(i) on the **South** by an **Eastward** extension of the center line of the existing finger pier located on the **South** side of the appropriate **Boat Slip**;

(ii) on the **North** by a line which is **thirteen feet six inches (13' 6") North** of and parallel to the **South** line described immediately above;

(iii) on the **West** by the **West** line of the existing eight (8) foot wide paved cart path shown on the **Plat of Sunset Bay**; and

(iv) on the **East** by a line which is located a distance of **fifty (50) feet East** of the **East** line of the existing boardwalk.

Boat Slip Number 21, Boat Slip Number 23, Boat Slip Number 25, Boat Slip Number 27, Boat Slip Number 29, Boat Slip Number 31, Boat Slip Number 33, Boat Slip Number 35, Boat Slip Number 37, Boat Slip Number 39, Boat Slip Number 41, Boat Slip Number 43, Boat Slip Number 45, Boat Slip Number 47, Boat Slip Number 49 and Boat Slip Number 51 are described as those parcels bounded as follows:

(i) on the **North** by an **Eastward** extension of the center line of the existing finger pier located on the **North** side of the appropriate **Boat Slip**;

(ii) on the **South** by a line which is **thirteen feet six inches (13' 6") South** of and parallel to the **South** line described immediately above;

(iii) on the **West** by the **West** line of the existing eight (8) foot wide paved cart path shown on the **Plat of Sunset Bay**; and

(iv) on the **East** by a line which is located a distance of **fifty (50) feet East** of the **East** line of the existing boardwalk.

Boat Slip Number 52, Boat Slip Number 54, Boat Slip Number 56, Boat Slip Number 58, Boat Slip Number 60, Boat Slip Number 62, Boat Slip Number 64 and Boat Slip Number 66 are described as those parcels bounded as follows:

(i) on the **South** by an **Eastward** extension of the center line of the existing finger pier located on the **South** side of the appropriate **Boat Slip**;

(ii) on the **North** by a line which is **sixteen feet (16') North** of and parallel to the **South** line described immediately above;

(iii) on the **West** by the **West** line of the existing eight (8) foot wide paved cart path shown on the **Plat of Sunset Bay**; and

(iv) on the **East** by a line which is located a distance of **fifty (50) feet East** of the **East** line of the existing boardwalk.

Boat Slip Number 53, Boat Slip Number 55, Boat Slip Number 57, Boat Slip Number 59, Boat Slip Number 61, Boat Slip Number 63, Boat Slip Number 65 and Boat Slip Number 67 are described as those parcels bounded as follows:

(i) on the **North** by an **Eastward** extension of the center line of the existing finger pier located on the **North** side of the appropriate **Boat Slip**;

(ii) on the **South** by a line which is **sixteen feet (16') South** of and parallel to the **South** line described immediately above;

(iii) on the **West** by the **West** line of the existing eight (8) foot wide paved cart path shown on the **Plat of Sunset Bay**; and

(iv) on the **East** by a line which is located a distance of **fifty (50) feet East** of the **East** line of the existing boardwalk.

Boat Slip Number 68, Boat Slip Number 70, Boat Slip Number 72, Boat Slip Number 74, Boat Slip Number 76, Boat Slip Number 78 and Boat Slip Number 80 are described as those parcels bounded as follows:

(i) on the **South** by an **Eastward** extension of the center line

of the existing finger pier located on the **South** side of the appropriate **Boat Slip**;

(ii) on the **North** by a line which is **twenty feet (20')** North of and parallel to the **South** line described immediately above;

(iii) on the **West** by the **West** line of the existing eight (8) foot wide paved cart path shown on the **Plat of Sunset Bay**; and

(iv) on the **East** by a line which is located a distance of **fifty (50) feet East** of the **East** line of the existing boardwalk.

Boat Slip Number 69, Boat Slip Number 71, Boat Slip Number 73, Boat Slip Number 75, Boat Slip Number 77 and Boat Slip Number 79 are described as those parcels bounded as follows:

(i) on the **North** by an **Eastward** extension of the center line of the existing finger pier located on the **North** side of the appropriate **Boat Slip**;

(ii) on the **South** by a line which is **twenty feet (20')** South of and parallel to the **South** line described immediately above;

(iii) on the **West** by the **West** line of the existing eight (8) foot wide paved cart path shown on the **Plat of Sunset Bay**; and

(iv) on the **East** by a line which is located a distance of **fifty (50) feet East** of the **East** line of the existing boardwalk.

