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**DECLARATION OF CONDOMINIUM
OF
WHITE CAPS, A CONDOMINIUM**

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STATE OF ALABAMA

COUNTY OF BALDWIN

**DECLARATION OF CONDOMINIUM
OF
WHITE CAPS, A CONDOMINIUM**

This Declaration Of Condominium Of White Caps, A Condominium (the "Declaration") is made this 30th day of April, 1996, by Romar, L.L.C., an Alabama limited liability company, (the "Developer"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, Ala. Code §§ 35-8A-101 to 417 (1975) (the "Act"), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land.

ARTICLE I

SUBMISSION OF PROPERTY AND DEFINED TERMS

1.01 Submission Of Property. The Developer is the owner of certain real property located in Baldwin County, Alabama, more particularly described on Exhibit "A", attached hereto and made a part hereof for all purposes, (the "Property" or "Condominium Property") on which is located certain buildings and other improvements.

It is the desire and intention of the Developer, by recording this Declaration, to submit the Property, together with all improvements, easements, rights and appurtenances thereunto belonging, to the Act and create with respect to the Property, a condominium to be known as **WHITE CAPS, A CONDOMINIUM** (the "Condominium") and to impose upon the Property mutually beneficial restrictions under a general plan for the benefit of all of the Condominium Units and the Owners thereof.

The Developer, upon recording this Declaration, does submit the Property, together with the improvements thereon, owned by the Developer in fee simple absolute, to the provisions of the Alabama Uniform Condominium Act of 1991, Ala. Code §§35-8A-101 to 417 (1975) 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, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Property 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 Property or any part thereof, and shall be for the benefit of each Owner of any portion of said Property or any interest therein, and shall inure to the benefit of and be binding upon each successor-in-interest to the Owners thereof.

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1.02 **Definitions.** 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 417 (1975), as the same may be amended from time to time.

(B) **"Association"** shall mean White Caps Condominium Association, a nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, Ala. Code §§ 10-3A-1 to 225 (1975).

(C) **"Articles Of Incorporation"** shall mean the Articles Of Incorporation Of White Caps Condominium Association, a copy of which is attached hereto as Exhibit "B" and made a part hereof for all purposes, as may be amended from time to time.

(D) **"Board Of Directors"** or **"Board"** shall mean the Board Of Directors of the Association, elected pursuant to the By-Laws of the Association.

(E) **"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 made a part hereof for all purposes, as may be amended.

(F) **"Common Elements or Common Areas"** shall mean:

(1) all portions of the Condominium Property other than the Private Elements which are held or designated for use and enjoyment of the Owners and shall include the following:

(a) the Land;

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

(c) the roofs, lobbies, elevators, mechanical equipment, and storage areas designated as common (excluding the storage areas located on the balconies or terraces appurtenant to a Unit), ramps, handrails, sidewalks, stairways and entrances and exits or communication ways;

(d) the compartments or installations of 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 utilities and services which exist for private use in the Private Elements;

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

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

(g) beach, sidewalk, boardwalk, lawn areas, landscaping, trees, curbs, roads, walkways, streets and parking lots;

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

(i) all other elements (other than Private Elements) desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Property; and

(j) 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.

(G) "Common Expenses" shall mean the expenses arising out of the operations and ownership of the Common Elements and Limited Common Areas and shall include, but not be limited to, expenses of administration of the Common Elements of the Condominium Property; expenses of insurance; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and Limited Common Elements and any portion of a Unit maintained by the Association; any valid charge against the Condominium Property as a whole; 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.

(H) "Condominium Documents" shall mean this Declaration and all exhibits hereto, including the Rules And Regulations Concerning The Use Of White Caps, A Condominium, the By-Laws and the Articles Of Incorporation of the Association, and the Plats and Plans, as same may be amended.

(I) "Declaration Of Condominium" or "Declaration" shall mean this Declaration Of Condominium Of White Caps, A Condominium, as may be amended.

(J) "Developer" or "Declarant" shall mean Romar, L.L.C., an Alabama limited liability company, and its successors and assigns, other than an Owner, who shall receive by assignment from Romar, L.L.C. all, or a portion of its rights hereunder as the Developer, by an instrument expressly assigning such rights as the Developer to such assignee.

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

(L) **"Limited Common Elements" or "Limited Common Areas"** shall mean and include any area designated by this Declaration and the Condominium Documents including the Plat and Plans, as Limited Common Elements and any amendments thereto, and any areas defined in the Act as Limited Common Areas for the exclusive use of one or more, but fewer than all of the Units. The Limited Common Elements shall include, among any other property so designated, balconies or terraces, 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 Private Elements to which it was originally assigned as a Limited Common Element.

(M) **"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.

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

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

(P) **"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.

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

(R) **"Plan" or "Plat"** shall mean the "as-built" Plan and Plat showing the Private Elements, 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 may be amended.

(S) **"Private Elements" or "Unit"** shall mean the parts of the Condominium Property as set forth in the Plan intended for the exclusive ownership and possession by an Owner. Each Private Element is identified in a diagrammatic floor plan of the floor on which it is situated as shown on the Plan, and 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 unfinished surface of the ceiling;

(b) the lower boundary shall be the plane of the upper surface of the concrete floor slab 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 Private Elements.

(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 party walls, (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 Private Elements.

Private Elements or Units shall include all non-structural interior partition walls located within the boundaries of the Private Elements 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 Private Elements and serving only the Private Element; the storage areas located on the balconies or terraces appurtenant to a Unit; and the mechanical systems and installations providing electrical power, gas, water, heating and air conditioning service to the Private Element, including the individual air conditioning compressor even though such equipment may be located outside the boundaries of the Private Element, provided that no pipes, wires, conduits, ducts, flues, shafts and other facilities situated within such Private Element, and forming a part of any system serving one or more other Private Elements or the Common Elements, shall be deemed to be a part of such Private Element; and, provided further, that no bearing wall providing structural support and located within the boundaries of the Private Elements shall be deemed part of the Private Elements.

(T) "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 amended from time to time.

(U) "Rules And Regulations" shall mean the Rules And Regulations Concerning The Use of White Caps, A Condominium, which are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Act or the Condominium Documents, a copy of which are attached hereto as Exhibit "D" and made a part hereof for all purposes, as may be amended.

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(V) **"Unit" or "Condominium Unit"** shall mean the Private Elements as shown on the Plat and Plan together with the undivided interest in the Common Elements and Limited Common Elements, if any, assigned to each Unit as herein provided.

ARTICLE II

DESCRIPTION OF IMPROVEMENTS

2.01 **Identification Of Units.** A Plat of the Land and improvements thereon and a graphic description of the improvements in which the eighty-five (85) 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 attached hereto as Exhibit "C", and made a part hereof for all purposes.

2.02 **Balconies And Terraces.** Exterior balconies and terraces, excluding the storage areas located thereon, are Limited Common Areas as designated by the Plat and Plans and this Declaration. Exterior balconies or terraces 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 balcony or terrace 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.

2.03 **Storage Facilities.** The Units have a storage room or facility located on the exterior balcony or terrace appurtenant to a Unit which such storage room shall be designated part of the Private Elements of the Unit from which it is directly accessible.

ARTICLE III

EASEMENTS

3.01 **Easements And Restrictions.** The Private Elements, 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 said Private Elements, 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 Private Elements, 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 described on Exhibit "E", attached hereto and made a part hereof for all purposes.

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(A) **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 and cable television) in order to adequately serve the Condominium Property.

(B) **Utility Equipment.** There may be utility equipment located 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 Owners 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.

(C) **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, stairways, elevators, and other Common Areas, in favor of all Owners and the Developer for all proper and normal 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.

(D) **Easement 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 and the Rules And Regulations.

(E) **Easements For Encroachments.** To the extent that any Private Element, Common Element or Limited Common Element encroaches on any other Private Element, 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 Private Element, Common Element or Limited Common Element stands. A valid easement shall not relieve an Owner of liability of 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 on parts of the Common Elements or Limited Common Elements upon any Unit or of any Unit upon any of the other Private Elements, 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.

(F) Easement Of Support. Each Private Element, Common Element and Limited Common Element shall have an easement of support from every other Private Element, Common Element, and Limited Common Element which provide such support.

(G) 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. 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.

3.02 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. The extent or amount of such ownership shall be expressed by a percentage relating to each Unit as set forth on Exhibit "F" attached hereto and made a part hereof for all purposes, and shall remain constant, unless changed in accordance with the provisions hereof or by the unanimous approval of all Owners and Mortgagees. The Owners of Units with Limited Common Elements which are appurtenant to such Unit as designated or described on the Plan attached hereto 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 attached shall have the right to use the Limited Common Element 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

SPECIAL DECLARANT RIGHTS

4.01 Amendment Of Condominium Plan. The Developer reserves the right to change the interior design and arrangement of all Units, to alter the boundaries between Units and to increase or decrease the number of Units so long as the Developer, or its affiliates or stockholders, owns the Units so altered. Changes in the boundaries between Private Elements, as hereinbefore provided, shall be reflected by an amendment to the Plan and, if necessary, an amendment to this Declaration. If two (2) adjoining Units are combined by the Developer to make one (1) large Unit, the Association's assessments and the ownership interest in the Common Elements attributable to the combined Unit shall remain as though there are two (2)

separate Units. 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 the 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.

4.02 Right To Convert Units Into Common Elements. The Developer expressly reserves the right until the second anniversary of the recordation of this Declaration to convert any Unit into Common Elements or Limited Common Elements, or both. This reserved development right may be exercised with respect to all or any portion of the Property in any order and at any time. There is no limitation on this right.

4.03 Option To Increase Size Of Units And Walls. The Developer expressly reserves the right until the second anniversary of the recordation of this Declaration to increase the size of any Unit created by this Declaration and owned by the Developer and to increase the height of any wall on the Property without the consent of any Owner or Mortgagee. There is no limitation on this option to increase the size of the Units.

4.04 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 provided in §35-8A-215 of the Act. The Developer otherwise expressly reserves the right to use one (1) or more Units owned by the Developer as models, and any portion of the Common Elements or one (1) or more Units 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. Upon relocation or sale of a model, the management office or sales office and the furnishings thereof may be removed by the Developer. 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.

4.05 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, the display of signs thereon and therein. These Special Declarant Rights exist so long as the Developer owns any Unit in the

Condominium or holds any Unit in the Condominium for sale in the ordinary course of business or lease 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.

4.06 Special Rights As To Unit 100. Unit 100 may be used for real estate sales, leasing, management and marketing activities, or if the Developer or Owner of such Unit prefers, for residential purposes. The Owner of Unit 100 may alter or change the interior design and arrangement of Unit 100, including without limitation, the erection or removal of interior walls, fixtures, plumbing, electrical wiring, doors, flooring, heating and air conditioning, ventilation and ducts, without the approval of the Association or an amendment to this Declaration. The Owner of such Unit shall also be granted an easement in, on, over and through the Common Elements, including the free use and access thereof, for the purpose of allowing its guests, customers, employees, licensees, and the lessees to use the Common Elements for any use allowed by the Declaration, the Association's By-Laws and Rules and Regulations for Unit owners, including, without limitation, parking, access, ingress and egress to and from Unit 100.

ARTICLE V

ORGANIZATION AND MANAGEMENT

5.01 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.

5.02 Members. The Members of the Association shall constitute all record Owners of the Units. Change of membership in the Association shall be established by recording in the Probate records of Baldwin County, Alabama, 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. The votes shall be cast in the manner provided in the Articles and Bylaws of the Association. Each Unit shall be allocated one (1) vote as set forth in Exhibit "F" attached hereto.

5.03 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.

ARTICLE VI

ASSESSMENTS

6.01 Liability, Lien And Enforcement. The Association is given the authority to administer the operation and the management of the Common Elements and 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.

6.02 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 said 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.

6.03 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 the next 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 therefore 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) 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 is 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

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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. The initial projected and estimated annual maintenance budget for the Condominium Property is attached to this Declaration as Exhibit "G", and made a part hereof for all purposes.

6.04 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.

6.05 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, Limited Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved 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 Mobile or Baldwin County, Alabama.

6.06 Payment Of Common Expenses And Limited Common Expenses By Unit Owners. All Unit Owners shall be obligated to pay the assessment for Common Expenses and/or 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, 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 may be 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 due the Association 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.

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6.07 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. Said lien shall also secure 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 or Limited Common Elements. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages 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 greater, 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 shall acquire such interest in any Unit 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 Office of the Judge of Probate of Baldwin County, Alabama, 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.

6.08 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 VII

MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY

7.01 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 which by definition excludes the surfaces of all interior walls, floors, ceilings, entrance doors, and windows of the Units (except the painting of the exterior faces of the exterior doors or windows which shall be the responsibility of the Association);

(B) incidental damage caused to a Unit by any work done by the Association;

(C) portions of all Units contributing to the support of the building, the outside walls and load bearing columns, excluding, however, interior wall and floor surfaces; and

(D) the Limited Common Elements.

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.

7.02 Each 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 the Private Elements attributable to such Owner's Unit in good 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 such Owner's Unit, including the refrigerator, stove and all other appliances within the Unit; drains, sinks, plumbing and plumbing fixtures, and connections within the Unit; electrical panels, wiring, outlets, and electrical fixtures within the Unit; interior doors, window frames, screening and glass; all exterior doors (except the painting of the exterior faces of the exterior doors and windows which shall be the responsibility of the Association); all wall coverings including paint, wallpaper and light fixtures; and all flooring including carpeting, vinyl and ceramic tile within a Unit; and

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(2) plumbing, 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;

(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 Declarant 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, 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 shall use only a contractor approved by the Association, who shall comply with all Rules And Regulations with respect to the work which may be adopted by the Association and the Unit 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.

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(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, it's 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.

7.03 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 X 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 does not require an expenditure of more than Twenty-Five Thousand And No/100 (\$25,000.00) Dollars, 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, benefitting 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 and ratified by not less than sixty percent (60%) of the total votes of the Members exclusively, or substantially exclusively, benefitting therefrom. Alterations, improvements or repairs of an emergency nature may be made upon authorization by a vote of the majority of the Directors available for consultation if the same is necessary and in the best interest of the Members.

7.04 Utilities. Each Unit Owner shall be required to pay all charges for utilities, including but not limited to electricity, gas, cable television, and telephone service, used or consumed in an Owner's Unit. The utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association shall

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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 VIII

RESTRICTIONS ON USE OF UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

8.01 Rules And Regulations Concerning The Use Of White Caps. A Condominium. The Association is authorized to promulgate, amend and enforce the Rules And Regulations, a copy of which is attached hereto as Exhibit "D", 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 person who uses any part of the Condominium Property in any manner, are subject to, and shall comply with the provisions of the Condominium Documents and the Rules And Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any one (1) person shall constitute 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.

8.02 Restrictions On Use. The use of the Condominium Property is subject to the following restrictions:

(A) Each Unit is hereby restricted to residential use and the parking spaces shall be used exclusively for the parking of passenger automobiles.

(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 Limited Common Elements (except balconies and terraces), nor shall anything be constructed on or planted in or removed from the Common Elements or Limited Common Elements, nor shall the Common Elements in any other way be altered without the prior written consent of the Association. The exterior of a Unit 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,

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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 of 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 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 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) 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 balconies, railings, furniture or on any part of the Common Elements or Limited Common Elements. The Common Elements and Limited Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

8.03 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, Common Elements or Limited Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within 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 inflicted on the Common Elements, Limited Common Elements or any Unit through which access is taken, the Unit Owner or the Association, if it causes the same, shall be liable for the prompt repair thereof.

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

8.05 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.

8.06 Failure Of The Association To Insist On Strict Performance: No Waiver. Failure of the Association to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option 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.

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ARTICLE IX

RIGHTS OF MORTGAGEES

9.01 Notification Of Mortgagees Required. Any Mortgagee 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 (\$10,000.00) Dollars; (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds Ten Thousand And No/100 (\$10,000.00) Dollars; (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.

9.02 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, other financial data, and, upon request, an annual audited statement, within ninety (90) days following the end of any fiscal year of the Association.

9.03 Required Reserve Funds And Working Capital Fund. Assessments levied by the Board Of Directors 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. A working capital fund shall be established for each Unit Owner purchasing a Unit. Assessments levied by the Board Of Directors 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 shall be payable in regular installments rather than by special assessments. 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 two (2) months' assessment at the time of closing the purchase by each Unit Owner of a Unit to be used by the Association as working capital. 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.

9.04 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

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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.

Notwithstanding the above, the lien created pursuant to this Declaration is prior to any Mortgage to the extent of the Common Expense assessments based on the annual budget which would have become due in absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.

(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, 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 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.

9.05 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.

ARTICLE X

CASUALTY LOSS AND INSURANCE

10.01 Responsibility Of Owners: Separate Insurance Coverage.

(A) The Owner of each Unit may, at the Unit Owner's expense, obtain insurance coverage for loss of or damage to the Private Elements, any furniture, furnishings,

personal effects, and other property belonging to such Owner, and may, at the Unit Owner's expense, obtain 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 Limited Common Elements. Risk of loss of or damage to any furniture, furnishings and personal property belonging to or carried on the person of the Owner, 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 each Unit. All furniture, furnishings and personal property constituting a portion of the Common Elements and held for the joint use and benefit of all Owners of Units shall be covered by such insurance as the same shall be maintained in force and effect by the Association as hereinafter provided. Each Owner shall be required to notify the Association of all improvements made by the Owner to the Owner's Unit, the value of which is in excess of Five Thousand And No/100 (\$5,000.00) Dollars. 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.

10.02 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 inside the Units in the Condominium Property (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 or the Insurance Trustee (hereinafter defined), 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 obtain an opinion or an appraisal from a qualified 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 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 (ii) 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 (\$1,000,000.00) Dollars, and in such form as shall be required by the Association to protect said 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.

(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 should 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.

10.03 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 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 make every effort 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 and the Mortgagee of each Unit;

(3) The insurance coverage will be primary, even if a Unit Owner has other insurance that covers the same loss; and

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

10.04 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.

10.05 Insurance Trustee. The Association may engage the services of a bank or trust company authorized to do trust business in the State of Alabama and having a capital surplus of not less than Fifty Million (\$50,000,000.00) Dollars to act on its behalf as an insurance trustee ("Insurance Trustee") and to receive and disburse the insurance proceeds in accordance with the provisions of this Declaration. In the event the lowest of two (2) bids from reputable contractors for making all repairs required by any such loss shall exceed Fifty Thousand And No/100 (\$50,000.00) Dollars, the Association upon written demand of the Mortgagee of any Unit shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The

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Association, as a Common Expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Whenever the Insurance Trustee may be required to make a distribution of insurance proceeds to Owners of Units and their Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee the name of the Owner of each Unit, the name of the Mortgagee who may hold a Mortgage encumbering each Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any Unit, and the Unit Owner's respective Mortgagee, as their respective interests may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Condominium Property. The rights of the Mortgagee of any Unit under any standard mortgagee clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property; provided, however, that if the Association or the Insurance Trustee fails to perform all the conditions precedent required by the policy or policies of insurance, and fails to collect the amount of the loss within the time required by law, and the Mortgagee or Mortgagees are required to avail themselves of their rights under the standard mortgagee clause to collect the proceeds of the policy or policies of insurance, any amount so collected through the efforts of said Mortgagee or Mortgagees shall be applied as directed by said Mortgagee or Mortgagees. No provision hereof shall entitle an Owner or any other party to any priority over a Mortgagee with respect to the distribution of any insurance proceeds with respect to such Unit.

10.06 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 or the Insurance Trustee, as the case may be, 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 by the Insurance Trustee 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, in such proportion that the share of such excess insurance proceeds paid to the Owner of each Unit and Unit Owner's Mortgagee shall bear the same ratio to the total excess insurance proceeds 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 or the Insurance Trustee 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, or shall deposit sufficient funds with the Insurance Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage, as the case may be. The monies to be so paid, or deposited by the Association with the Insurance Trustee, 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.

10.07 Loss To Common Elements, Limited Common Elements And/Or Private Elements. In the event of loss of or damage to Common Elements, Limited Common Elements and/or any Private Element of 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 or Insurance Trustee, as the case may be, 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 Private Elements and the Limited Common Elements sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed by the Insurance Trustee 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 or the Insurance Trustee, as the case may be, 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 Private Elements of 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 Private Elements of Units sustaining damage, then the Association shall levy and collect an assessment from the respective Owners of the Private Elements and/or the Owners to whom Limited Common Elements have been allocated which sustained any loss or damage, and the assessment so collected from said Owner shall be deposited with the Insurance Trustee, if any, so that the sum shall be on deposit for the repair, replacement or reconstruction of all Common Elements, Limited Common Elements, if any, and Private Elements of Units. In said latter event, the assessment to be levied and collected from the Owner of each Private Element sustaining loss or damage shall be apportioned between such Owners in such manner that the assessment levied against each Owner of a Private Element 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 Private Element bears to the cost applicable to all of said Private Elements sustaining loss or damage. If the fire and casualty insurance proceeds, if any, payable to the Association or the Insurance Trustee in the event of the loss of or damage to Common Elements, the Limited Common Elements and the Private Elements of Units are not an amount which will pay for the

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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 Elements or Private Elements of a 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 the Private Elements of each Unit sustaining loss or damage shall then be levied and collected by assessment of the Owners of the Private Elements 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 Private Elements sustaining loss or damage.