All references in this **Paragraph 2.B.** to **Boat Slips**, finger piers, boardwalks, eight (8) foot wide paved cart path and **Lot** lines are to the **Plat of Sunset Bay**.

C. The definition of "**Developer**" contained in the **Master Declaration** is amended to read as follows:

"**Developer**" means the **Declarant** and each **Person** who is a successor in title to or acquires a fee simple interest from the **Declarant** with respect to any **Lot** or **Unit**, or **Lot** or **Unit** and **Boat Slip**, except the **Association**, and with the permission of the **Declarant** is engaged in the business of the development, improvement and sale of any **Lot** or **Unit**, or **Lot** or **Unit** and **Boat Slip**, including the construction and sale of a **Dwelling** and related improvements or appurtenances on any **Lot** or **Unit**, or **Lot** or **Unit** and **Boat Slip**."

D. The **Master Declaration** is amended to add a definition for "**Development Rights**" as follows:

"**Development Rights**" shall mean any right or combination of rights reserved by the **Declarant** in the **Master Declaration** or this **Amendment**, including, but not limited to, the right to develop **Sunset Bay** or to add **Additional Property**.

E. The definition "**Dwelling**" contained in the **Master Declaration** is amended to read as follows:

"**Dwelling**" shall mean a fully detached residence which is designed and used as a

conventional single family home, and which should be designed to maximize views, climatic conditions, and the environmental amenities of the site. "Dwelling" shall also mean a condominium Unit, where the context requires."

F. The definition of "Lot" contained in the Master Declaration is amended to read as follows:

"Lot" shall mean a portion of Sunset Bay, whether developed or undeveloped, intended for development, use and occupancy as an attached or detached improvement (not including a Unit in a condominium), and shall, unless specified, include within its meaning (by way of illustration, but not limitation), Lots, and single-family detached Dwellings on separately platted Lots, including, but not limited to, all Lots in Sunset Bay, Phase I and all Lots in the Additional Property annexed hereto, but does not include the Common Areas. A Boat Slip shall be assigned to each and every Lot in Sunset Bay, Phase I as an appurtenance to such Lot. Lots 3 through Lot 20, inclusive, are hereby permanently assigned the Boat Slip that abuts the west boundary line of each of said Lots as depicted on the Plat. Lots 1, 2, and 21 through 48 will be assigned a Boat Slip at the time each of said Lots are conveyed by the Declarant to an Owner other than the Declarant. (See Section 9.02, of the Master Declaration).

G. The definition of "Lot Assessment" contained in the Master Declaration is amended to read as follows:

"Lot or Unit Assessment" shall mean the share allocated to a Lot or Unit, and thereby the Owners of such Lot or Unit, of the Association's: (i) maintenance Assessments if elected by the Board of Directors and the appropriate class of Member, as described under Section 5.02, (ii) special Assessments under Section 5.03, and (iii) expenses, costs, charges and other amounts incurred with respect to either such Lot or Unit or the satisfaction, discharge or compliance with any obligations or duties of the Owners of such Lot or Unit as specified in the Master Declaration as amended by this Amendment. All references in the Master Declaration to "Lot Assessment" shall be changed to read, where the context requires, "Lot or Unit Assessment".

H. The definition of "Owner" contained in the Master Declaration is amended to read as follows:

"Owner" shall mean the record holder, whether one or more Persons, of a fee or undivided interest, or right to use in the case of a Boat Slip, in or to any Lot or Unit, or a Lot or Unit and a Boat Slip, including contract sellers, but excluding those Persons who hold an interest in a Lot or Unit, or Lot or Unit and a Boat Slip, merely as security for the performance of an obligation or payment of a debt.

I. The Master Declaration is amended to add a definition for "Recording" as follows:

"Recording" shall mean the recording records of the Office of the Judge of Probate of Baldwin County, Alabama.

J. The Master Declaration is amended to add a definition for "Unit" as follows:

"Unit" shall mean a Unit in a condominium as defined in the Alabama Uniform Condominium Act of 1991, Ala. Code 1975, §35-8A-101, et seq."

3. Additional Amendments to the Master Declaration.

A. Amendment of Second Paragraph on Page 1 of the Master Declaration. In order to correct a typographical error contained in the **Master Declaration** and to add an additional provision thereto, the last sentence of the second paragraph on **Page 1** of the **Master Declaration** is amended to read as follows and the following additional provision is added:

"The **Declarant** shall make the **Property** subject to this **Declaration** and will cause the **Property** to be platted and subdivided, and/or converted to the condominium form of ownership in part or in whole, into residential **Lots** or condominium **Units** and a boat docking facility with no more than **eighty (80) Boat Slips**. **Provided, However**, anything else contained in this **Declaration** to the contrary notwithstanding, the **Declarant** may elect to include additional **Boat Slips** in any **Additional Property** annexed into **Sunset Bay**."

B. Amendment to References in Master Declaration to "Lot" and "Lot and a Boat Slip or a Boat Slip". Except as specifically provided in this **Amendment**, all references in the **Master Declaration** to: (i) "**Lot**" shall be changed to read, where the context requires, "**Lot or Unit**", (ii) "**Lot in Sunset Bay, Phase I**" shall mean and refer to, where the context requires, a **Lot in Sunset Bay** and not a **Unit**, and (iii) "**Lot and a Boat Slip or a Boat Slip**" shall be changed to read, where the context requires, "**Lot or Unit, or Lot or Unit and a Boat Slip**". All references to "**Lots**" in **Article XI**, **Article XII** and **Article XIII** of the **Master Declaration** shall mean and refer to **Lots in Sunset Bay, Phase I** or **Lots in any Additional Property**, but shall not apply to any **Units**.

C. Amendment of Section 2.03. of the Master Declaration. The first sentence of **Section 2.03.** of the **Master Declaration** is amended to read as follows:

"Effective with the **Recording** of this **Amendment**, at any one or more times prior to **December 1, 2008**, and without the assent of any **Member**, the **Declarant** or any other person with the written assent of the **Declarant**, shall have the right, privilege or option to annex to the **Property** any of the **Additional Property**."

D. Amendment to Article III of the Master Declaration.

(i) **Section 3.01.** of the **Master Declaration** is amended to read as follows:

"**Section 3.01. Membership.** The **Members** of the **Association** shall be and consist of every **Person** who is or who becomes, an owner of record of the fee title to a **Lot or Unit**, or a **Lot or Unit and a Boat Slip**, and is included in the definition of an **Owner** under **Article I**. When more than one **Person** owns or holds an interest or interests in a **Lot or Unit**, or a **Lot or Unit and a Boat Slip**, then all such **Persons** shall be **Members**. The rights of the **Members** of the **Association** are more specifically set out in the **Master Declaration** and this **Amendment**."

(ii) **Section 3.02.** of the **Master Declaration** is amended to read as follows:

"**Section 3.02. Action by Members.** Effective with the **Recording** of this **Amendment**, the **Association** shall have **three (3)** classes of voting **Members**. **Class Lot Members** shall consist of all **Members** who own a **Lot in Sunset Bay**, whether said **Lot** is in **Phase I** or in any **Additional Property** annexed into **Sunset Bay**, but shall not include any **Units** in a condominium. **Class Boat Slip Members** shall consist of all **Members** who own the right to use a **Boat Slip** which **Boat Slip** must be appurtenant to a **Lot or Unit in Sunset Bay** as elsewhere provided for in this **Amendment**. **Class Condominium Unit Members** shall consist of all **Members** who own a **Unit** in a condominium which is part of **Sunset Bay**."

Whenever any provision of this **Declaration** requires a vote of a specified percentage of the voting power of each class of **Members**, then such provision shall require a separate vote by the specified percentage of the voting power of the **Class Lot Members** and by the specified percentage of the voting power of the **Class Boat Slip Members** and by the specified percentage of the voting power of the **Class Condominium Unit Members**. Whenever any provision of this **Declaration** requires a vote of a specified percentage of the voting power of all **Members**, then such provision shall require a vote by the specified percentage of the combined voting power of all **Members**. Effective with the **Recording** of this **Amendment**, there shall be no **Class A Member**, **Class B Member** or **Class C Member** as each of the **Members** shall either be a **Class Lot Member**, **Class Boat Slip Member** or **Class Condominium Unit Member**.