10.08 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, 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, portions of which are attached as Exhibit "C" to this Declaration as the same may from time to time be amended, 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 the 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 said 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 and deposited with the Insurance Trustee, if any, not later than thirty (30) days from the date on which the Association or the Insurance Trustee, as the case may be, shall receive the monies payable from the policies of fire and casualty insurance.

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ARTICLE XI

CONDEMNATION

11.01 Condemnation Considered A Casualty Loss. The taking of a portion of a Unit or Private Element, 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 the casualty and shall be applied and distributed by the Association in accordance with the provisions of Article X. Even though the awards may be payable to the Owners, the Owners shall deposit the awards with the Association or Insurance Trustee, as the case may be; 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 is made the subject matter of any condemnation or eminent domain proceeding or 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.

11.02 Partial Condemnation. In the event that the Condominium Property is not to be terminated 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 for 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.

(4) If the taking destroys or so reduces the size of a Unit so 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:

(a) 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 interest may appear.

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(b) 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.

(c) 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 re-computing the shares of such continuing Owners in the Common Elements as percentages of the total of the shares of such Owners as they exist prior to the adjustment.

(d) 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 and 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 (3rd) 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 in 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.

11.03 Association Appointed As Attorney-In-Fact For Unit Owners. The Association shall be appointed as attorney-in-fact 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 XII

TERMINATION

12.01 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 exist:

(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 forty (40) years 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 the 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, the 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 inhabitable 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

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delivery of possession, the Owners of inhabitable 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 or the Insurance Trustee. Upon such termination of this Declaration and the plan of condominium ownership established herein, the Association or the Insurance Trustee, as the case may be, shall distribute any insurance indemnity which may be due under any policy or 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 herein 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 interests may appear, in the same manner as is above provided for the distribution of any final insurance indemnity.

12.02 Termination By Consent. Except in the event of this Declaration and plan of condominium ownership established herein being terminated as provided above, this Declaration and said plan of condominium ownership may only be otherwise terminated by the consent of one hundred percent (100%) 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 instrument shall be recorded in the Baldwin County, Alabama, Probate Court Records.

ARTICLE XIII

AMENDMENT

13.01 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 of Incorporation and the By-Laws of the Association 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 a 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.

13.02 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. The proposal to amend the 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 sixty-seven percent (67%) of the total allocated votes of the Units subject to Mortgages; or

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

Notwithstanding the foregoing, no amendment to the Declaration under this article shall:

(1) change a Unit, including the ownership in Common Elements, 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

(2) change, impair or prejudice the rights of Developer or change the provisions of this Declaration with respect to the Developer's rights hereunder without Developer's prior written approval.

13.03 Effectiveness Of Amendments. A copy of each amendment so adopted shall be certified by the President or a Vice President and Secretary or Assistant Secretary of the Association as having been fully adopted, and shall be effective when recorded in the Baldwin County, Alabama Probate Court Records.

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ARTICLE XIV

CONTROL OF THE ASSOCIATION

14.01 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; provided that the Developer may, at its option, terminate its control of the Association at an earlier date. Notwithstanding the foregoing, within ninety (90) days after conveyance 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. Not 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 (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.

14.02 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.

14.03 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 the 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 such time as sixty (60) days after the conveyance of the first Unit. 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

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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 Private Elements of the unsold Units.

14.04 **Professional Management And Other Contracts.** Any agreement incurred by the Association prior to the passage of control of the Association from the Developer (including contracts for professional management of the Condominium Property, whether it be the Developer, its successors and assigns, or any other person or entity) shall provide the following:

(A) The Association shall have the right of termination which is exercisable without penalty any time upon not more than ninety (90) days' written notice to the other party thereto; and

(B) The Association shall have a right of termination for cause which is exercisable without penalty at any time upon not more than thirty (30) days' written notice to the other party thereto.

ARTICLE XV

MISCELLANEOUS

15.01 **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.

15.02 **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.

15.03 **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.

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

15.05 **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.

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15.06 **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.

IN WITNESS WHEREOF, the Developer has caused these presents to be executed on the day and year first above written.

ROMAR, L.L.C.,
an Alabama limited liability company

By: W. Allen Cox
W. ALLEN COX,
As its Managing Member

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned notary public in and for said state and county, hereby certify that W. ALLEN COX, whose name as Managing Member of ROMAR, 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, in his capacity as aforesaid and with full authority, executed the same voluntarily for and as the act of said company on the day the same bears date.

GIVEN under my hand and seal this 30th day of April, 1996.

Quay H. Hill
NOTARY PUBLIC
My commission expires: 9-9-97

NOTARY SEAL
QUAY H. HILL
NOTARY PUBLIC
BALDWIN COUNTY, ALABAMA

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CONSENT OF MORTGAGEE

THIS DECLARATION OF CONDOMINIUM OF WHITE CAPS, A CONDOMINIUM IS CONSENTED TO AND ACKNOWLEDGED BY FIRST ALABAMA BANK, A STATE BANKING CORPORATION, AS MORTGAGEE.

**FIRST ALABAMA BANK,
a state banking corporation**

By: 
**STEPHEN J. DAVITT JR.,
Vice President**

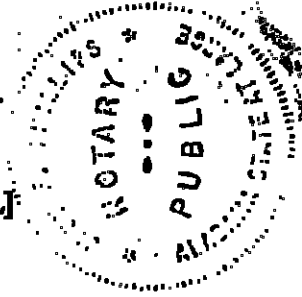
STATE OF ALABAMA

COUNTY OF MOBILE

I, the undersigned notary public in and for said state and county, hereby certify that **STEPHEN J. DAVITT, JR.**, whose name as Vice President of **FIRST ALABAMA BANK**, a state banking 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 as the act of said corporation on the day the same bears date.

GIVEN under my hand and seal this 25th day of April, 1996.


NOTARY PUBLIC
My commission expires: 9-9-97



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EXHIBIT "A"

LEGAL DESCRIPTION

Lot 3, Mitchell Subdivision, according to map or plat thereof recorded in Slide 1465-A of the records in the Office of the Judge of Probate of Baldwin County, Alabama.

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EXHIBIT "B"

**ARTICLES OF INCORPORATION
AND
BY-LAWS
OF
WHITE CAPS CONDOMINIUM ASSOCIATION**

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**ARTICLES OF INCORPORATION OF
WHITE CAPS CONDOMINIUM ASSOCIATION
A NON PROFIT CORPORATION**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, acting as Incorporator, does hereby form a corporation under the Alabama Nonprofit Corporation Act [1975 Code of Alabama, Section 10-3A-1 et. seq.], and adopts the following Articles of Incorporation:

ARTICLE I - NAME

The name of this Corporation shall be White Caps Condominium Association (hereinafter the "Corporation" or the "Association").

ARTICLE II - PERIOD OF DURATION

The Association shall exist perpetually, unless terminated according to the terms of these Articles.

ARTICLE III - NOT FOR PROFIT

This Association is not organized for profit and the purpose for which the Association is organized is to provide an entity pursuant to the Alabama Uniform Condominium Act of 1991, Code of Alabama 1975, §§ 35-8A-101 et seq., for the acquisition, operation, management, maintenance, care, control and administration of all those properties known as White Caps, A Condominium, located in Orange Beach, Alabama (the "Condominium"). Any income received by the Association shall be applied only to the non profit purposes and objectives of the Association and no part of the net earnings thereof shall inure to the benefit of any private member, officer, director, or individual. This Association shall be without capital stock. The members of this Association shall not be personally liable for the debts, liabilities or obligations of this Association.

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ARTICLE IV - PURPOSES AND POWERS.

A. The Association shall have all the common law and statutory powers of a non-profit corporation and shall have all the powers which an association may have or exercise under the Alabama Uniform Condominium Act of 1991 (the "Condominium Act"), which are not in conflict with the terms of these Articles or the Declaration of Condominium of White Caps, A Condominium (the "Declaration") same being recorded in the Probate records of Baldwin County, Alabama, as they may be amended from time to time, including, but not limited to the following (with the terms capitalized herein having the meanings set forth in the Declaration or the Condominium Act and to which reference is made hereto):

- 1. To acquire, hold, lease, mortgage or convey real, personal or mixed property wherever situated, including, without limit, Units in the Condominium;**
- 2. To make and collect assessments against the members as provided in the Declaration to defray the costs, expenses and losses of the Condominium or any other business enterprise, venture or property interest of the Association, and to use the proceeds of the assessments in the exercise of the powers and duties herein provided;**
- 3. To borrow funds to pay for such expenditures as may be authorized by the provisions of the Declaration;**
- 4. To maintain, repair, replace, clean, sanitize and operate the property of the Condominium or the property of the Association;**
- 5. To lease or grant easements or licenses for use of the Limited Common Elements or the Common Elements of the Condominium in a manner not inconsistent with the rights of owners of the Units in the Condominium;**
- 6. To enforce by legal means the provisions of the Condominium Act, the Declaration, the Articles and By-Laws of the Association, and the rules and regulations for the use of the property of the Condominium or the Association;**
- 7. To contract for the management of the Condominium and to delegate to such contractor all powers and duties of the Association, except such as are specifically required to be performed by the Association;**
- 8. The objects and purposes set forth in Article III of these Articles shall be construed as powers, as well as objects and purposes and the Association shall have and may exercise such powers as if such powers were set forth in full herein;**

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9. The Association shall have and may exercise all powers as shall enable it to do each and every thing necessary, suitable, convenient, expedient or proper for the accomplishment of any or all purposes and the attainment of any or all objects set forth in Articles III and IV herein; and
10. The Association shall have and may exercise all powers set forth in any other Article of these Articles of Incorporation.

B. All funds and title to properties acquired by the Association and the proceeds therefrom shall be held in trust for the members of the Association in accordance with the provisions of the Condominium Act, the Declaration and the By-Laws of the Association.

ARTICLE V - MEMBERSHIP

The members of the Association shall consist of all of the record owners of Units in the Condominium and, after termination of the Condominium shall consist of those who are members of the Association at the time of such termination and their heirs, successors, and assigns. Membership in the Association shall be evidenced by a deed or other instrument establishing record title to a Unit in the Condominium recorded in the Probate Office of Baldwin County, Alabama. Upon such recordation, the Owner of the Unit designated by such instrument shall become a member of the Association and the membership of the prior Owner shall be terminated. The share of a member in the funds or assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance to the Unit. The number of votes to be cast by Owner(s) of a Unit and the manner of exercising voting rights shall be determined by the Declaration and the By-Laws of the Association.

Notwithstanding the foregoing, any person or entity who holds an interest in a Unit in the Condominium merely as security for the performance of an obligation shall not be a member of the Association, unless and until such security holder or mortgagee has acquired title to the Unit pursuant to foreclosure or any proceeding in lieu thereof and the deed thereby evidencing title has been duly and properly recorded, at which time such security holder or mortgagee shall become a member and the debtor's membership shall thereupon cease, regardless of whether or not there is an outstanding right of redemption to the Unit.

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ARTICLE VI - DIRECTORS

The affairs of the Association shall be managed by a Board of Directors consisting of the number of Directors as shall be determined by the By-Laws; provided, however, that the Board of Directors shall consist of not less than three (3) Directors and not more than seven (7) Directors and in the absence of a provision in the By-Laws to the contrary, shall consist of five (5) Directors. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws and as limited below. Vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

Notwithstanding the provisions set forth in this Article VI of these Articles or in any provision of the By-Laws granting to the members the right to elect and remove members of the Board of Directors, Romar, L.L.C., an Alabama limited liability company (the "Developer"), its successors and assigns, and not the members of the Association, shall have exclusive control of the Board of Directors of the Association by virtue of their exclusive right to elect or appoint, remove, and in the event of vacancies shall have the exclusive right to fill such vacancies in each and every position of the members of the Board of Directors of the Association by written notice to the members stating the names of the persons so elected, appointed or removed, until such time as either (a) the expiration of sixty (60) days following the conveyance of seventy-five (75%) percent of the Units in the Condominium to purchasers of Units other than the Developer, or (b) the expiration of two (2) years from the date the Developer has ceased to offer Units for sale in the ordinary course of business, or (c) the Developer elects by written notice to the Association, at its option, to terminate such control of the Association, whichever first occurs. Notwithstanding the above, and in limitation of the foregoing, within ninety (90) days after conveyance of twenty-five (25%) percent of the Units, the members of the Association other than Developer, shall be entitled to elect twenty-five (25%) percent of the members of the Board of Directors. Not later than ninety (90) days after conveyance of fifty (50%) percent of the Units to members of the Association, other than the Developer, not less than thirty-three and one-third (33 1/3%) percent of the members of the Board shall be elected by the members of the Association. Further, 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 (5%) percent of the Units in the Condominium and such right is not violative of the then provisions of the Condominium Act. Within sixty (60) days before the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days' notice of a Special Meeting of the membership for the purpose of electing the members of the Board of Directors to be elected by the members other than the Developer.

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The initial Board of Directors shall have five (5) Directors. The names and addresses of the members of the Board of Directors who shall hold office until their successors are elected and have qualified or until such Directors are removed, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
J. Richard Miller, III	P. O. Box 957 Brewton, Alabama 36427
Richard M. Stimpson	P. O. Box 1663 Mobile, Alabama 36633
W. Allen Cox	9901 Timbercreek Boulevard Daphne, Alabama 36527
Thomas E. Mitchell	P. O. Box 579 Bay Minette, Alabama 36507
William S. Stimpson	P. O. Box 1663 Mobile, Alabama 36633

Other than a Board member elected or appointed by the Developer (who may be removed solely by the Developer), any Director may be removed, either with or without cause, at any time, by the affirmative vote of members entitled to cast not less than sixty-seven percent (67%) of the votes of the persons present in person or represented by proxy and entitled to vote at a meeting at which a quorum is present, and the vacancy in the Board caused by any such removal may be filled by the members at such meeting or at any subsequent meeting in the manner prescribed in the By-Laws for the filling of vacancies on the Board.

The initial By-Laws of this Association shall be adopted by its Board of Directors. The power to alter, amend, or repeal the By-Laws or adopt new By-Laws shall be vested in the Board of Directors of this Association for such period of time as the Developer has the right to elect at least a majority of the members of the Board of Directors and thereafter, by the members at any regular or special meeting upon the affirmative vote of the holders of not less than sixty-seven percent (67%) of the outstanding votes present at such meeting in person or represented by proxy, a quorum being present.

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ARTICLE VII - AMENDMENTS

The Association reserves the right to amend, alter, change or repeal any provision contained in these Articles in the manner now or hereafter provided by law and all rights conferred upon officers and Directors herein are granted subject to this reservation.

ARTICLE VIII - REGISTERED OFFICE AND AGENT

The address of the Association's initial registered office is 9901 TimberCreek Blvd., Daphne, Alabama, 36527, and the name of its initial registered agent at such address is W. Allen Cox.

ARTICLE IX - RELATED PARTY TRANSACTIONS

No contract or other transaction between the Association or any person, firm, association or corporation and no other act of the Association shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the Directors of the Association are directly or indirectly, pecuniarily or otherwise interested in such contract, transaction or other act, or are related to or interested in (either as director, stockholder, officer, employee, member or otherwise) such person, firm, association or corporation. Any Director of the Association individually, or any firm or association of which any Director may be a member, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that the fact that he, individually, or such firm or association is so interested, shall be disclosed or known to the Board of Directors or a majority of the members thereof as shall be present at any meeting of the Board of Directors or of any committee of Directors having the powers of the full Board, at which action upon any such contract, transaction or other act is taken, and if such fact shall be so disclosed or known, any Director of the Association so related or otherwise interested may be counted in determining the presence of a quorum of any meeting of the Board of Directors or of such committee, at which action upon any such contract, transaction or act shall be taken, and may vote with respect to such action with like force and effect as if he were not so related or interested. Any Director of the Association may vote upon any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

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ARTICLE X - INDEMNIFICATION

The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Association), by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such claim, action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraphs one and two of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, notwithstanding that he has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

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Any indemnification under the first two unnumbered paragraphs of this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in this Article. Such determination shall be made in the manner provided by law.

Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding as authorized by the Board of Directors in each specific case upon receipt of a written affirmation of good faith belief by or on behalf of the director, officer, employee or agent that he has met the required standard of good conduct together with his written undertaking and unlimited obligation to repay such amount if and to the extent that it shall be ultimately determined that he is not entitled to be indemnified by the Association as authorized in this Article.

The indemnification authorized by this Article shall not be deemed exclusive of and shall be in addition to any other right (whether created prior or subsequent to the recording of these Articles) to which those indemnified may be entitled under any statute, rule of law, provisions of articles of incorporation, by-law, agreement, vote of Members or of disinterested directors, or otherwise, both as to action in his official capacity and as to actions in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provision of this Article.

ARTICLE XI - DISSOLUTION

The Association may be dissolved only upon the vote of members entitled to cast not less than sixty-seven percent (67%) of the votes of its membership present in person or represented by proxy and entitled to vote at a meeting called as provided for herein, at which a quorum is present. Written notice of a proposal to dissolve, setting forth the reasons therefor and the disposition to be made of the assets (which shall be in accordance with Article XII hereof) shall be mailed to every member at least thirty (30) days in advance of any such action sought and shall be subject to prior approval of such dissolution by the Board of Directors in the manner required by the Alabama Non Profit Corporation Act.

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ARTICLE XII - DISTRIBUTION UPON DISSOLUTION

Upon the dissolution of the Association, the assets of the Association shall be distributed to the members in the same manner as provided in the Declaration for the distribution of property subject thereto upon termination of the Condominium to the extent that any such distribution is not inconsistent with the provisions of the Condominium Act.

ARTICLE XIII - NAME AND ADDRESS OF INCORPORATOR

The name and address of the incorporator is as follows:

NAME

W. Allen Cox

ADDRESS

9901 Timbercreek Blvd.
Daphne, Alabama 36527

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IN WITNESS WHEREOF, this Incorporator files these Articles of Incorporation and tenders to the Probate Judge of Baldwin County, Alabama, the lawful fees and charges therefor and prays that these Articles may be examined and approved and that the Association may be deemed to be incorporated for the purposes herein set forth. The undersigned Incorporator has hereunto set his hand and seal on this the 30th day of April, 1996.

W. ALLEN COX

STATE OF ALABAMA

COUNTY OF MOBILE

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that W. Allen Cox, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day same bears date.

Subscribed and sworn to before me on this ____ day of _____, 1996.

NOTARY PUBLIC

My Commission Expires: _____

THIS INSTRUMENT PREPARED BY:

Shirley M. Justice, Esq.
Sirote & Permutt, P.C.
P. O. Drawer 2025
Mobile, Alabama 36652
334/432-1671

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BY-LAWS
OF
WHITE CAPS CONDOMINIUM ASSOCIATION

ARTICLE I.

THE ASSOCIATION

Section a. Identity. These are the By-Laws of White Caps Condominium Association, a not for profit corporation (the "Association"), which was formed under the Alabama Non-Profit Corporation Act [Code of Alabama 1975 §§ 10-3A-1 et seq] by filing the Articles of Incorporation of the White Caps Condominium Association (the "Articles"), with the Office of the Judge of Probate of Baldwin County, Alabama, on April 30, 1996. The Association has been organized for the purpose of providing for the acquisition, operation, management, maintenance, care, control and administration of the properties of White Caps, A Condominium (the "Condominium"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991 [Code of Alabama §§ 35-8A-101 et seq.] (the "Condominium Act") and the Declaration of Condominium of White Caps, A Condominium (the "Declaration"), as filed with the Office of the Judge of Probate of Baldwin County, Alabama, in accordance with the provisions of said Act. The terms capitalized herein shall be deemed to have the meanings set forth in the Declaration and the Condominium Act.

Section b. Principal Office. The principal office of the Association in the State of Alabama shall be located in the City of Orange Beach, County of Baldwin. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors may designate or as the business of the Association may require from time to time.

Section c. Registered Office. The registered office of the Association, required by the Alabama Non-Profit Corporation Act to be maintained in the State of Alabama, may be, but need not be, identical with the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board of Directors.

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ARTICLE II.