(iii) **Section 3.03**, of the **Master Declaration** is amended to read as follows:

"Section 3.03. Members' Voting Rights. Except as otherwise specifically provided in the **Charter** or the **Bylaws**, the voting rights of the **Members** shall be as follows:

(a) Whenever a vote of the **Class Lot Members** is required or permitted under this **Declaration**, the aggregate voting power of all **Class Lot Members** shall be equal to the aggregate number of **Lots** owned by all **Class Lot Members**. **Class Lot Members** shall be entitled to one vote for each **Lot** owned by such **Class Lot Members**. When more than one **Member** owns or otherwise holds an interest or interests in a **Lot**, then the one vote for such **Lot** shall be exercised as such **Members** shall determine, but in no event shall more than one vote be cast with respect to any **Lot**.

(b) Whenever a vote of the **Class Boat Slip Members** is required or permitted under this **Declaration**, the aggregate voting power of all **Class Boat Slip Members** shall be equal to the aggregate number of **Boat Slips** owned by all **Class Boat Slip Members**. **Class Boat Slip Members** shall be entitled to one vote for each **Boat Slip** owned by such **Class Boat Slip Members**. When more than one **Member** owns or otherwise holds an interest or interests in a **Boat Slip**, then the one vote for such **Boat Slip** shall be exercised as such **Members** shall determine, but in no event shall more than one vote be cast with respect to any **Boat Slip**.

(c) Whenever a vote of the **Class Condominium Unit Members** is required or permitted under this **Declaration**, the aggregate voting power of all **Class Condominium Unit Members** shall be equal to the aggregate number of **Units** owned by all **Class Condominium Unit Members**. **Class Condominium Unit Members** shall be entitled to one vote for each **Unit** owned by such **Class Condominium Unit Members**. When more than one **Member** owns or otherwise holds an interest or interests in a **Unit**, then the one vote for such **Unit** shall be exercised as such **Members** shall determine, but in no event shall more than one vote be cast with respect to any **Unit**.

(d) Prior to the **Recording** of this **Amendment**, the voting rights of the **Members** in the **Master Association** shall be as described in the **Master Declaration**. Also, prior to the **Recording** of this **Amendment**, the **Class C Member** shall be entitled to four (4) votes for each **Lot** and four (4) votes for each **Boat Slip** (which is not attached or appurtenant to a **Lot**) owned by the **Class C Member** that is in excess of the number of **Lots** owned by the **Class C Member**. Effective upon the **Recording** of this **Amendment**, there shall be no **Class C Member** and the **Declarant** shall, so long as the **Declarant** owns a **Lot** or **Unit**, or a **Lot** or **Unit** and a **Boat Slip**, qualify as a **Member** as elsewhere described in this **Amendment**. Reference is made to **Paragraph 4**, of this **Amendment** providing for the release of control by the **Declarant**.

Anything contained in this Section 3.03, to the contrary notwithstanding, the weight assigned to the votes by each of the **Members** in the **Master Association** will be established by the **Supplemental Declaration** which brings any portion of the **Additional Property** into **Sunset Bay**."

(iv) Section 3.04, of the **Master Declaration** is amended to read as follows:

"Section 3.04. Membership Appurtenant to Real Property. The membership of the **Members** in the **Master Association** shall be appurtenant to the ownership of a **Lot** or **Unit**, or a **Lot** or **Unit** and a **Boat Slip**. A membership shall not be held, assigned, transferred, pledged, hypothecated, encumbered, conveyed or alienated in any manner except in conjunction with and as an appurtenance to the ownership, assignment, transfer, pledge, hypothecation, encumbrance, conveyance or alienation of the **Lot** or **Unit**, or a **Lot** or **Unit** and **Boat Slip** to which the membership is appurtenant."

E. Amendment to Article V of the Master Declaration.

(i) Section 5.01, of the **Master Declaration** is amended to provide that effective with the **Recording** of this **Amendment**, all references to **Class A Member** or **Class B Member** in Section 5.01, shall be revised to read "**Member**" so that all references in Section 5.01, of the **Master Declaration** to "**Class A Member**" or "**Class B Member**" shall now refer to all **Members**.

(ii) Prior to the effective date of the **Recording** of this **Amendment**, Section 5.03, of the **Master Declaration** shall control. Effective with the **Recording** of this **Amendment**, Section 5.03, of the **Master Declaration** is amended to read as follows:

"Section 5.03. Annual Maintenance Assessment.

(a) Within thirty (30) days of the **Recording** of this **Amendment** and thereafter prior to the first day of **January** beginning in **January** of the year following and in each year thereafter the **Board of Directors** shall adopt three (3) budgets as follows:

(i) one budget (the "**Class Lot Member's Budget**") estimated by the **Board of Directors** to be sufficient to meet the cost and expenses described in Section 5.02, that are applicable to that portion of the property that lies east of the west boundary line of the **Lots** in **Sunset Bay, Phase I** and the extension of said line to the north boundary line of the **Property** and is designated for the exclusive use and benefit of the **Owners of Lots** in **Sunset Bay** and the **Board of Directors** shall fix and levy upon each **Lot** in **Sunset Bay** and the **Owners** thereof that portion of the **Annual Maintenance Assessment** deemed to be an amount sufficient to meet the **Class Lot Member's Budget** adopted by the **Board of Directors**.

(ii) a second budget (the "**Class Boat Slip Member's Budget**") estimated by the **Board of Directors** to be sufficient to meet the cost and expenses described in Section 5.02, that are applicable to that portion of the property that lies west of the west boundary line of the **Lots** in **Sunset Bay, Phase I** and the extension of said line to the north boundary line of the **Property** and is designated for the exclusive use and benefit of the **Owners of Boat Slips** and the **Board of Directors** shall fix and levy upon each **Boat Slip** and the **Owners** thereof that portion of the **Annual Maintenance Assessment** deemed to be an amount sufficient to meet the **Class Boat Slip Member's Budget** adopted by the **Board of Directors**.

(iii) a third budget (the "**Class Condominium Unit Member's Budget**")

estimated by the **Board of Directors** to be sufficient to meet the cost and expenses described in **Section 5.02**, that are applicable to that portion of the **Property** described as follows, to wit:

That portion of **D'Iberville Lane** which begins at the **East** line of the **County Road No. 6** main entrance of **Sunset Bay** and runs in a westwardly and southwardly direction past the **Clubhouse** and swimming pool and terminates at the southern end of the parking area which lies immediately southwest of the **Clubhouse** and swimming pool, together with the area of real property occupied by the **Clubhouse** and the swimming pool situated immediately west of the **Clubhouse**, all as shown on the **Plat of Sunset Bay**.

and is designated for the nonexclusive use and benefit of the **Owners of Units** in a condominium which is part of any **Additional Property** annexed into **Sunset Bay** and the **Board of Directors** shall fix and levy upon each **Unit** in said condominium and the **Owners** of said **Units** that portion of the **Annual Maintenance Assessment** deemed to be an amount sufficient to meet the **Class Condominium Unit Member's Budget** adopted by the **Board of Directors**."

(b) Effective with the **Recording** of this **Amendment**, as to all annual maintenance assessments levied by the **Board of Directors** of the **Master Association** pursuant to **Section 5.03**, the **Declarant** shall not be excluded from the payment of the annual maintenance assessments levied pursuant to **Section 5.03**, if the **Declarant** is an **Owner** of a **Lot** or **Unit**, or **Lot** or **Unit** and **Boat Slip**. Prior to the **Recording** of this **Amendment**, the provisions of the **Master Declaration** pertaining to the payment of assessments by the **Declarant** to the **Master Association** shall apply.

(iii) The second sentence of **Section 5.05**, of the **Master Declaration** is amended to read as follows:

"The **Association** shall have the responsibility and duty only for the maintenance, repair and care of the **Common Areas** and **Facilities**, unless, by the majority vote of the **Class Lot Members**, the **Association** elects to provide to its **Class Lot Members** lawn care and yard maintenance in which event, a charge determined by the **Board of Directors** shall be levied against and assessed to every **Lot** owned by a **Class Lot Member**, and only such **Lot** owned by a **Class Lot Member** so maintained by the **Association**."

(iv) **Section 5.09**, of the **Master Declaration** is amended to read as follows:

"**Uniform Rate for Assessments**. All **Assessments** applicable to each class of **Member** shall be levied at a uniform rate for each **Lot**, **Unit**, or **Boat Slip** to which the class membership is appurtenant, except special **Assessments** under **Section 5.04(b)**."