MEMBERSHIP

Section a. Annual Meeting. The annual meeting of the Membership shall be held on the first Saturday in the month of November in each year, beginning with the year 1996 at the hour of 2:00 p.m., or at such other time on such other day within such month as shall be fixed by the Board of Directors, for the purpose of electing directors, if the period of exclusive Developer control of the election of Members of the Board of Directors has ended, and in any event, for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Alabama, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the Membership, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Membership as soon thereafter as may be convenient.

Section b. Special Meetings. Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by a majority of the Board of Directors and shall be called by the President or the Secretary at the request of holders of not less than twenty (20%) percent of all the outstanding votes of the Membership.

Section c. Place of Meeting. The Board of Directors may designate any place, within or without the State of Alabama, as the place of meeting for any annual meeting or for any special meeting of the Membership. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the Association in the State of Alabama.

Section d. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of an annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall, unless otherwise prescribed by statute, be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section e. Fixing of Record Date. The Board of Directors may fix in advance a date as the record date for the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or for any other proper purpose, such date in any case to be not more than thirty (30) days and, in case of a meeting of the Membership, not less than ten (10) days prior to the date on which the particular action requiring such determination of members is to be taken. If no record date is fixed for the

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determination of members entitled to notice of or to vote at a meeting of the Membership, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination has been made, as provided in this section, such determination shall apply to any adjournment thereof.

Section f. Voting Lists. The officer or agent having charge of the records of members of the Association shall make, at least ten (10) days before each meeting of the Membership, a complete list of the members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of each member and the number of votes to which he is entitled, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any member making written request therefor at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting.

Section g. Quorum. The presence at any meeting of the Membership of the members entitled to cast twenty (20%) percent of the votes in the Association, represented in person or by proxy, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the members so represented may adjourn the meeting and reconvene from time to time without further notice. At any such reconvened meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section h. Majority Vote. The vote of members entitled to cast a majority of the votes represented at a meeting of the Membership at which a quorum is present shall be the act of the members of the Association, unless the vote of a greater number is required by law, the Declaration, the Articles, or these By-Laws.

Section i. Proxies. At all meetings of the Membership, a member may vote in person or by proxy executed in writing by the member or by his duly authorized attorney in fact. A proxy is void if it is not dated or purports to be revocable without notice. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after one year from the date of its execution, unless a shorter term is provided in the proxy.

Section j. Voting Rights. If only one of the multiple Owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is a majority agreement if any one of the multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

Section k. Informal Action by Members. Any action required to be taken at a meeting of the Membership, or any other action which may be taken at a meeting of the Membership, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

ARTICLE III.

BOARD OF DIRECTORS

Section a. General Powers. The business and affairs of the Association shall be managed by or under the direction of its Board of Directors.

Section b. Number, Tenure and Qualifications. The initial Board of Directors shall consist of five (5) directors. The By-Laws may be amended from time to time as provided for herein to increase or decrease the number of directors of the Association to not less than three (3) nor more than seven (7) directors. Each director shall hold office until the next annual meeting of the members and until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed, as provided for herein. A director need not be a member of the Association.

Section c. Election of Directors.

(1) Election of directors entitled to be elected by the members shall be held at the annual meeting, or, if required in accordance with sub-paragraph (2) below, at a special meeting of the Membership. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. The Owner of each whole Unit shall be entitled to cast his votes for each of as many nominees as there are vacancies to be filled at the time of the election. There shall be no cumulative voting.

(2) Notwithstanding the provisions of sub-paragraph (1) above, or anything in these By-Laws to the contrary, the Developer (as defined in the Declaration), its successors and assigns and not the members of the Association, shall have the exclusive right to control the selection of all of the members of the Board of Directors of the Association by virtue of their exclusive right to elect, appoint, remove, and in the event of vacancies, the Developer shall fill each and every such vacancies, until such time as either (a) the expiration of sixty (60) days following the conveyance of 75% of the Units in the Condominium to purchasers of Units other than Developer, or (b) the expiration of two (2) years from the date the Developer has ceased to offer Units for sale in the ordinary course of business, or (c) the Developer elects by written notice to the Association, at its option, to terminate such control of the Association, whichever first occurs. Provided, however, and in limitation of the foregoing, no later than ninety (90) days after conveyance of 25% of the Units, members of the Association, other than the Developer shall be entitled to elect 25% of the members of the Board

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and not later than ninety (90) days after conveyance of 50% of the Units to Unit Owners other than Developer, not less than 33 1/3% of the members of the Board may be elected by the members of the Association. The Developer shall be entitled to elect and/or appoint, and to remove and fill vacancies with respect to at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least 5% of the Units in the Condominium and such right is not violative of the then provisions of the Condominium Act. Within sixty (60) days before the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the Membership for the purpose of electing the members of the Board of Directors.

Section d. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of the Membership, provided, however, any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all directors. The Board of Directors may provide, by resolution, the time and place, within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

Section e. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) directors.

Section f. Notice. Notice of any special meeting shall be given at least three (3) days prior thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business, because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section g. Quorum. A majority of the number of directors determined in the manner fixed by Section (b) of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

If a quorum is present when the meeting is convened, the directors present may continue to do business, taking action by a vote of the majority of a quorum, until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum present, or the refusal of any director present to vote.

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Section h. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section i. Action Without a Meeting. Any action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section j. Vacancies. Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by a majority of the remaining directors, except as otherwise provided in Section (c) above. A director elected or appointed, as the case may be, shall be elected or appointed for the unexpired term of his predecessor in office.

Section k. Compensation. By resolution of the Board of Directors, the directors may be paid their expense, if any, of attendance at each meeting of the Board of Directors, and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as a director or both. No such payment shall preclude any director from serving the Association in any other capacity and receiving compensation therefor.

Section l. Committees. The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each of which shall consist of two (2) or more directors and which, to the extent provided in said resolution or resolutions or in the By-Laws of the Association shall have and may exercise all of the powers of the Board of Directors in the management of the activities and affairs of the Association and may have power to authorize the seal of the Association to be affixed to all papers which may require it, except that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the By-Laws; electing, appointing or removing any member of any such committee or any director or officer of the Association; amending the Articles, restating the Articles, adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of assets of the Association; or amending, altering or repealing any action or resolution of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by such committee. The designation of such committee or committees or the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual director of any responsibility imposed upon it or him by law.

Section m. Resignations. Any director of the Association may resign at any time, either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Such resignation shall take effect at the time specified therefor and the acceptance of such resignation shall not be necessary to make it effective.

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Section n. Place of Meeting. The Board of Directors may designate any place within or without the State of Alabama as the place of meeting for any regular or special meeting of the Board of Directors.

Section o. Presumption of Assent. A director of the Association who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

ARTICLE IV.

OFFICERS

Section a. Number. The officers of the Association shall be a President, one or more Vice President(s) (the number thereof to be determined by the Board of Directors), a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the President and Secretary. An officer need not be a member of the Association. The failure of the Board of Directors to elect any officers other than a President, a Treasurer and a Secretary shall not constitute a violation of these By-Laws.

Section b. Election and Term of Office. The officers of the Association to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Membership. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed in the manner hereinafter provided.

Section c. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed at any time, by the affirmative vote of the Board of Directors, whenever in their judgment the best interests of the Association will be served thereby. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not of itself create any contract rights in favor of such officer.

Section d. Vacancies. A vacancy in any office elected or appointed by the Board of Directors because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

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Section e. President. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall preside at all meetings of the Membership. He may sign, with the Secretary or an Assistant Secretary, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general, shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section f. Vice President. In the absence of the President or in the event of his death, inability or refusal to act, the Vice president (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section g. Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the Members and of the Board of Directors in one or more books provided for the purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the mailing address of each member which shall be furnished to the Secretary by such member; (e) have general charge of the transfer books of the members of the Association; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section h. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these By-Laws; and (c) in general perform all of the duties as from time to time may be assigned to him by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section i. Assistant Secretaries and Assistant Treasurer. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors. The Assistant Treasurers shall respectively, if required by the Board of Directors,

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give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine

Section J. Salaries. The salaries of the officers, if any, shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Association.

ARTICLE V.

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section a. Contracts. The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section b. Loans. No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section c. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section d. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

Section e. Proxies. Unless otherwise provided by resolution of the Board of Directors, the President may from time to time appoint an attorney or agent of the Association, in the name and on behalf of the Association, to cast the votes which the Association may be entitled to cast as the holder of stock or other securities in any other corporation any of whose stock or other securities may be held by the Association, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name and on behalf of the Association, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Association and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

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ARTICLE VI.

BOOKS AND RECORDS

Section a. Accounting. The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the members, Board of Directors and committees thereof and shall keep at its registered or principal office in Alabama a record of the names and addresses of the members entitled to vote for directors and officers. The accounting records shall be maintained in accordance with generally accepted accounting principles. All books and records of the Association shall be open to inspection by the members or their authorized representatives for any proper purpose at any reasonable time in Baldwin County, Alabama. Such records shall include:

(1) **Association Accounts.** The receipts and expenditures of the Association shall be credited and charged to the appropriate account as set forth below.

(a) **Current Expenses.** All funds to be expended during the year for the maintenance of the Common Elements and Limited Common Elements (as defined in the Declaration) and the operation and working capital of the Association shall be held in the Current Expense Account. Any balance in this fund at the end of each year may be used to pay Common Expenses and Limited Common Expenses incurred in any successive year or may be placed in the Reserve Fund Account.

(b) **Reserve Funds.** All funds to be expended for replacement, acquisition and repair of capital improvements which are a part of Common Elements and Limited Common Elements shall be held in the Reserve Fund Account.

(2) **Member Accounts.** An account for each member shall be maintained setting forth the name and address of the member, the interest percentage in the Common Elements and Limited Common Elements, if any, the amount of each assessment, the amounts and dates on which the assessments become due, the amounts paid upon the account and the balance due.

Section b. Budget. Within sixty (60) days prior to the beginning of each calendar year, the Board of Directors shall adopt a proposed budget for each calendar year that shall include the estimated funds required to defray the Common Expenses and Limited Common Expenses and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Within thirty (30) days of adoption of the proposed budget copies of the budget and proposed assessments shall be transmitted to each member of the Association and a date set for a meeting of the Unit Owners to consider ratification of the budget, not less than fourteen (14) days nor more than thirty (30) days after delivery of the budget to the Unit Owners. Unless, at the meeting, a majority of all Unit Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time a new budget is ratified.

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Section c. Assessments. Subject to the terms and conditions of the Declaration, assessments against the members for their shares of the items of the budget shall be made for the calendar year annually in advance on or before December 31, preceding the year for which the assessments are made. Such assessments shall be due in quarterly or monthly installments, as may be determined by the Board of Directors of the Association. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors. Such assessments shall constitute a lien as provided for in the Declaration.

Section d. Assessments for Emergencies. Subject to the terms and conditions of the Declaration, assessments for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need for such is given to the members concerned, and it shall be due thirty (30) days after such notice in such manner as the Board of Directors of the Association may require in the notice of assessment. Such assessments shall constitute a lien as provided for in the Declaration.

Section e. Audit or Compilation. An audit or compilation of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the audit report shall be made available for review by each member in Baldwin County, Alabama.

Section f. Bonds. Fidelity bonds shall be required by the Board of Directors from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors, but shall not be less than three times the amount of the total annual assessments against members for Common Expenses and Limited Common Expenses. The premiums of such bonds shall be paid by the Association.

Section g. Rules and Regulations and Violation of any Documents. Subject to the terms and conditions of the Declaration, the Board of Directors may establish, abolish or amend reasonable rules and regulations concerning the use of the Common Elements. The text of such rules and regulations shall be furnished or made available to the members. The Board shall have the power, upon violation of the rules and regulations, or upon violation of the terms of the Declaration or By-Laws to impose monetary fines on a member which shall constitute a lien and shall be enforceable in like manner as provided for assessments or to suspend for a reasonable period of time either the member's right to the use of Common facilities within the common Elements or the member's right to vote.

ARTICLE VII.

WAIVER OF NOTICE

Whenever any notice is required to be given to any member or director of the Association under the provisions of these By-Laws, the Articles of Incorporation, the Declaration, the provisions of the Alabama Non-Profit Corporation Act, and any act amendatory thereof,

supplementary thereto or substituted therefor, the provisions of the Condominium Ownership Act of Alabama, and any act amendatory thereof, supplemental thereto or substituted therefor, or the Alabama Constitution, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE VIII.

FISCAL YEAR

The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

ARTICLE IX.

INDEMNIFICATION

Section a. Third Party Claims. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section b. Association Claims. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he

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reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section c. Mandatory Indemnification. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections (a) and (b) above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section d. Approved Indemnification. Any indemnification under Sections (a) and (b) above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in this Article IX. Such determination shall be made in the manner provided by law.

Section e. Advance of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of a written affirmation of good faith belief by or on behalf of the director, officer, employee or agent that he has met the required standard of good conduct, together with his written undertaking and unlimited obligation to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this section.

Section f. Non-Exclusivity of Remedies. The indemnification provided by this section shall not be deemed exclusive of and shall be in addition to any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

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ARTICLE X.

AMENDMENT

Section a. Amendment to By-Laws. These By-Laws may be amended, altered or repealed in the following manner:

(1) By the Board of Directors for such period of time as the Developer has the right to elect at least a majority of the members of the Board of Directors of the Association in accordance with Article III, Section (c), paragraph (2) herein; and thereafter,

(2) By the members at any regular or special meeting upon the affirmative vote of the holders of not less than sixty-seven percent (67%) of the outstanding votes present and entitled to vote at such meeting in person or represented by proxy, at which a quorum is present.

Section b. Recordation. No modification or amendment to the By-Laws shall be valid and effective until the President and Secretary of the Association shall certify as to the adoption of such amendment and shall file their certificate setting forth the text of the amendment with the Office of the Judge of Probate of Baldwin County, Alabama.

MS:0067 ME:1884

EXHIBIT "C"

PLAN AND PLAT OF THE CONDOMINIUM

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CERTIFICATION

I, the undersigned, F.M. Fischrupp, a registered Architect in the State of Alabama, Number 613, hereby certify that the PLANS labeled Exhibit "C", pages 1 through 23, inclusive, attached to and made a part of the Declaration of Condominium of White Caps, a Condominium, show the layout, location, Unit numbers and dimensions of the Units and the improvements. I further certify that the PLANS show the dimensions of the improvements and the units and that the improvements shown on the PLANS are substantially complete. I further certify that to the best of my knowledge and believe, the PLANS contain all of the information required by Section 35-8A-209, CODE OF ALABAMA, (1975).



F.M. Fischrupp
Registered Architect #613
License Number # 613

Date: 4/23/96

Subscribed and sworn to before me
this the 23-day of April, 1996.

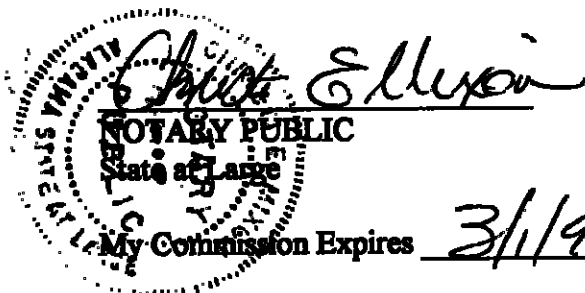


EXHIBIT "C", PAGE 1

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Certificate of Occupancy
City of Orange Beach
Department of Building Inspection

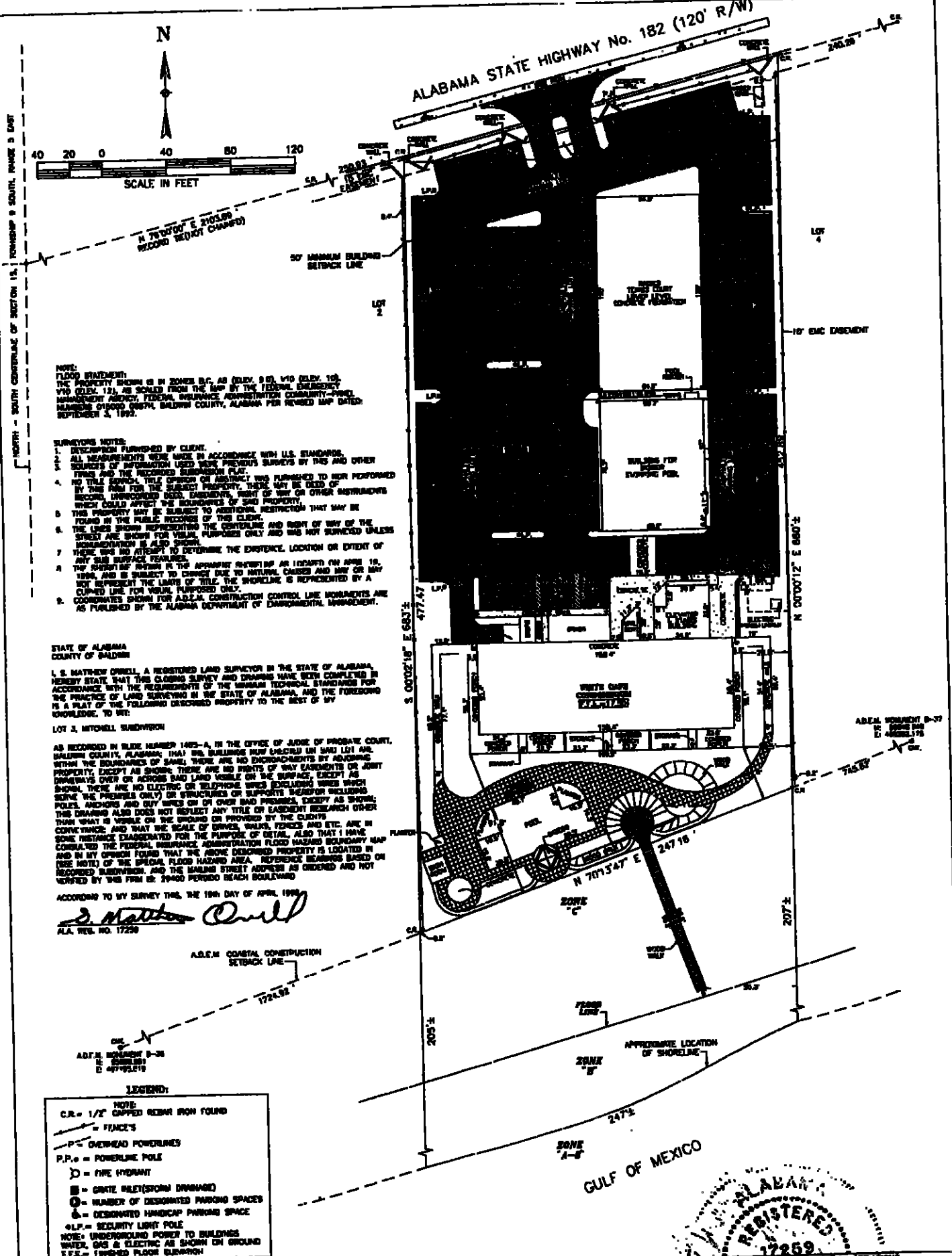
This Certificate issued pursuant to the requirements of the Standard Building Code certifying that at the time of issuance this structure was in compliance with the various ordinances of the Jurisdiction regulating building construction or use. For the following:

Use Classification Residential Bldg. Permit No. 1665
Group R Type Construction I Fire District _____
Owner of Building White Caps LLC Address PO Box 579 Bay Minette AL 36507
Building Address 24900 Perdido Rch Blvd Locality Lot 3 Mitchell S/D
By: [Signature] Date: 4-23-96
Building Official Unit No. all units

POST IN A CONSPICUOUS PLACE

EXHIBIT "C", PAGE 2

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NOTE:
FLOOD STATEMENT:
THE PROPERTY SHOWN IS IN ZONE B-C, AS SHOWN BY THE FLOOD HAZARD BOUNDARY MAP, VTD (ELEV. 10'), AS SHOWN ON THE MAP BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION COMMUNITY-PAID, NUMBERED 01000 00874, BALDWIN COUNTY, ALABAMA PER REVISED MAP DATED SEPTEMBER 3, 1992.

- SURVEYOR'S NOTICE:
1. DESCRIPTION FURNISHED BY CLIENT.
 2. ALL MEASUREMENTS WERE MADE IN ACCORDANCE WITH U.S. STANDARDS.
 3. SOURCES OF INFORMATION USED WERE PREVIOUS SURVEYS BY THIS AND OTHER SURVEYORS.
 4. NO TITLE SEARCH, TITLE OPINION OR ABSTRACT WAS FURNISHED TO BEAR PERFORMED BY THIS FIRM FOR THE SUBJECT PROPERTY. THERE MAY BE DEEDS OF RECORD, UNRECORDED DEEDS, EASEMENTS, RIGHT OF WAY OR OTHER INSTRUMENTS WHICH COULD AFFECT THE BOUNDARIES OF SAID PROPERTY.
 5. THIS PROPERTY MAY BE SUBJECT TO ADDITIONAL RESTRICTIONS THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS CLIENT.
 6. THE LINES SHOWN REPRESENTING THE CENTERLINE AND RIGHT OF WAY OF THE STREET ARE SHOWN FOR VISUAL PURPOSES ONLY AND WAS NOT SURVEYED UNLESS INDICATED BY THIS CLIENT.
 7. THERE WAS NO ATTEMPT TO DETERMINE THE EXISTENCE, LOCATION OR EXTENT OF ANY SUBSURFACE FEATURES.
 8. THE PROPERTY SHOWN IS THE APPROPRIATE PROPERTY AS LOCATED ON APRIL 10, 1993, AND IS SUBJECT TO CHANGE DUE TO NATURAL CAUSES AND MAY OR MAY NOT REPRESENT THE LIMITS OF TITLE. THE SHORELINE IS REPRESENTED BY A CURVED LINE FOR VISUAL PURPOSES ONLY.
 9. COORDINATES SHOWN FOR A.S.E.M. CONSTRUCTION CONTROL LINE MONUMENTS ARE AS PUBLISHED BY THE ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

STATE OF ALABAMA
COUNTY OF BALDWIN

I, S. MATTHEW OWELL, A REGISTERED LAND SURVEYOR IN THE STATE OF ALABAMA, HEREBY STATE THAT THIS CLOSING SURVEY AND DRAWING HAVE BEEN COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE STATE OF ALABAMA, AND THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL SURVEY RECORD AS FURNISHED TO THE CLIENT.

LOT 3, MITCHELL SUBDIVISION

AS RECORDED IN BLUE BOOK 1403-A, IN THE OFFICE OF JUDGE OF PROBATE COURT, BALDWIN COUNTY, ALABAMA, THAT THE BUILDINGS NOW ERECTED ON SAID LOT ARE WITHIN THE BOUNDARIES OF SAID LOT. THERE ARE NO ENCROACHMENTS BY ADJACENT PROPERTY, EXCEPT AS SHOWN. THERE ARE NO RIGHTS OF WAY EASEMENTS OR JOINT EASEMENTS OVER OR ACROSS SAID LAND OR ON THE SURFACE, EXCEPT AS SHOWN. THERE ARE NO ERECTED OR TELEPHONE WIRE ENCLOSURES WHICH SERVE THE PREMISES ONLY OR STRUCTURES OR SUPPORTS THEREON INCLUDING POLES, ANCHORS AND GUY WIRES OR ON OVER HANGING, EXCEPT AS SHOWN. THIS DRAWING ALSO DOES NOT REFLECT ANY TITLE OR EASEMENT RESEARCH OTHER THAN WHAT IS VISIBLE ON THE GROUND OR PROVIDED BY THE CLIENTS. CONVEYANCE, AND THAT THE SCALE OF DRIVE, WALKS, FENCES AND ETC. ARE IN SOME INSTANCES EXAGGERATED FOR THE PURPOSE OF DETAIL. ALSO THAT I HAVE CONSULTED THE FEDERAL INSURANCE ADMINISTRATION FLOOD HAZARD BOUNDARY MAP AND IN MY OPINION THAT THE ABOVE DESCRIBED PROPERTY IS LOCATED IN THE UNZONED AREA OF THE SPECIAL FLOOD HAZARD AREA. REFERENCE BEARINGS BASED ON RECORDED SUBDIVISION, AND THE MAIN STREET ADDRESS AS ORDERED AND NOT WORKED BY THIS FIRM IS: 29400 PERDUE BEACH BOULEVARD

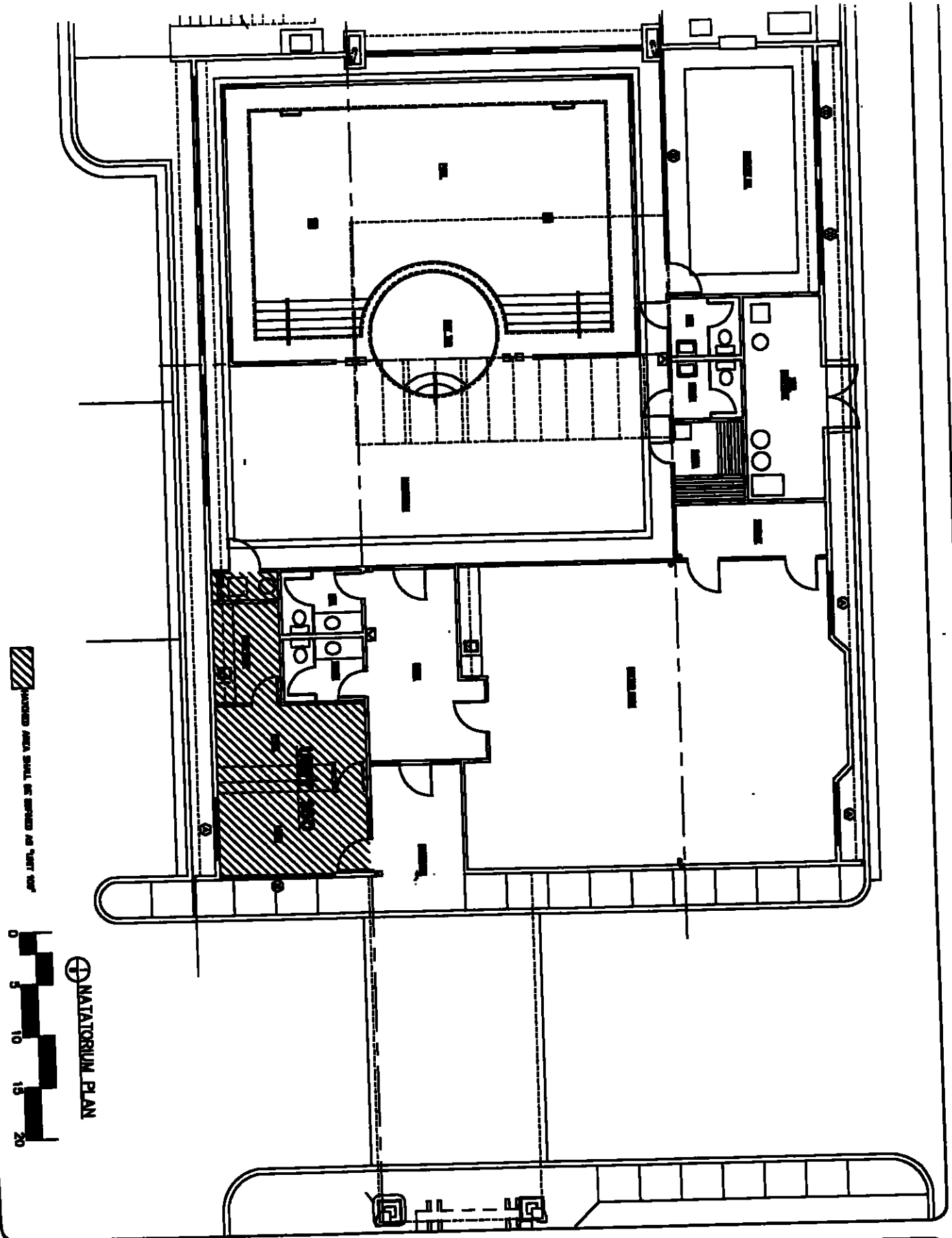
ACCORDING TO MY SURVEY TIME, THE 10th DAY OF APRIL, 1993
S. Matthew Owell
ALA. REG. NO. 17259

A.S.E.M. COASTAL CONSTRUCTION SETBACK LINE
1724.92'
A.S.E.M. MONUMENT B-36
N 70°00'00" E 2003.00'
D 471953.19'

- LEGEND:
- NOTE:
C.R. = 1/2" CAPPED REBAR IRON FOUND
- - - FENCES
 - - - OVERHEAD POWERLINES
 - P.P. = POWERLINE POLE
 - D = FIRE HYDRANT
 - = GRIPE HOLE (FOR DRAINAGE)
 - = NUMBER OF DESIGNATED PARKING SPACES
 - = DESIGNATED HANDICAP PARKING SPACE
 - L.P. = SECURITY LIGHT POLE
- NOTE: UNDERGROUND POWER TO BUILDINGS
WATER, GAS & ELECTRIC AS SHOWN ON GROUND
T.F.E. = TURNED FLOOR SURVEYOR

P: FILE NO. 17259-087 FILE NAME: 8803-075 5-(41)	WHITECAPS CONDOMINIUM	POLY SURVEYING 17259	SCALE: 1" = 40'	DATE: 04-10-93	DRAWN BY: R.A.M.
			DATE SURVEYED: 04-10-93	CHECKED BY: S.O.A.	
THIS SURVEY NOT VALID WITHOUT EMBOSSED SEAL			W.P. 18603-087		

EXHIBIT "C", PAGE 3



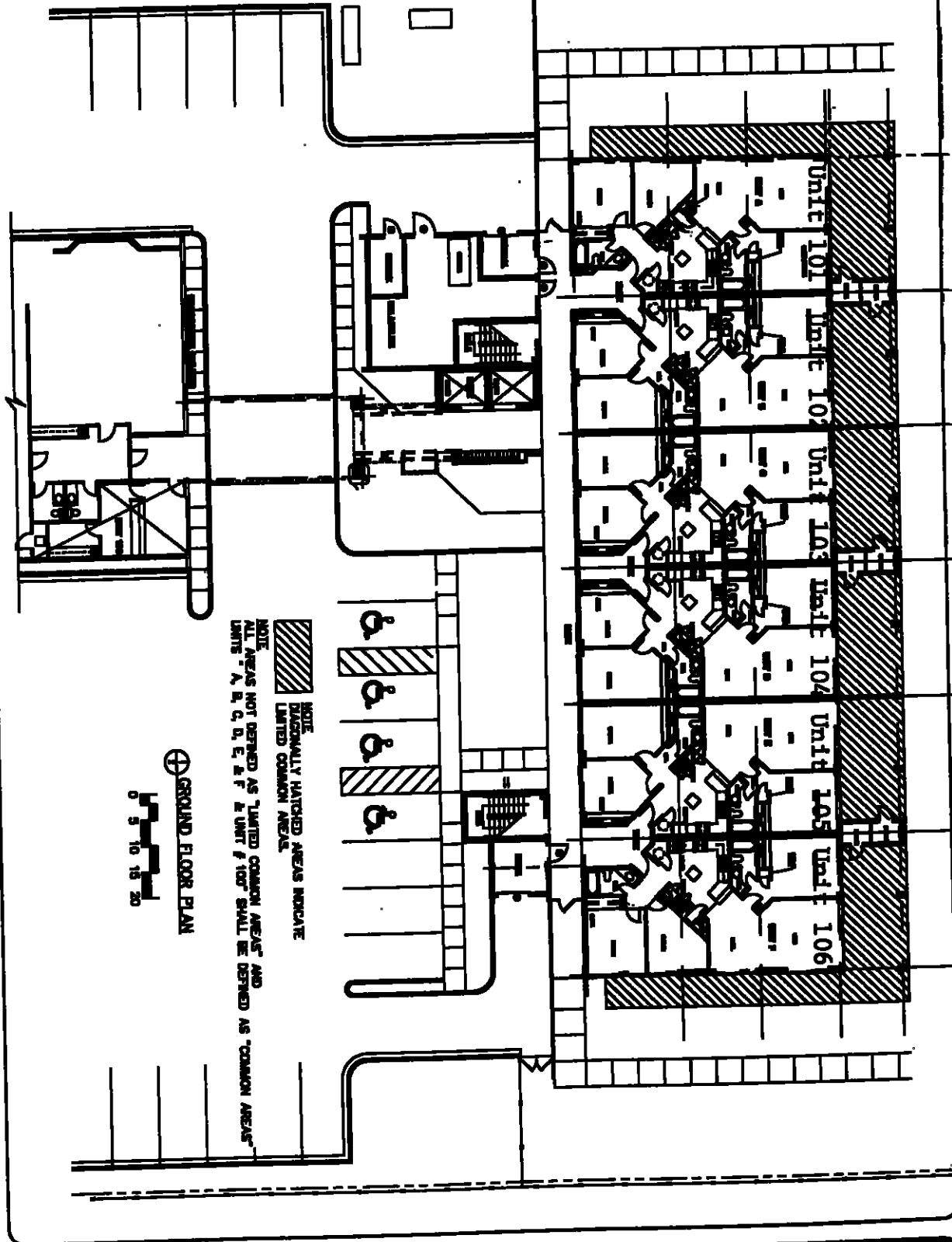
dpf architects, p.c.

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EXHIBIT "C", PAGE 4

White Bay, A CONDOMINIUM
Orange Beach, Alabama



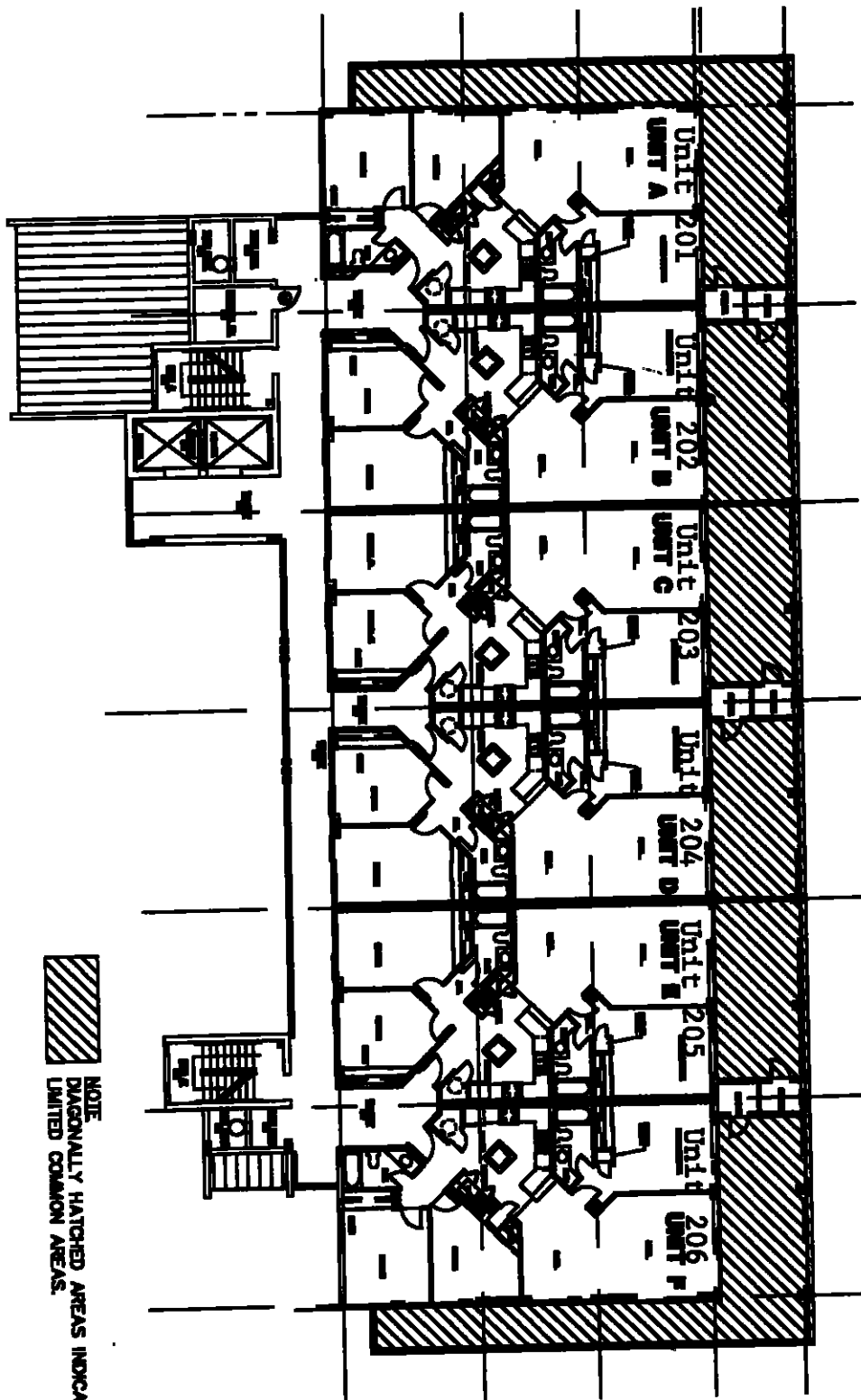
dpf architects, p.c.

Miss Cape

A CONDOMINIUM
Orange Beach, Alabama

EXHIBIT "C", PAGE 5

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NOTE
DIAGONALLY HATCHED AREAS INDICATE
UNITED COMMON AREAS.

NOTE
ALL AREAS NOT DEFINED AS "UNITED COMMON AREAS" AND
UNITS "A, B, C, D, E, & F" SHALL BE DEFINED AS "COMMON AREAS"

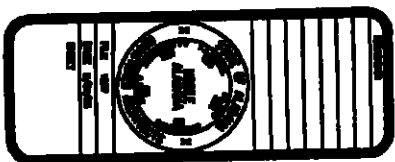
⊕ TYPICAL FLOOR PLAN

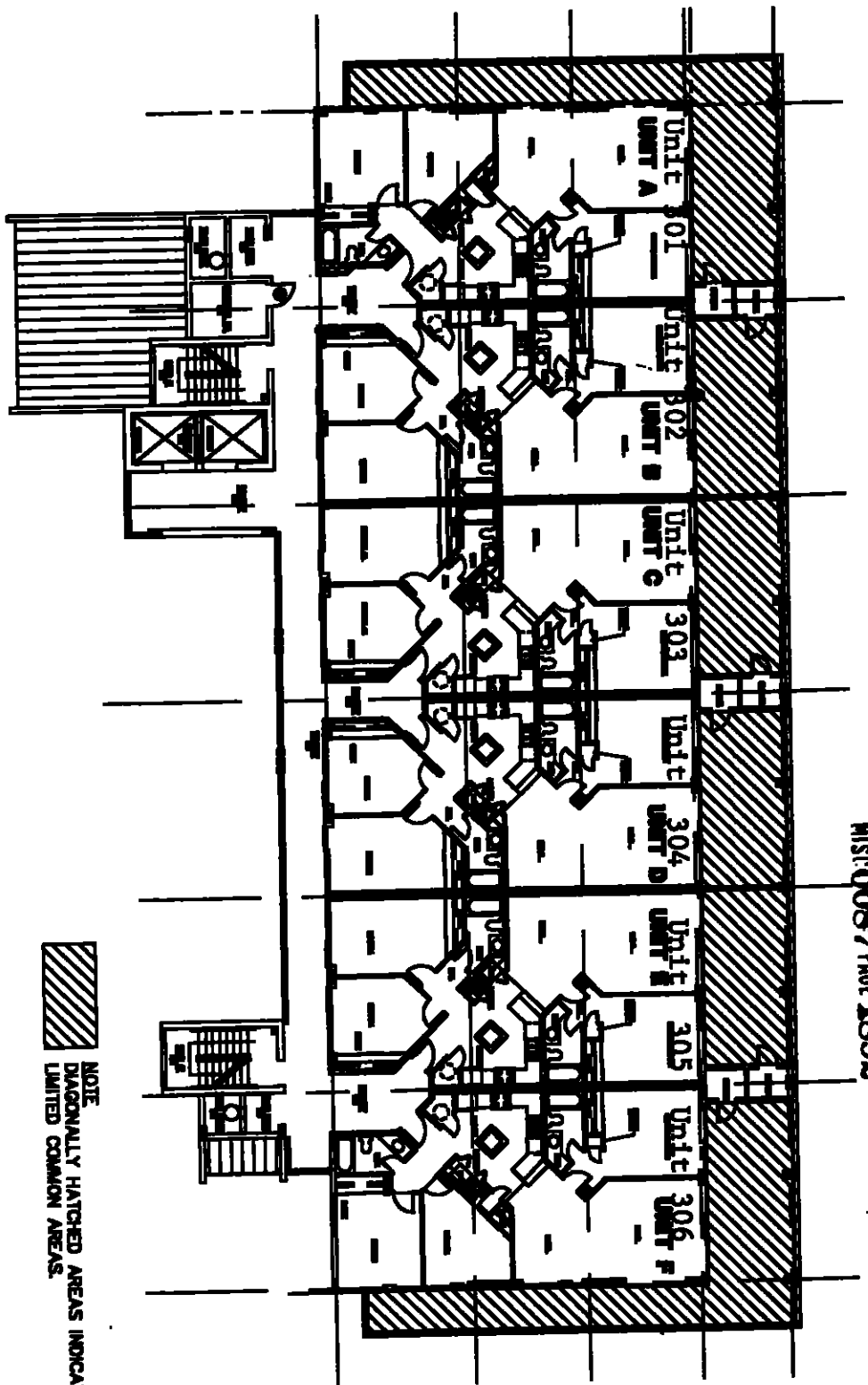


White Caps, A CONDOMINIUM
Orange Beach, Alabama

EXHIBIT "C", PAGE 6

architects. p.c.