F. **Amendment of Article VII of the Master Declaration**. **Section 7.02**, of the **Master Declaration** is amended to add the following:

"Anything else contained in this **Section 7.02**, to the contrary notwithstanding, the requirement for an **Owner** of a **Unit** in a condominium to insure the **Unit** of said **Owner** shall be subject to the provisions of any **Declaration of Condominium** affecting said **Unit** which **Declaration of Condominium** shall control all provisions pertaining to insurance on said **Unit** and the condominium property."

G. Amendment of Article IX of the Master Declaration.

(i) **Article IX** of the Master Declaration is amended to provide that anything else contained in **Article IX** to the contrary notwithstanding, unless the **Supplemental Declaration** provides otherwise, the **Owner** of a **Unit** in a condominium which is annexed as **Additional Property** into **Sunset Bay** may not have a right and easement of enjoyment in and to all **Common Areas** in **Sunset Bay**.

(ii) **Section 9.02.** of the Master Declaration is amended to add the following additional provision:

The right to use the navigable waterways within each **Boat Slip** is a riparian right which is appurtenant and attached to the land described within each **Boat Slip**. The rules of **Alabama** common law shall govern said riparian rights. Each **Owner** of a **Boat Slip** shall have the riparian right and easement to use the water space within the **Boat Slip** for the purpose of mooring a vessel. The right of an **Owner** to use a **Boat Slip** or the waterways is exclusive as to all other **Owners** but is non-exclusive and is subject to the rights of other parties, the **United States of America** or the **State of Alabama**, in and to the shore, littoral or riparian rights of the property lying adjacent to the waters of the harbor basin and the rights of said parties to use and/or regulate said waterways.

(iii) All references to "**Lot**" or "**Lots**" in **Section 9.04.** of the Master Declaration shall mean and refer to a **Lot** or **Lots** and shall not refer to a **Unit** in a condominium.

H. Amendment of Article XI of the Master Declaration. **Section 11.04.** of the Master Declaration is amended to provide that the **Owners** of **Units** shall have a perpetual non-exclusive easement for pedestrian and vehicle traffic over and across the private streets, common walkways and driveways as may be located on the **Common Area**, but only within those areas limited and designated in the **Supplemental Declaration** annexing said **Units** into **Sunset Bay**. The **Owners** of **Units** in a condominium may or may not have access to all **Common Areas** in **Sunset Bay**.

I. Amendment of Article XIII of the Master Declaration. The last sentence of **Section 13.01.** of the Master Declaration is amended to read as follows:

"Parking requirements for the **Class Boat Slip Members** are contained in the **Rules and Regulations** adopted by the **Board of Directors**."

4. Release of Control by the Declarant. Prior to the **Recording** of this **Amendment**, the provisions of the **Master Declaration** pertaining to the rights of the **Class C Member** shall control. Any reference in this **Paragraph 4.** to "**Lots, Units and Boat Slips**" in **Sunset Bay** shall mean and refer to the total of all **Lots, Units and Boat Slips** in **Sunset Bay** and **Lots, Units and Boat Slips** in any **Additional Property** annexed into **Sunset Bay**, in accordance with the provisions of the **Master Declaration**. Effective with the **Recording** of this **Amendment**, the **Master Declaration** is amended to provide that until the earliest of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the **Lots, Units and Boat Slips** in **Sunset Bay** which may be created to **Owners** other than the **Declarant**; or (ii) two (2) years after the **Declarant**, or the successors or assigns of the **Declarant**, have ceased to offer **Lots, Units and Boat Slips** in **Sunset Bay** for sale in the ordinary course of business; or (iii) two (2) years after any **Development Rights** to add new **Lots, Units and Boat Slips** to **Sunset Bay** was last exercised, the **By-Laws and Rules and Regulations** of the **Master Association** adopted by the **Declarant** shall govern and the **Declarant** shall have the exclusive right to appoint, remove and designate the officers and members of the **Board of Directors** of the **Master Association**, and neither the **Owners** of **Lots, Units and Boat Slips** in **Sunset Bay** nor the **Master Association** nor the use of **Sunset Bay** by occupants shall interfere with the completion of the contemplated improvements and the sale of the **Lots, Units and Boat Slips** in **Sunset Bay**. The **Declarant** may voluntarily surrender the right to appoint and remove officers and members of the **Board of**