NOTE
DIAGONALLY HATCHED AREAS INDICATE
UNITED COMMON AREAS.

NOTE
ALL AREAS NOT DEFINED AS "UNITED COMMON AREAS" AND
UNITS "A, B, C, D, E, & F" SHALL BE DEFINED AS "COMMON AREAS"

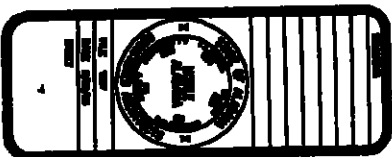
① TYPICAL FLOOR PLAN ②

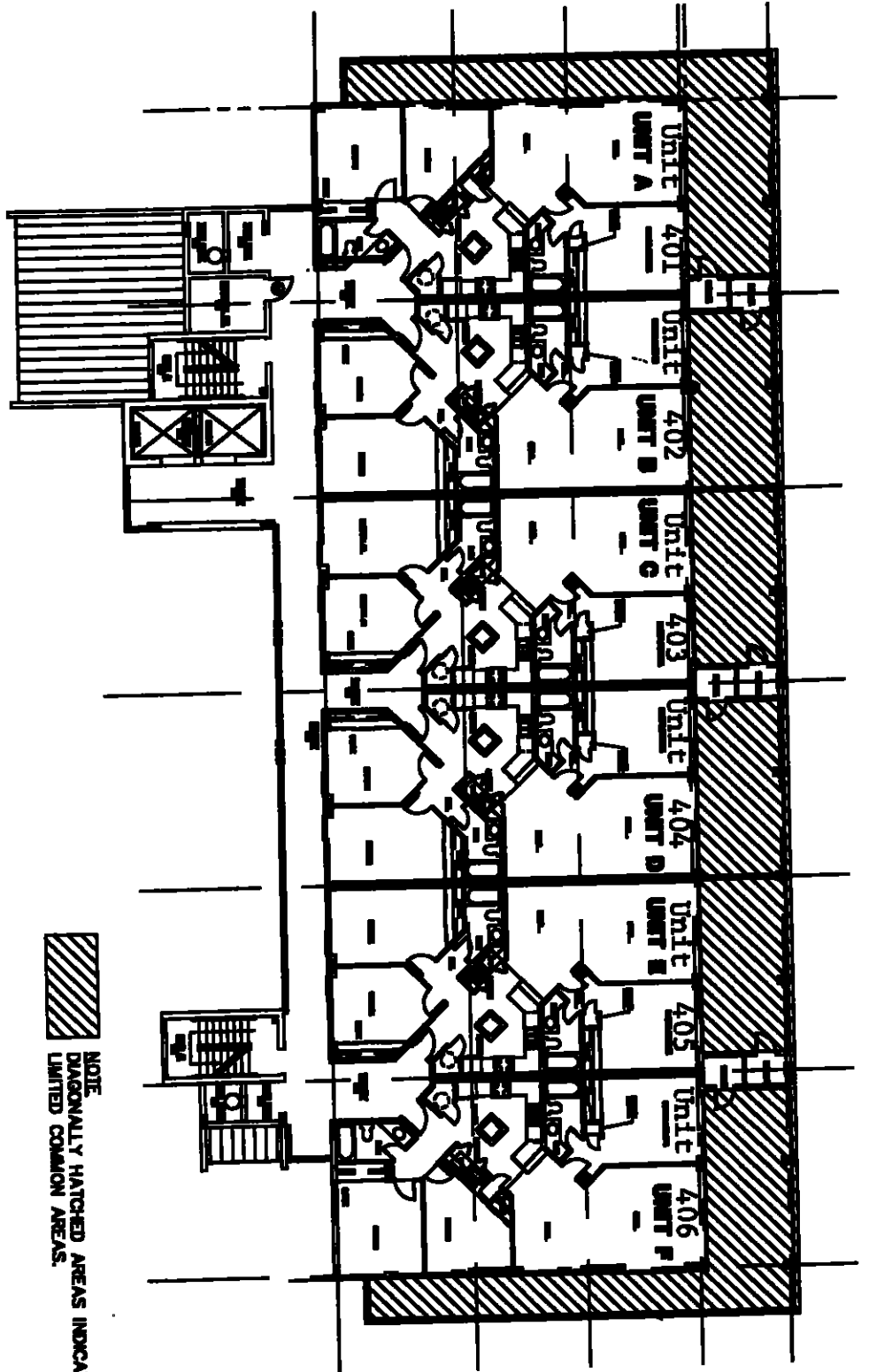
0 5 10 15 20

White Eagle, A CONDOMINIUM
Orange Beach, Alabama

EXHIBIT "C", PAGE 7

dpf architects, p.c.





NOTE
DIAGONALLY HATCHED AREAS INDICATE
UNITED COMMON AREAS.

NOTE
ALL AREAS NOT DEFINED AS "UNITED COMMON AREAS" AND
UNITS "A, B, C, D, E, & F" SHALL BE DEFINED AS "COMMON AREAS"

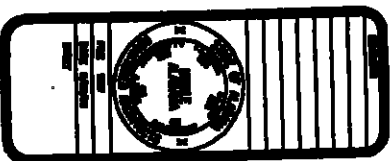
⊕ TYPICAL FLOOR PLAN

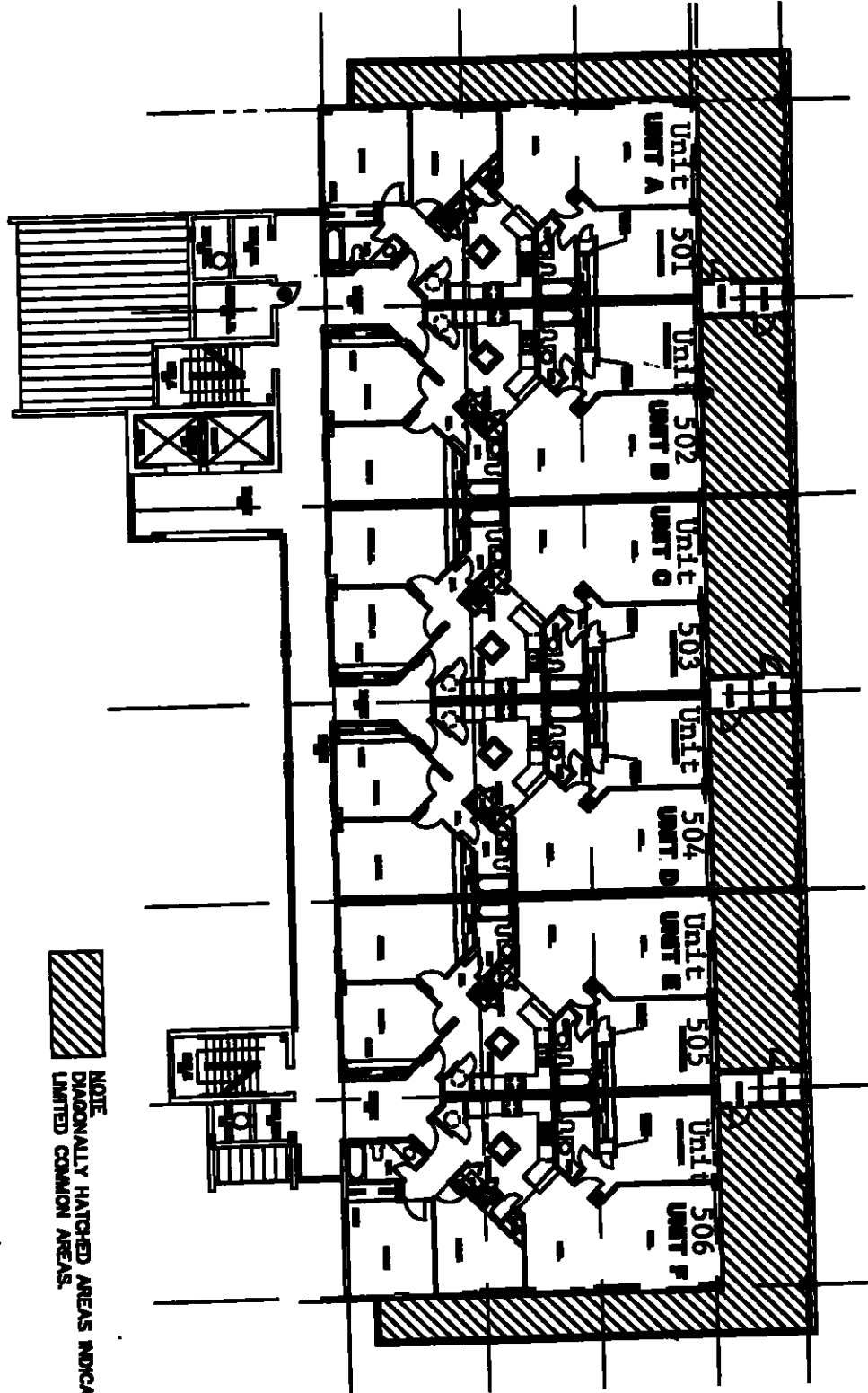
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White Eagle, A CONDOMINIUM
Orange Beach, Alabama

EXHIBIT "C", PAGE 8

dpf architects, p.c.





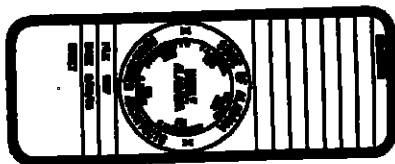
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⊕ TYPICAL FLOOR PLAN

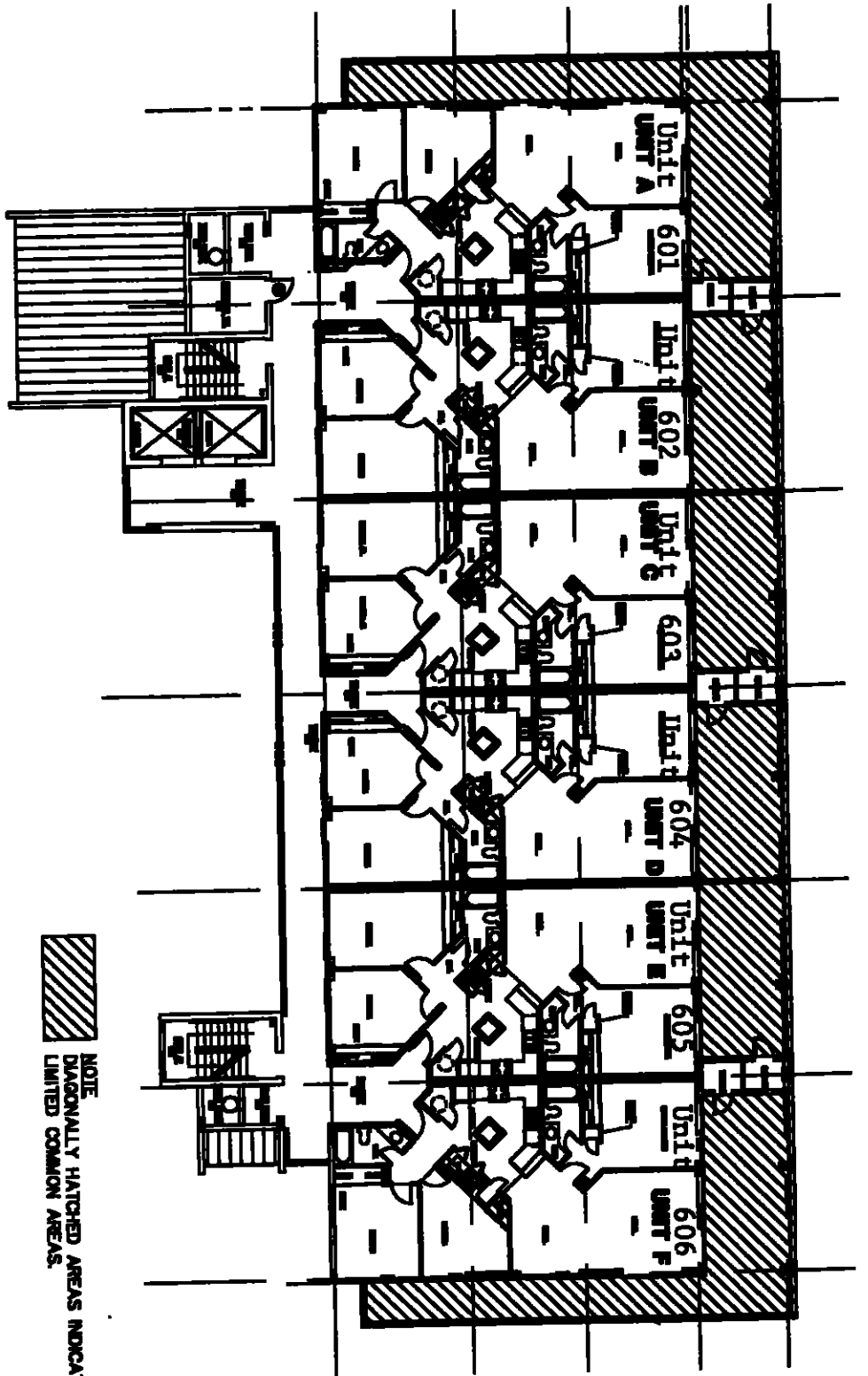


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dof architects, p.c.

White Cape, A CONDOMINIUM
Orange Beach, Alabama



NOTE
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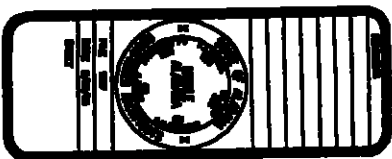
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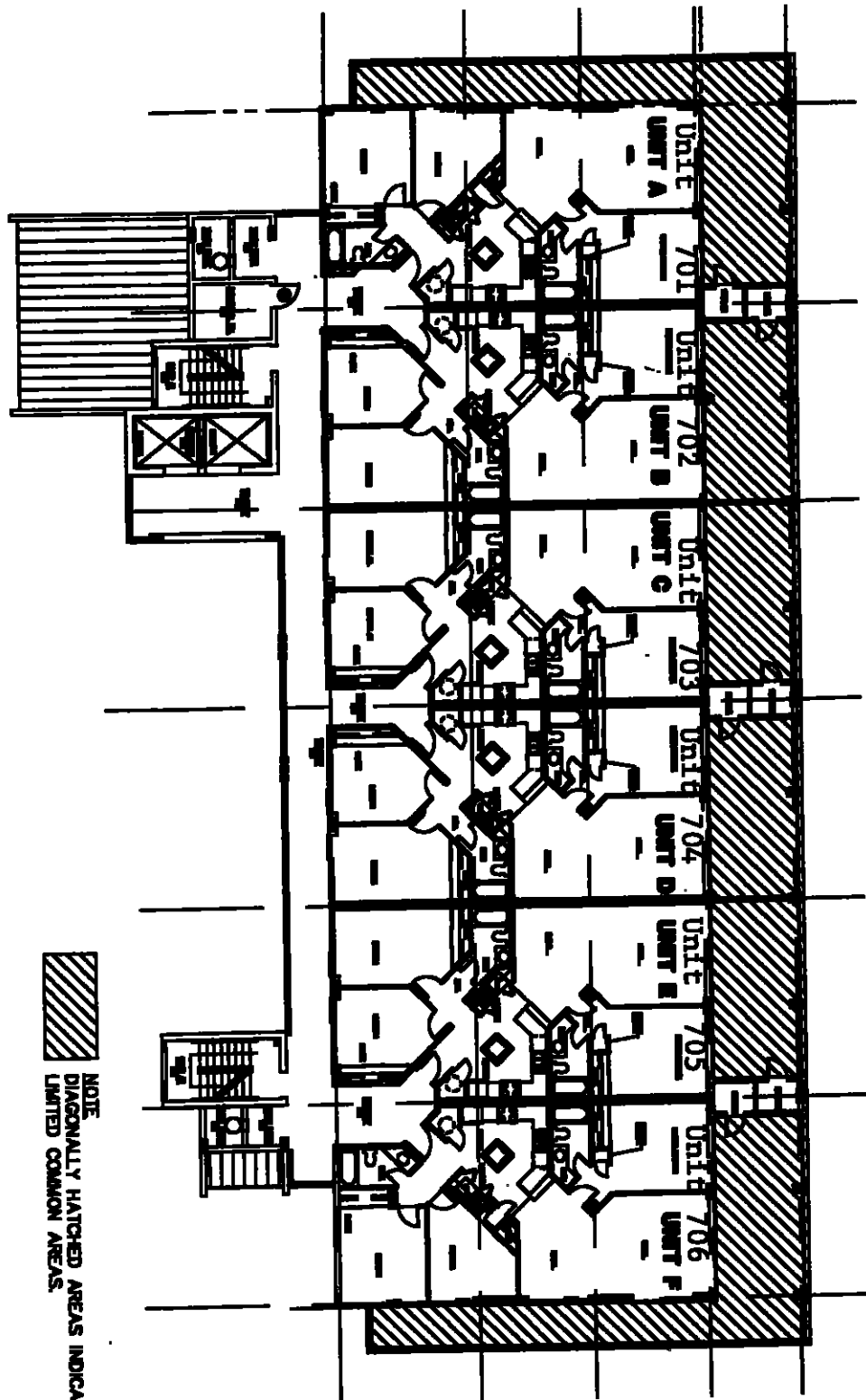
① TYPICAL FLOOR PLAN

0 5 10 15 20

Wild Eggs, A CONDOMINIUM
Orange Beach, Alabama

EXHIBIT "C", PAGE 10





NOTE
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UNITED COMMON AREAS.

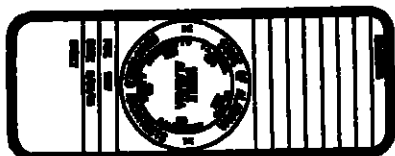
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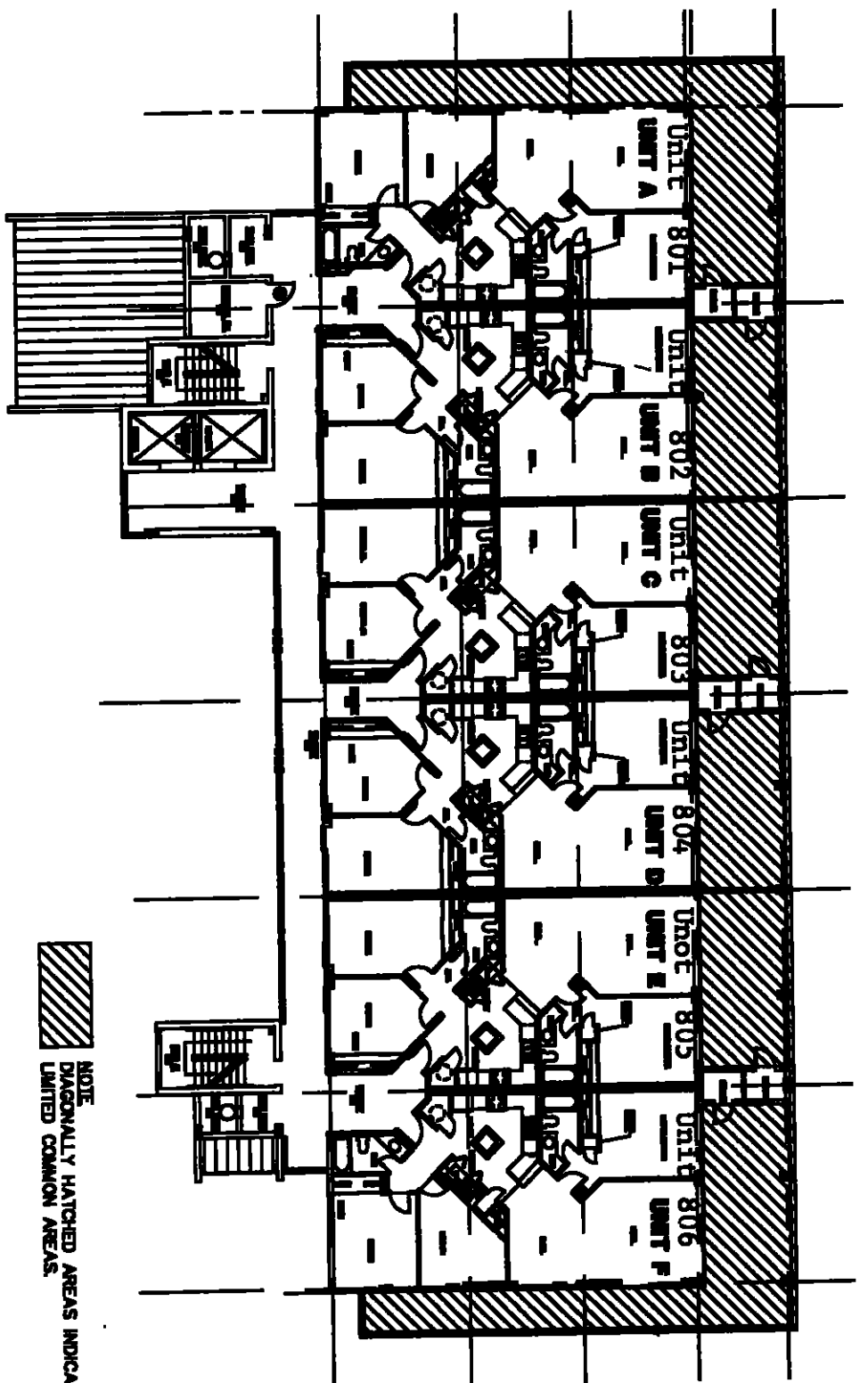
⊕ TYPICAL FLOOR PLAN

0 5 10 15 20

White Oaks, A CONDOMINIUM
Orange Beach, Alabama

dpf architects, p.c.