Directors of the Master Association; but, in that event, the **Declarant** may require, for the duration of the period of **Declarant** control, that specified actions of the **Master Association** or **Board of Directors** of the **Master Association**, as described in a recorded instrument executed by the **Declarant**, be approved by the **Declarant** before they become effective. **Provided, However**, not later than **ninety (90) days** after conveyance of **twenty-five percent (25%)** of all **Lots, Units and Boat Slips** in **Sunset Bay** which may be created to **Owners of Lots, Units and Boat Slips** in **Sunset Bay** other than the **Declarant**, at least one (1) member and not less than **twenty-five percent (25%)** of the members of the **Board of Directors** of the **Master Association** must be elected by **Owners of Lots, Units and Boat Slips** in **Sunset Bay** other than the **Declarant**. Not later than **ninety (90) days** after conveyance of **fifty percent (50%)** of all **Lots, Units and Boat Slips** in **Sunset Bay** which may be created to **Owners of Lots, Units and Boat Slips** in **Sunset Bay** other than the **Declarant**, not less than **thirty three and one-third percent (33 1/3%)** of the members of the **Board of Directors** of the **Master Association** must be elected by **Owners of Lots, Units and Boat Slips** in **Sunset Bay** other than the **Declarant**.

The **Declarant** may make such use of the unsold **Lots, Units and Boat Slips** in **Sunset Bay** and of the common areas and facilities as may facilitate such completion and sale, including but not limited to showing of **Lots, Units and Boat Slips** in **Sunset Bay** and the display of signs. The **Declarant** may maintain sales offices, management offices, leasing and operations offices, and models in any **Lot, Unit or Boat Slip** of **Sunset Bay** or on common areas or **Common Elements** in **Sunset Bay** without restriction as to the number, size or location of said sales offices, management offices, leasing and operations offices and models. The **Declarant** shall be permitted to relocate said sales offices, management offices, leasing and operations offices and models from one **Lot, Unit or Boat Slip** location to another **Lot, Unit or Boat Slip** or from one area of the common area to another area of the common area in **Sunset Bay**. The **Declarant** may maintain signs on the common areas advertising **Sunset Bay** or the **Additional Property**. The rights of the **Declarant** as provided for in this **Paragraph 4**, shall cease and terminate **fifteen (15) years** from the date of the **Recording** of this **Amendment**.

Anything else contained in this **Paragraph 4**, to the contrary notwithstanding, the **Declarant** retains the right to appoint the **Architectural Review Committee** so long as the **Declarant** owns of record any **Lot or Unit**, or **Lot or Unit and Boat Slip** as provided for in **Article X** of the **Master Declaration**.

5. **Joinder by Master Association and Binding on Master Association.** The **Master Association** joins in the execution of this **Amendment** for the purpose of approving this **Amendment**. The provisions of this **Amendment** shall be binding upon the **Master Association**.

6. **Rules and Regulations.** The current **Rules and Regulations** are amended to provide that in addition to the powers granted to the **Master Association** to impose **Rules and Regulations** on the use of **Boat Slips** and the **Boat Canal**, the **Master Association** amends the current **Rules and Regulations** to provide as follows:

- A. No **Class Boat Slip Member** shall allow any vessel to remain in a **Boat Slip** or the **Boat Canal** of **Sunset Bay** when a hurricane or tropical storm, as defined by the **National Oceanic & Atmospheric Administration** or other appropriate governmental authority, issues a warning that a hurricane or tropical storm threatens **Sunset Bay**. The **Class Boat Slip Member** shall be responsible for any damages to any **Boat Slips**, bulkheads, finger piers, **Common Areas** or other improvements or other boats resulting from the failure of the **Class Boat Slip Member** to remove any vessel from the **Boat Slip** and **Boat Canal** of **Sunset Bay** in any such weather event.
- B. Subject to the **Rules and Regulations** imposed by the **Master Association** and any laws, statutes or ordinances imposed by any governmental entity having jurisdiction, an **Owner** of a **Boat Slip** and an

immediate family member of an Owner of a Boat Slip may reside on a vessel located in a Boat Slip. A Boat Slip may be leased or rented only to another Owner of a Lot or Unit pursuant to the provisions of the Master Declaration. Said tenant and the immediate family members of said tenant may reside on the vessel within the Boat Slip. In no event shall any Person reside on any vessel located in the Boat Canal outside of a Boat Slip.

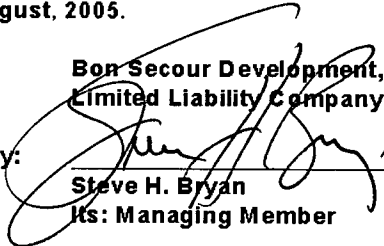
7. **Conflict.** If there is any conflict between the provisions of this Amendment and the Master Declaration, the provisions of this Amendment shall control.

8. **Adoption.** As altered and amended by this Amendment, the Master Declaration and every part and provision of the Master Declaration is in all respects ratified and confirmed and by reference adopted and incorporated in this Amendment, the same as if fully set out in this Amendment. This Amendment does Not and is Not intended to create a condominium within the meaning of the Alabama Uniform Condominium Act of 1991, Ala. Code 1975, § 35-8A-101, et seq.

9. **Right to Amend.** The Declarant may, by amendment or Supplemental Declaration, amend the Master Declaration or this Amendment as more specifically provided for in the Master Declaration.

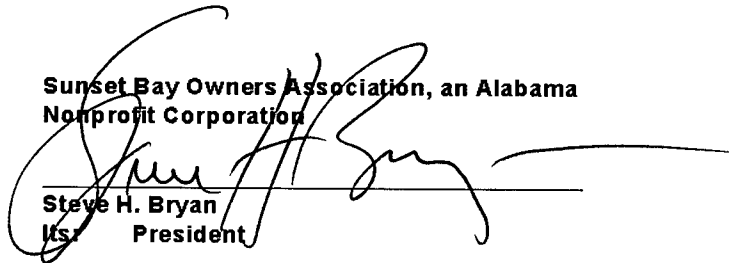
IN WITNESS WHEREOF, the Declarant and Master Association have each caused this Amendment to be executed on this 17th day of August, 2005.

Bon Secour Development, L.L.C., an Alabama
Limited Liability Company

By: 

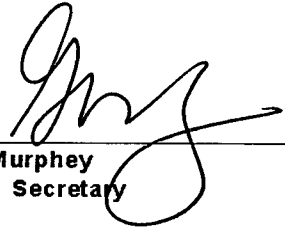
Steve H. Bryan
Its: Managing Member

Sunset Bay Owners Association, an Alabama
Nonprofit Corporation

By: 

Steve H. Bryan
Its: President

Attest:

By: 

Greg Murphey
Its: Secretary

(Affix Corporate Seal)

STATE OF ~~ALABAMA~~ *MISSISSIPPI*
COUNTY OF ~~BALDWIN~~ *MADISON*

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that **Steve H. Bryan**, whose name as **Managing Member of Bon Secour Development, L.L.C., 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 **Managing Member** and with full authority, executed the same voluntarily for and on behalf of said **Limited Liability Company**.

Given under my hand and seal this 17 day of AUGUST, 2005.

Doris Warren

Notary Public

My Commission Expires:

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES AUG. 12, 2007
BONDED THRU STEGALL NOTARY SERVICE

STATE OF ~~ALABAMA~~ *MISSISSIPPI*
COUNTY OF ~~BALDWIN~~ *MADISON*

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that **Steve H. Bryan**, whose name as a **President of Sunset Bay Owners Association, an Alabama Nonprofit Corporation**, 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 on behalf of said **Corporation**.

Given under my hand and seal this 17 day of AUGUST, 2005.

Doris Warren

Notary Public

My Commission Expires:

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES AUG. 12, 2007
BONDED THRU STEGALL NOTARY SERVICE

STATE OF ~~ALABAMA~~ *MISSISSIPPI*
COUNTY OF ~~BALDWIN~~ *MADISON*

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that **Greg Murphey**, whose name as a **Secretary of Sunset Bay Owners Association, an Alabama Nonprofit Corporation**, 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 on behalf of said **Corporation**.

Given under my hand and seal this 17 day of AUGUST, 2005.

Doris Warren

Notary Public

My Commission Expires:

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES AUG. 12, 2007
BONDED THRU STEGALL NOTARY SERVICE

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THIS INSTRUMENT
PREPARED BY

Irby + Heard, P.C.
Post Office Box 1031
Fairhope, Alabama 36533

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