NOTE
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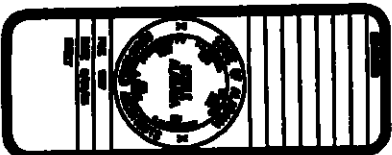
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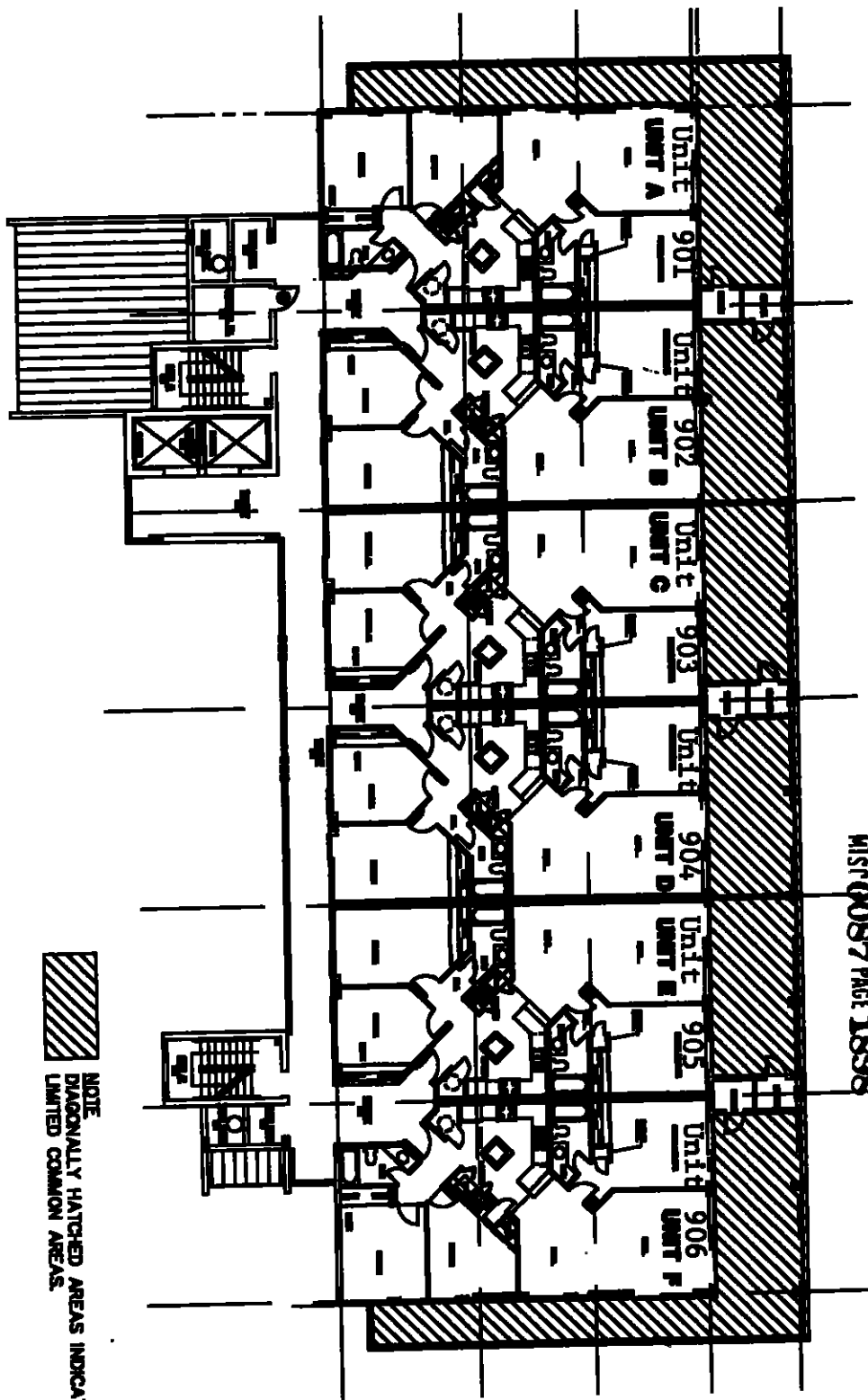
⊕ TYPICAL FLOOR PLAN



White Cape, A CONDOMINIUM
Orange Beach, Alabama

EXHIBIT "C", PAGE 12





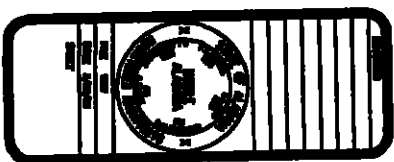
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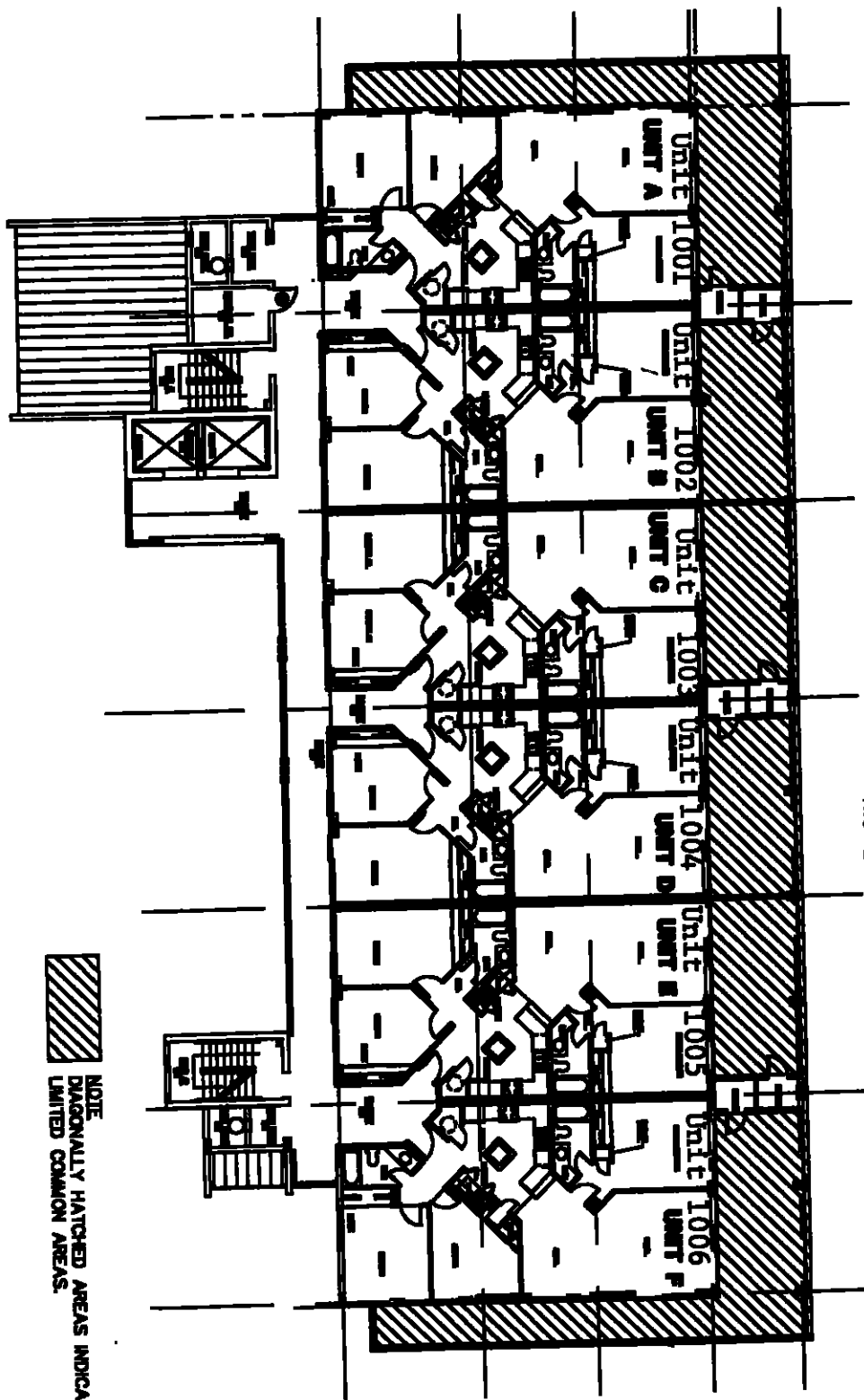
NOTE
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⊕ TYPICAL FLOOR PLAN



White Eagle, A CONDOMINIUM
Orange Beach, Alabama





NOTE
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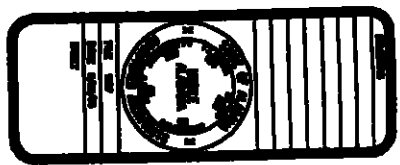
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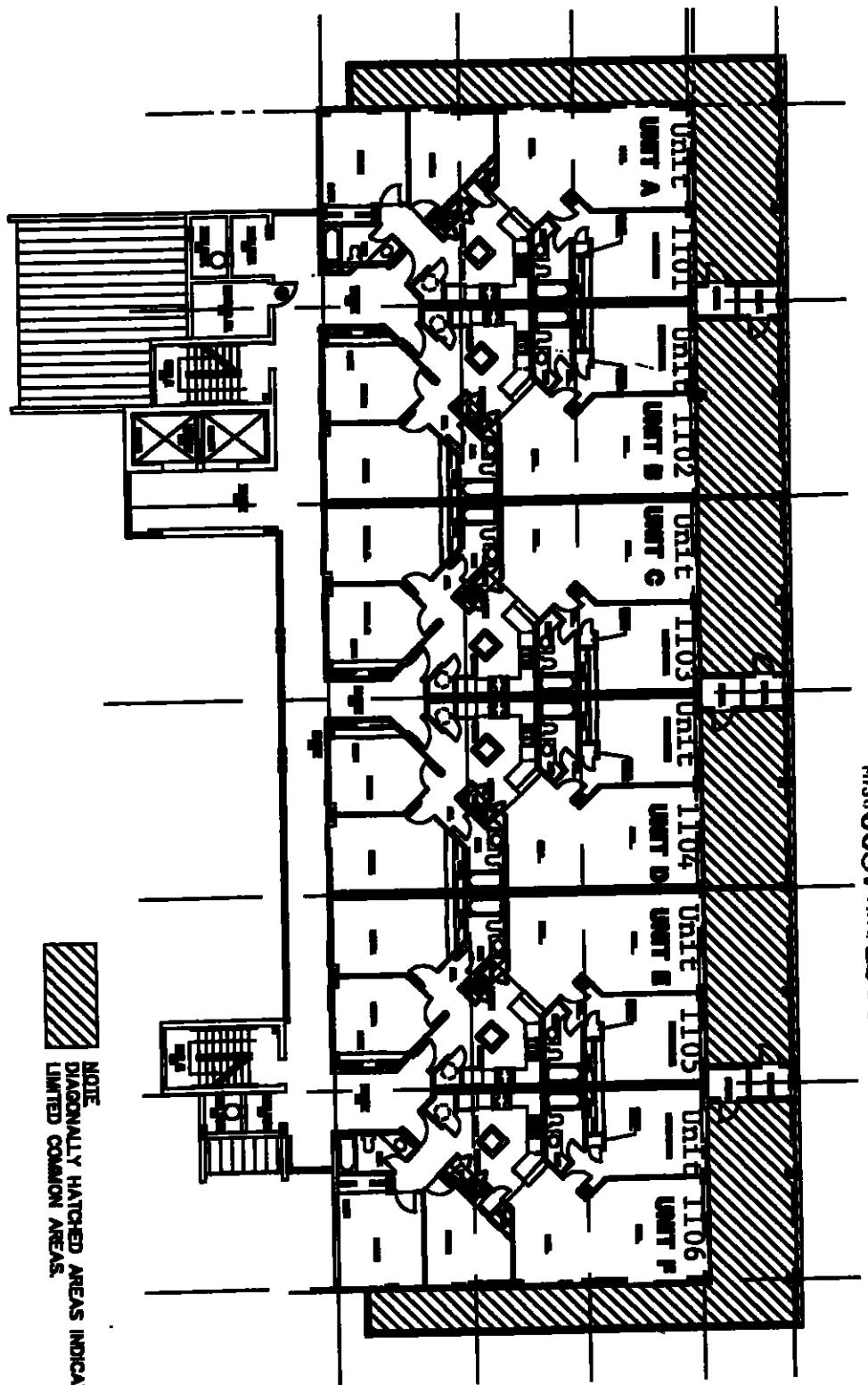
⊕ TYPICAL FLOOR PLAN



White Sands, A CONDOMINIUM
Orange Beach, Alabama

White Sands, P.C.





NOTE
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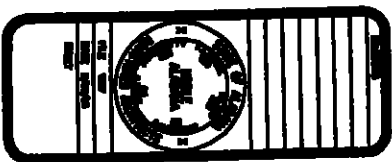
① TYPICAL FLOOR PLAN

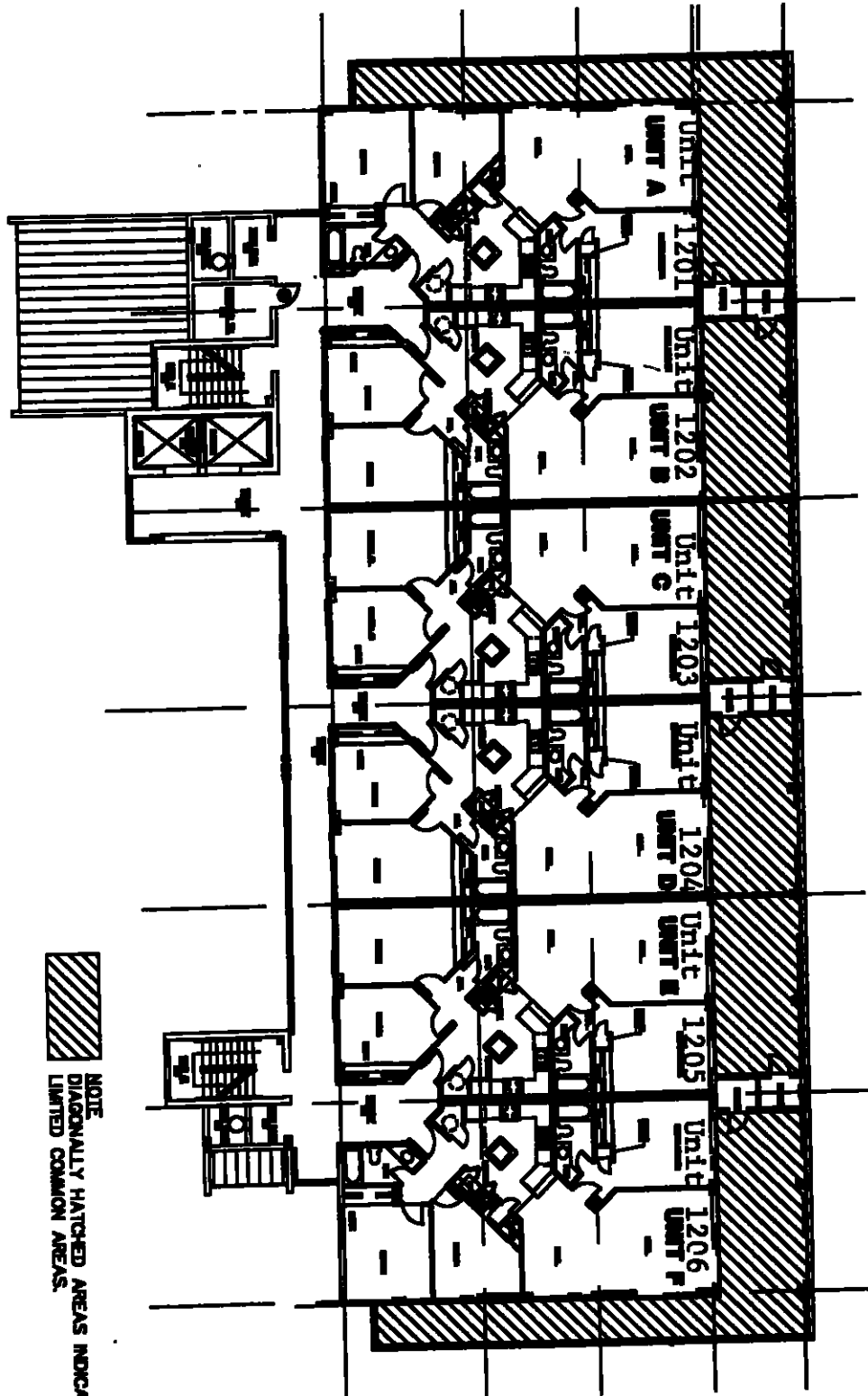


0 5 10 15 20

White Eagle, A CONDOMINIUM
Orange Beach, Alabama

dp architects. p.c.





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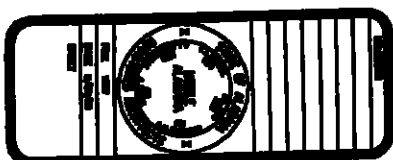
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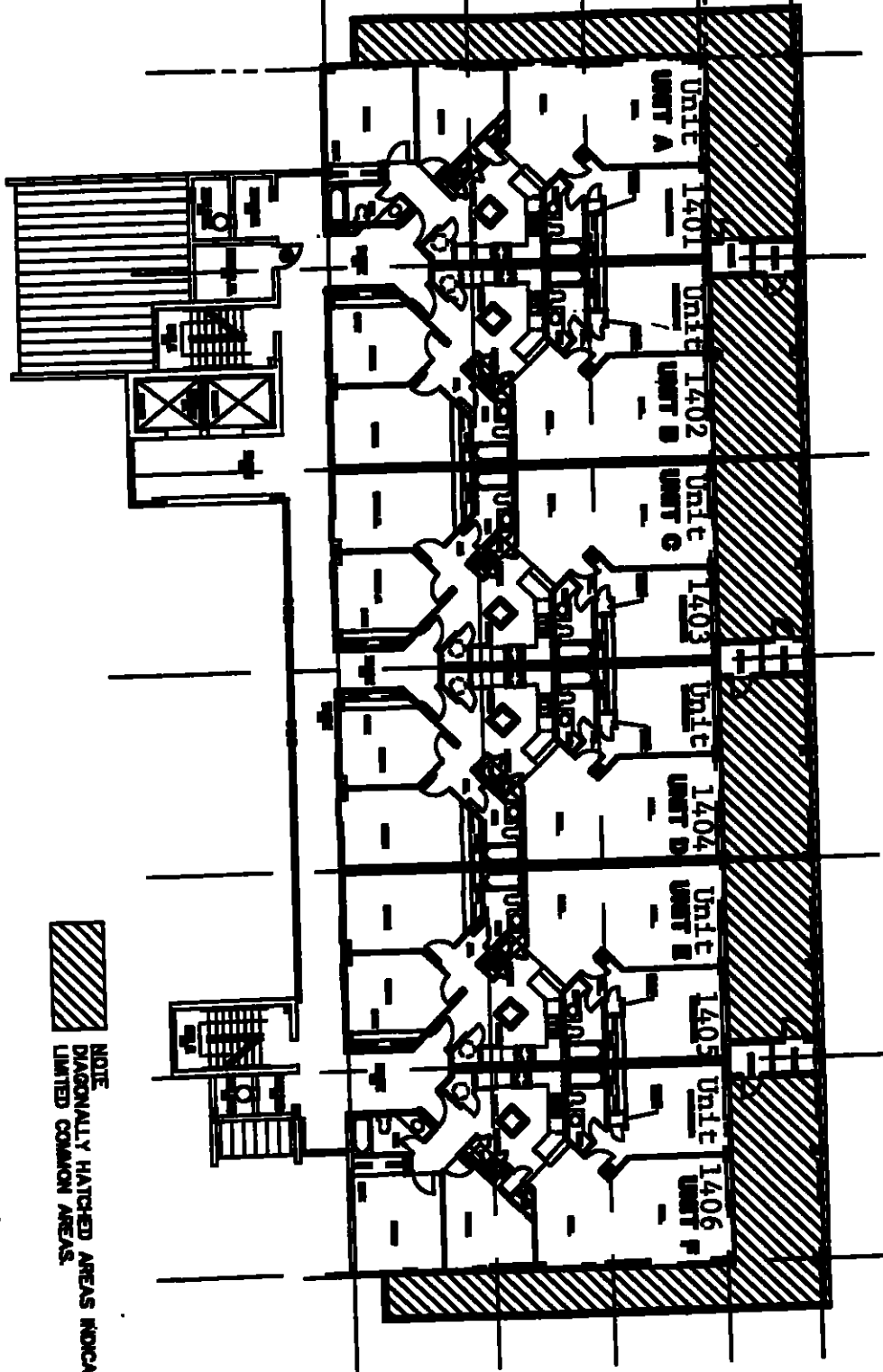
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White Oaks, A CONDOMINIUM
Orange Beach, Alabama

EXHIBIT "C", PAGE 16

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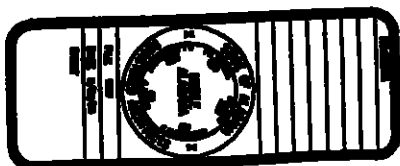
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⊕ TYPICAL FLOOR PLAN

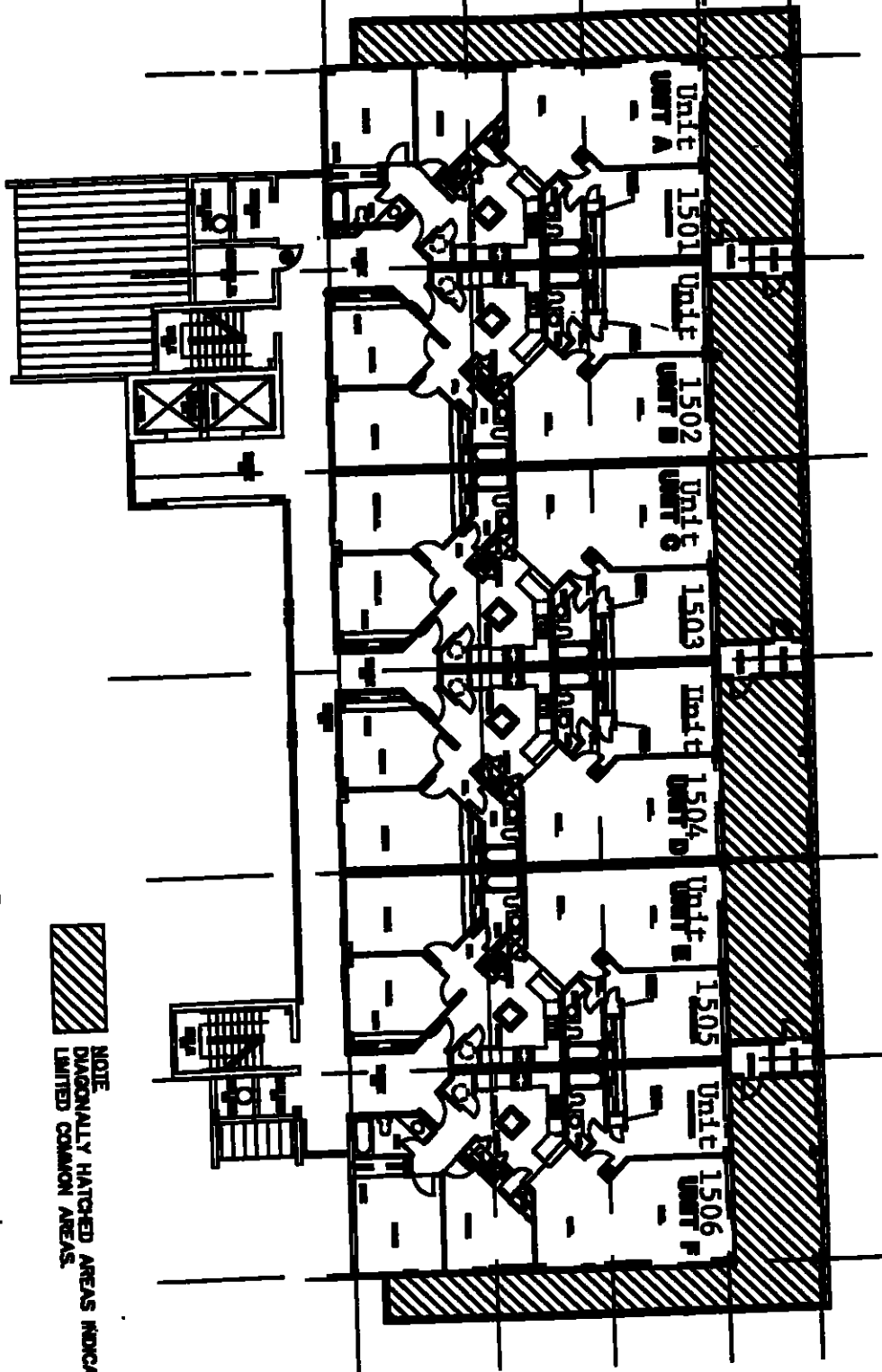


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architects, p.c.

Wild Eyes, A CONDOMINIUM
Orange Beach, Alabama



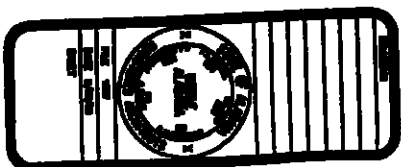
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⊕ TYPICAL FLOOR PLAN



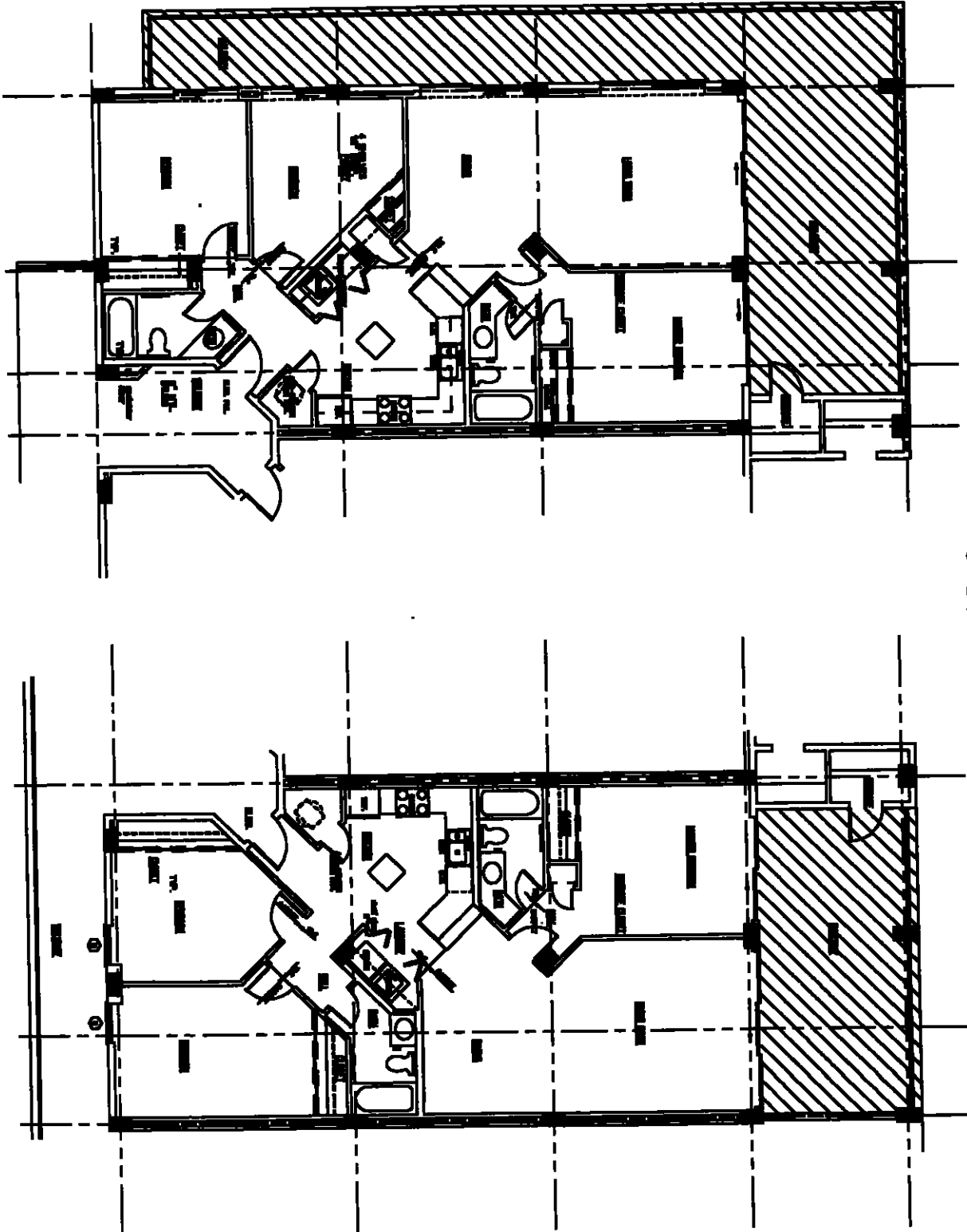
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A CONDOMINIUM
Orange Beach, Alabama



NOTE
DIAGONALLY HATCHED AREAS INDICATE
LIMITED COMMON AREAS



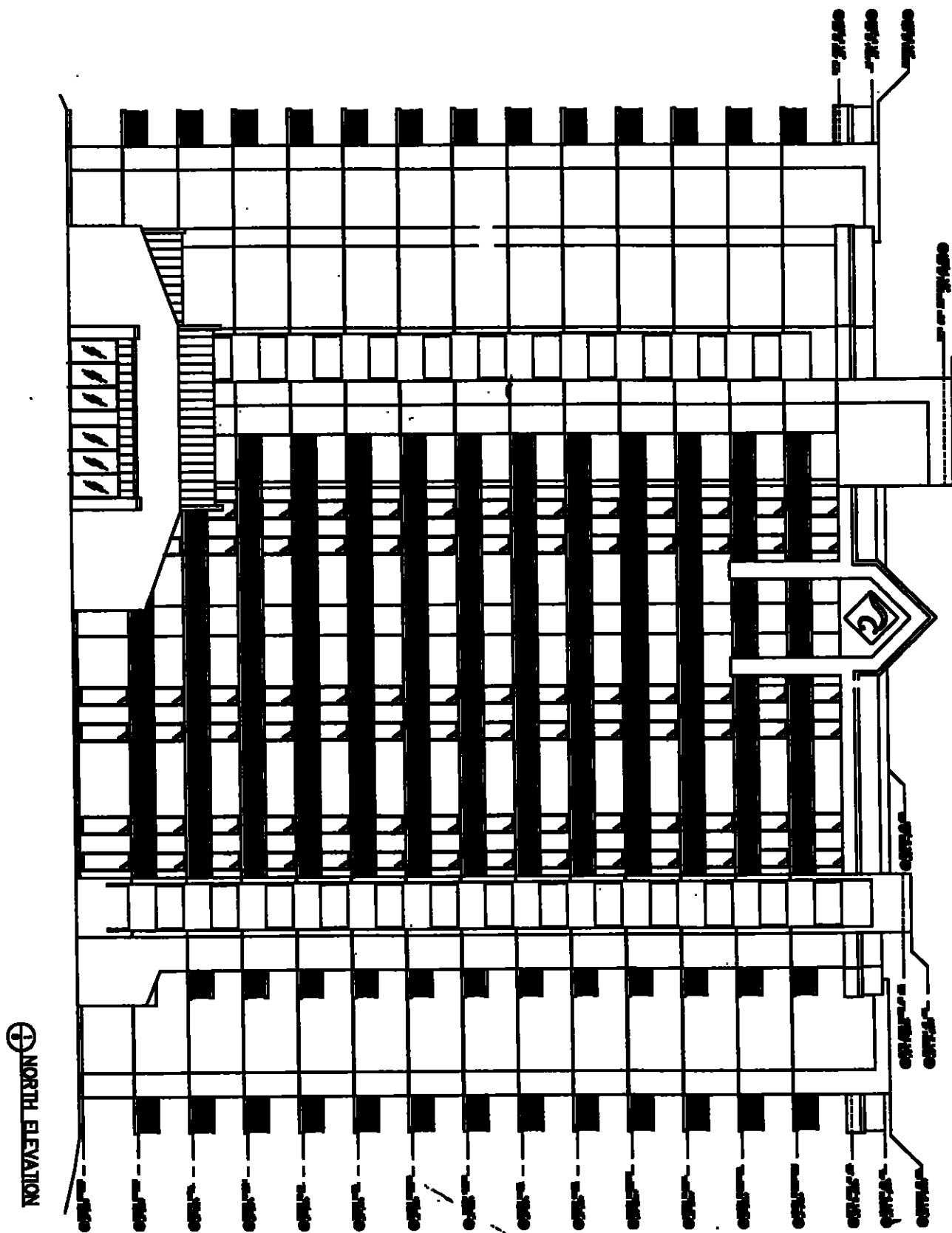
① ENLARGED FLOOR PLAN - UNIT A
SCALE: 1/8" = 1'-0"

② ENLARGED FLOOR PLAN - UNIT B & D
SCALE: 1/8" = 1'-0"



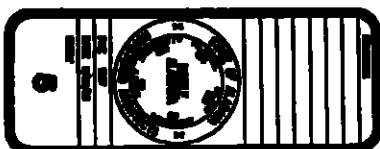
d p f
architects, p.c.
P.O. BOX 1000
ALBUQUERQUE, NM 87106

White Cape
A CONDOMINIUM
Orange Beach, Alabama



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⊕ NORTH ELEVATION



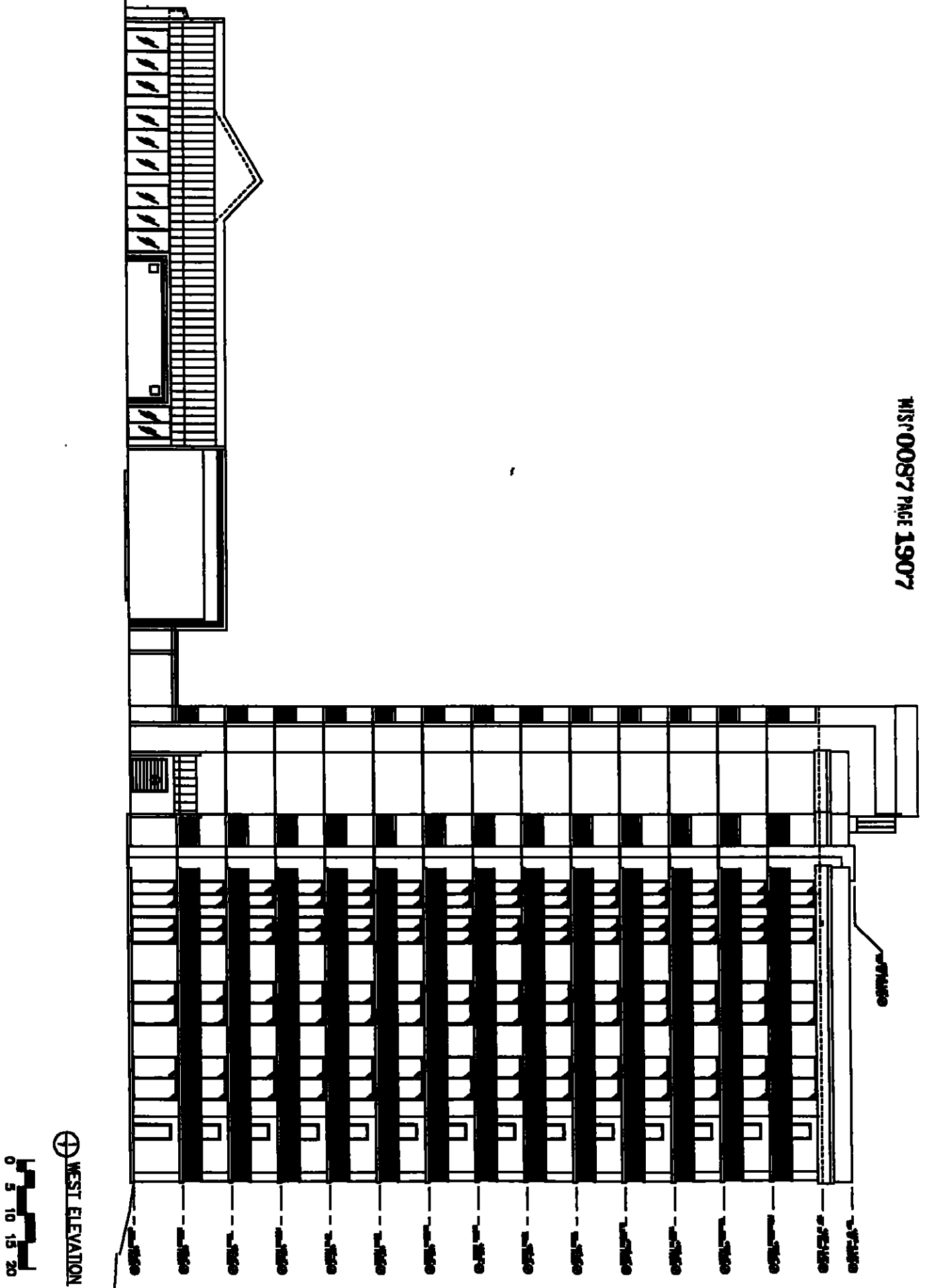
dpf architects, p.c.



Age Group	Percentage
0-5	10%
5-10	20%
10-15	30%
15-20	40%



EXHIBIT "C", PAGE 21



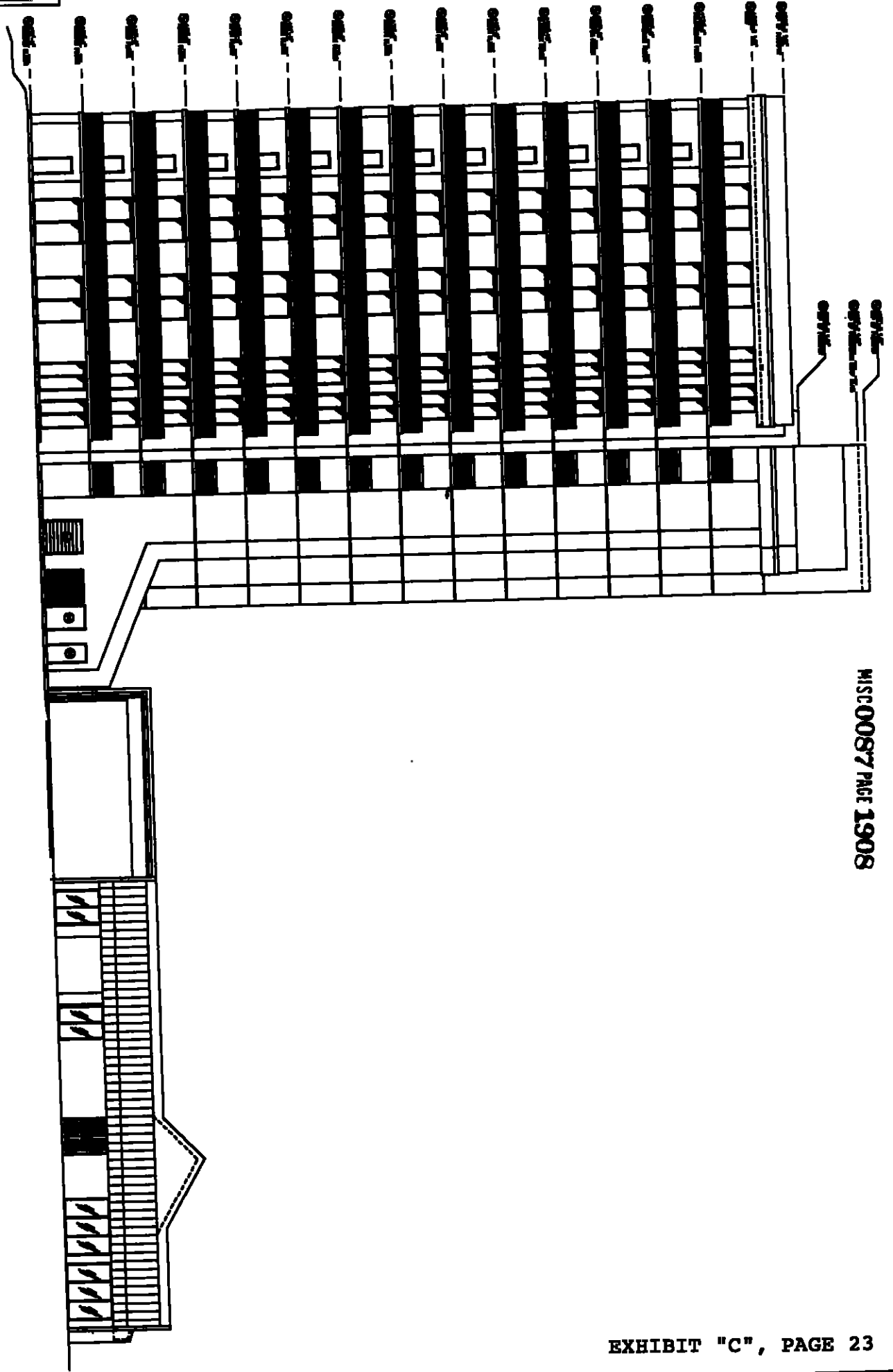


EXHIBIT "D"

**RULES AND REGULATIONS
CONCERNING THE USE OF
WHITE CAPS, A CONDOMINIUM**

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**RULES AND REGULATIONS
CONCERNING THE USE OF
WHITE CAPS, A CONDOMINIUM**

GENERAL COMMUNITY RULES

In addition to those rules and regulations contained in Article VIII of the Declaration Of White Caps, A Condominium, the following rules are hereby adopted by White Caps Condominium Association (the "Association"):

1. The facilities of White Caps, A Condominium (the "Condominium") are for the use of Condominium unit owners and their invited guests.
2. Designated walkways and paved areas shall be used at all times and shortcuts shall be avoided, both to prevent accidents and to preserve the appearance of planted areas. No motorized vehicle shall be operated on any walkway or other area except upon the driveways and parking areas designated for vehicular use.
3. No article shall be hung or shaken from the doors or windows or placed upon the window sills or balconies of the units. Under no circumstances shall laundry or other articles be placed or hung on the exterior portions of a unit.
4. No one shall make or permit any noises that will disturb or annoy the occupants of any of the other units in the Condominium, or do or permit anything to be done which will interfere with the rights, comfort or convenience of others.
5. Each owner shall keep such owner's unit in good state of preservation and cleanliness, and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors or window or balconies thereof, any dirt or other substance. All garbage and refuse shall be deposited with care in garbage containers intended for such purpose only at such times and in such manner as the Board of Directors may direct. Garbage cans shall be deposited in the garbage collection areas designated for that purpose in order to accommodate the garbage pickup service. No trash or other articles shall be burned, and all disposals shall be in accordance with such further rules and regulations as shall, from time to time, be promulgated by the Board of Directors of the Association and posted.
6. The sidewalks, driveways and parking areas must not be obstructed or encumbered or used for any purpose other than ingress or egress, and for parking. Automobile parking spaces have been provided. No vehicle shall be parked in such manner as to impede or prevent ready access to other parking areas. No parking space, driveway, or other area shall be used for the storage or parking of any boat, boat trailer, house trailer, camper trailer, or any other sort of towed vehicle or object. The owners, their employees, servants, agents, visitors,

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licensees and family will obey the parking regulations posted in the private streets, parking areas, and drives, and any other traffic regulations promulgated in the future for the safety, comfort or convenience of the owners. Washing of cars, boats, and vehicles of any kind is prohibited.

7. Water closets or other water apparatus in the buildings shall not be used for any purpose other than those for which they were designed, nor shall any sweepings, rubbish, rags or other articles be placed in the same. Any damage resulting from misuse of water closets or other apparatus in the units shall be repaired and paid for by the owner of such unit. Water shall not be left running for any unreasonable or unnecessary length of time.

8. A unit owner may identify such owner's unit with a name plate of a type and size approved by the Association and mounted in a place and manner approved by the Association. No other sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any unit owner or any part of the outside of a building, hung from or placed on windows, window sills, balconies, or otherwise displayed, without the prior written consent of the Association, except signs used by the Developer in the sale or leasing of units as provided in the Declaration.

9. Unit owners are reminded that alteration and repair of the common elements is the responsibility of the Association except for those matters which are stated in the Declaration Of Condominium Of White Caps, A Condominium to be the responsibility of a unit owner. No work of any kind is to be done upon or affecting those portions of exterior building walls or interior boundary walls which are the responsibility of the Association without first obtaining the approval required by the Declaration Of Condominium Of White Caps, A Condominium.

10. No radio or television antenna shall be attached to or hung from the exterior of any building without the written approval of the Board of Directors of the Association.

11. The Association, its workmen, contractors or agents, shall have the right of access to any unit at any reasonable hour of the day for the purpose of making inspections, repairs, replacements, or improvements, or to remedy any conditions which would result in damage to the portions of the building, or for any purpose permitted under the terms of the Declaration Of Condominium Of White Caps, A Condominium or the By-Laws of the Association. Except in case of emergency entry will be made by prearrangement with the owner. In the event the Association finds there are vermin, insects or other pests within any unit, it may take such measures as it deems necessary to control or exterminate the same.

12. No one shall use or permit to be brought into any unit or upon any of the common areas and facilities any inflammable oils or fluids such as gasoline, kerosene, naphtha or benzine, 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.

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SWIMMING POOLS

13. All persons using the swimming pools do so at their own risk. The Association is not responsible for any accident or injury in connection with use of the pools or for any loss or damage to personal property. Persons using the pool area agree not to hold the Association liable for any actions of whatever nature occurring within the pool area.

14. Persons twelve (12) years of age or under must be accompanied at all times by an adult.

15. Except by prior agreement with the Board of Directors of the Association, the number of persons in any one group in a pool at any one time will not exceed the resident members of the unit owner's family plus three (3) guests.

16. Residents are responsible for the conduct of their guests at all times, and for the careful observance of all safety and sanitation precautions. Any person having an apparent or known skin disease, sore or inflamed eyes, cough, cold, nasal or ear discharge, or any communicable disease shall be excluded from the pools.

17. No boisterous or rough play shall be permitted in the pools, or in the pool areas. Swimming alone when no other person is in the immediate pool areas is prohibited.

18. All persons are requested to cooperate in maintaining maximum cleanliness and tidiness in the swimming pool areas.

19. Tobacco, beverages, food or glassware are not to be brought into the pool areas, and no glassware shall be brought onto the patios.

20. The pools shall be used in accordance with such rules and regulations as shall, from time to time, be promulgated by the Board of Health of Baldwin County, Alabama, and/or by the Board of Directors of the Association, which rules shall be posted by the Board of Directors.

21. Use of the pools is reserved for persons eighteen (18) years of age and over, after 7 PM, local time. The pools will be closed from 10 PM to 10 AM, local time, and during such other times and seasons as may be decided by the Board of Directors of the Association.

TENNIS COURT

22. All persons using the tennis court do so at their own risk. The Association is not responsible for any accident or injury in connection with the use of the tennis court or for any loss or damage to personal property. Persons using the tennis court agree not to hold the Association liable for any actions of whatever nature occurring on or around the tennis court.

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23. Persons twelve (12) years of age or under must be accompanied at all times by an adult at the tennis court.

24. Residents are responsible for the conduct of their guests at all times, and for the careful observance of all safety and sanitation precautions at the tennis court.

25. No boisterous or rough play shall be permitted on the tennis court or in the tennis court area. All persons are requested to cooperate and maintain maximum cleanliness and tidiness in the tennis court area.

26. Use of the tennis court shall be scheduled through the Association or the resident manager and use of the tennis court shall be limited to one and one-half (1 1/2) hour reservations per unit owner. The tennis court will be closed from 11 PM to 8 AM, local time, and during such other times and seasons as may be decided by the Board of Directors of the Association. The last party to use the tennis court in the evenings shall be responsible for turning out the lights on the courts.

27. The tennis court shall be used in accordance with such rules and regulations as shall, from time to time, be promulgated by the Board of Directors of the Association, which rules shall be posted by the Board of Directors of the Association.

NATATORIUM

28. The persons using the facilities located in the natatorium or indoor pool building do so at their own risk. The Association is not responsible for any accident or injury in connection with the use of the indoor pool building or for any loss or damage to personal property. Persons using the indoor pool building agree not to hold the Association liable for any actions of whatever nature occurring on or around the indoor pool building.

29. Persons seventeen (17) years of age or under must be accompanied at all times by an adult at the indoor pool building.

30. Owners are responsible for the conduct of their guests at all times, and for the careful observance of all safety and sanitation precautions.

FITNESS ROOM

31. All persons using the fitness room do so at their own risk. The Association is not responsible for any accident or injury in connection with the use of the fitness room or for any loss or damage to personal property. Persons using the fitness room agree not to hold the Association liable for any actions of whatever nature occurring within the fitness room.

32. No person under the age of sixteen (16) shall be permitted to use the fitness room.

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33. Except by prior arrangement with the Board of Directors of the Association, the number of persons in any one group in the exercise room at any one time will not exceed the resident members of the unit owner's family plus one (1) guest.

34. Owners are responsible for the conduct of their guests at all times, and for the careful observance of all safety and sanitation precautions.

35. No boisterous or rough play shall be permitted in the fitness room. All persons are requested to cooperate in maintaining cleanliness and tidiness in the exercise room.

36. Tobacco, beverages, food or glassware are not to be brought into the fitness room. The fitness room will be closed from 10 PM to 10 AM, local time, and during such other times as may be decided by the Board of Directors of the Association. The fitness room shall be used in accordance with such rules and regulations as shall, from time to time, be promulgated by the Board of Directors of the Association.

RECREATION OR MEETING ROOM

37. Use of the Recreation or Meeting Room located in the Natatorium shall be scheduled through the Association or resident manager in accordance with the rules and regulations as shall, from time to time, be promulgated by the Board of Directors of the Association.

38. Use of the Recreation or Meeting Room is restricted to persons thirteen (13) years of age or older from 9:00 a.m. to 9:00 p.m. local time; after 9:00 p.m., use of the Recreation Area or Meeting Room is restricted to persons twenty-one (21) years of age or older. Upon the election of a Board of Directors of the Association by the Unit Owners after the Developer turns over the Association to the Owners,, the Board shall determine in its discretion the rules applicable to the usage of the Recreation or Meeting Room by the Owners and their guests.

39. Owners are responsible for the conduct of their guests at all times and must obey the rules and regulations set forth by the Board of Directors of the Association.

PETS

40. No pets shall be allowed in the pool or in the pool areas. Pursuant to a City of Orange Beach ordinance, no pets are allowed on the beach.

41. Pets shall only be walked in grass areas on the north side of the building and then only when on a leash.

42. Loud barking of pets in units is prohibited and shall be considered and treated as a public nuisance.

COMPLAINTS

43. Complaints regarding the management of the condominium or regarding actions of other owners or persons shall be made in writing to the Board of Directors of the Association. The Association may assign to one or more persons, or to a manager, full responsibility for the enforcement of all or any one of these Rules and Regulations. Any complaint or dispute as to any of these Rules and Regulations, or as to any application or enforcement thereof, shall be made in writing to the Board of Directors setting forth the nature of the matter complained of, and the names of all parties aggrieved and/or charged by reason of such matter. The Board of Directors may, in its sole discretion, decide the complaint without a hearing. In the event the Board of Directors elects to have a hearing upon such complaint, not less than five (5) days notice thereof shall be given in writing to each person named in the complaint as aggrieved and/or charged, stating the date, time and place of such hearing. Proceedings before the Board of Directors shall be informal, without technical rules of evidence, and each party aggrieved and/or charged shall be entitled to be present in person or by their attorney, and to be heard.

AMENDMENT AND ENFORCEMENT

44. Any consent or approval given under these rules by any person designated as manager or any person or committee designated as being responsible for the enforcement of any of these rules, and/or for the use of any common facility, shall be revocable at any time by the Board of Directors of the Association.

45. These rules are subject to amendment by the Board of Directors of the Association and to the promulgation of further rules by the Board of Directors and/or by the Association.

46. The foregoing Rules and Regulations shall not apply to the Developer, its successors or assigns, until it has surrendered control of the condominium or its control of the condominium has been terminated in the manner set forth in the Declaration Of Condominium Of White Caps, A Condominium and the By-Laws of the Association.

MISC:0087 PAGE 1915

EXHIBIT "E"

**RECORDED EASEMENTS, RESTRICTIONS AND ENCUMBRANCES
OF RECORD AFFECTING THE CONDOMINIUM PROPERTY**

MISC0087 PAGE 1916

**RECORDED EASEMENTS, RESTRICTIONS AND ENCUMBRANCES
OF RECORD AFFECTING THE CONDOMINIUM PROPERTY**

- (a) Coastal Building Setback Line as shown on the recorded plat of Mitchell Subdivision recorded on Slide 14654, in the office of the Judge of Probate, Baldwin County, Alabama.
- (b) Rights of other parties, the United States of America or the State of Alabama in and to the shore, littoral or riparian rights to the Condominium Property lying adjacent to the Gulf of Mexico.
- (c) Any lands of the Condominium Property which would be below mean high tide.
- (d) Any adverse claim arising by reason of rules or regulations being imposed upon the Condominium Property by any environmental agency of the State of Alabama or of the United States of America.
- (e) Any adverse claim based upon the assertion that some portion of the Condominium Property is tide or submerged land, or has been created by artificial means or has accreted to such portion so created.
- (f) Conveyance of 1/6 each oil, gas and other minerals and all rights in connection therewith as contained in deed from Elizabeth Turner Ladd, et viz to James Milton Ladd, Pelham Fleetwood Ladd and Noel Ladd Freeman dated February 3, 1976, recorded in Deed Book 483, Page 854.
- (g) Conveyance of 1/6 each oil, gas and other minerals and all rights in connection therewith as contained in deed from Elizabeth Turner Ladd, et viz to James Milton Ladd, Pelham Fleetwood Ladd and Noel Ladd Davis dated January 7, 1986, recorded in Real Property Book 239, Page 1024.
- (h) Conveyance of oil, gas and other minerals and all rights in connection therewith as contained in deed from Noel Ladd Davis, et viz, James Milton Ladd, et ux., Pelham Fleetwood Ladd, et ux., to Noel Ladd Davis, James Milton Ladd, Pelham Fleetwood Ladd, as Trustee of the John Milton Ladd and Elizabeth Turner Ladd Irrevocable Trust Agreement dated December 28, 1992 and February 5, 1993, recorded in Real Property Book 502, Page 1069.
- (i) Right of way conveyed the State of Alabama by instrument recorded in Deed Book 141, Page 51.
- (j) Fifty (50) foot minimum building setback line as shown on the recorded plat of Mitchell Subdivision on Slide 1465A.

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(k) Ten (10) foot EMC Easement as shown on the recorded plat of Mitchell Subdivision on Slide 1465A.

(l) Easement and right of way conveyed to Baldwin County Electric Membership Corporation by Romar, L.L.C., dated May 23, 1995, recorded at Real Property Book 635, Page 153.

(m) Ad valorem taxes which are a lien upon the subject property, but are not due and payable until October 1 of each year, and subject to any potential current use rollback taxes, any reappraisal, assessed value adjustment, and/or escape taxes which may become due by virtue of any future action of the Office of the Tax Collector and/or the Board of Equalization of Baldwin County.

(n) The Declaration and the Articles of Incorporation of the Association to be recorded upon completion of the Condominium Development, as well as the Association's By-Laws and Rules and Regulations.

(o) A construction loan mortgage to First Alabama Bank to finance the construction of the Condominium. Each Unit shall be released from the construction mortgage when such Unit is sold by the Developer.

All recording references are to the records in the Office of the Judge of Probate, Baldwin County, Alabama.

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EXHIBIT "F"

WHITE CAPS. A CONDOMINIUM
PERCENTAGE OWNERSHIP OF COMMON ELEMENTS
AND ALLOCATION OF COMMON EXPENSES AND VOTES

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WHITE CAPS. A CONDOMINIUM
PERCENTAGE OWNERSHIP OF COMMON ELEMENTS
AND ALLOCATION OF COMMON EXPENSES AND VOTES

<u>UNIT NUMBER</u>	<u>PERCENTAGE OWNERSHIP OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS AND ALLOCATION OF COMMON EXPENSES</u>	<u>NUMBER OF VOTES</u>
100	0.50000	0
101	1.18452	1
102	1.18452	1
103	1.18452	1
104	1.18452	1
105	1.18452	1
106	1.18452	1
201	1.18452	1
202	1.18452	1
203	1.18452	1
204	1.18452	1
205	1.18452	1
206	1.18452	1
301	1.18452	1
302	1.18452	1
303	1.18452	1
304	1.18452	1
305	1.18452	1
306	1.18452	1
401	1.18452	1
402	1.18452	1
403	1.18452	1
404	1.18452	1
405	1.18452	1
406	1.18452	1
501	1.18452	1
502	1.18452	1
503	1.18452	1
504	1.18452	1
505	1.18452	1
506	1.18452	1
601	1.18452	1
602	1.18452	1
603	1.18452	1

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604	1.18452	1
605	1.18452	1
606	1.18452	1
701	1.18452	1
702	1.18452	1
703	1.18452	1
704	1.18452	1
705	1.18452	1
706	1.18452	1
801	1.18452	1
802	1.18452	1
803	1.18452	1
804	1.18452	1
805	1.18452	1
806	1.18452	1
901	1.18452	1
902	1.18452	1
903	1.18452	1
904	1.18452	1
905	1.18452	1
906	1.18452	1
1001	1.18452	1
1002	1.18452	1
1003	1.18452	1
1004	1.18452	1
1005	1.18452	1
1006	1.18452	1
1101	1.18452	1
1102	1.18452	1
1103	1.18452	1
1104	1.18452	1
1105	1.18452	1
1106	1.18452	1
1201	1.18452	1
1202	1.18452	1
1203	1.18452	1
1204	1.18452	1
1205	1.18452	1
1206	1.18452	1
1401	1.18452	1
1402	1.18452	1
1403	1.18452	1
1404	1.18452	1

1405	1.18452	1
1406	1.18452	1
1501	1.18452	1
1502	1.18452	1
1503	1.18452	1
1504	1.18452	1
1505	1.18452	1
1506	1.18452	1
TOTALS -	100%	84

NOTE: The formula used to determine the allocation of percentage ownership of the Common Areas is based upon a comparison of the approximate square footage of the three bedroom Units and the approximate square footage of Unit 100.

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EXHIBIT "G"

**WHITE CAPS CONDOMINIUM ASSOCIATION
1996-1997 PROJECTED OPERATING BUDGET**

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**WHITE CAPS CONDOMINIUM ASSOCIATION
1996 - 1997 PROJECTED OPERATING BUDGET**

**PROJECTED ANNUAL
EXPENSES**

ADMINISTRATIVE EXPENSES:

Insurance Expense	\$ 30,000.00
Management Fee	12,000.00
Office Supplies	250.00
Postage	250.00
Stationary & Printing	250.00
Professional Fees	4,500.00
Security Services	33,000.00

MAINTENANCE EXPENSES:

Building Maintenance	16,000.00
Grounds Maintenance	16,000.00
Other Common Areas & Pool	10,000.00
Elevator Maintenance	8,000.00
Exterminator	3,500.00
Waste Collection	9,000.00
Repairs & Maintenance	13,935.00
Reserve & Contingency	29,435.00
Supplies & Grounds Maintenance	2,500.00
Supplies - Miscellaneous	1,000.00
Supplies - Pool Maintenance	5,000.00
* Alarm/Fire Pump Maintenance	
* Diesel Generator Maintenance	

* included in Repairs & Maintenance

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UTILITY EXPENSES:

Cable Television	6,000.00
Elevator Telephones	300.00
Baldwin County EMC	12,500.00
Orange Beach Water	30,000.00
Sewer System	35,000.00
Gas Heated Pool	<u>10,000.00</u>

TOTAL EXPENSES (APPROXIMATE): **\$288,420.00**

PROJECTED MONTHLY ASSESSMENT:

Each Unit (except Unit 100) =	\$285.00
Unit 100 =	\$95.00

NOTE: The formula used to determine the amount of Common Area Expenses to be paid by each Unit Owner is based upon an approximation of the relative amount of the percentage of undivided interest in the Common Area allocated to each Unit.

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