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STATE OF ALABAMA,
BALDWIN COUNTY
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Book 56
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A

STATE OF ALABAMA

COUNTY OF BALDWIN

DECLARATION OF CONDOMINIUM

OF

MAGNOLIA KEY TOWNHOMES, A CONDOMINIUM

THIS DECLARATION, made this the 18th day of October, 1985, by James W. Rayfield, Jr. and Fred H. Clay, Jr., d/b/a Magnolia Key Properties (hereinafter referred to as "Developer"), for themselves, their successors, grantees and assigns.

WHEREIN, Developer makes the following Declaration:

WHEREAS, Developer is the fee simple owner of that certain real property situated in Baldwin County, Alabama, and intends to improve the same in the manner herein described, which said real property is more particularly described as follows:

> PARCEL A: Begin at the Northwest corner of the West half of the Southwest quarter of the Northwest quarter of Section 4, Township 9 South, Range 5 East; run thence East for 172 feet; run thence South 641.7 feet, more or less to the point of beginning, also being a point on the North right of way line of Alabama Highway 180; run thence eastwardly along the North right of way line of said Highway 180, 162.1 feet; run thence North 109 feet; run thence West 53 feet; run thence North 44° 28' 04" West, 45.68 feet; run thence West 77 feet; run thence South 144 feet to the point of beginning. Containing 0.47 acres, more or less, and lying in Section 4, Township 9 South, Range 5 East, Baldwin County, Alabama.
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> PARCEL B: A ten foot easement running North from the Northwest conrer of said parcel to the South boundary of Wolf Bay, 427 feet, more or less and thence East for 30 feet along the boundary of said Wolf Bay.

WHEREAS, Developer intends to improve the property described above by contructing thereon four (4) units contained in one (1) building, parking area, and entrance way, said building and other improvements to be constructed substantially in accordance with the plans attached hereto and to be located substantially as shown on the site plan attached hereto as Exhibit "A" and made a part hereof by reference; and

WHEREAS, said land and the improvements constructed thereon are to be legally created as a condominium property by and through this enabling Declaration and under and by the authority of the Alabama Condominium Ownership Act (Section 35-8-1, et seq., Code of Alabama, 1975, as amended); and

WHEREAS, Developer may, in its sole discretion, as market or other relevant conditions may dictate, improve the property described in Exhibit "B" attached hereto and made a part hereof by reference by constructing thereon additional condominium units and common elements, including parking areas and a swimming pool, bulkhead, and pier, which said lands and improvements may be submitted to the condominium form of ownership and use by amendment to this Declaration in not less than one (1) nor more than five (5) additional phases.

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WHEREAS, Phase I of the condominium will be created by the recordation of this Declaration, which may be amended by Developer, without requiring the approval or consent of any of the unit owners to include any subsequent phase or phases; and

WHEREAS, it is the intent of Developer that the condominium, which said property is described above, shall be operated and administered as condominium property; and

WHEREAS, it is the intent of Developer that in the event all or a portion of the property described in Exhibit "B" be submitted to the terms of this Declaration by amendment hereto, that it should be administered as condominium property; and

WHEREAS, the Developer proposes to establish by this Declaration a plan (a) for the individual ownership of certain areas or spaces and certain personal property, which areas or spaces and personal property are hereinafter defined and referred to as the "private elements", and (b) for the co-ownership by the owners of the private elements, as owners in common, of all of the remaining real and personal property, which is hereinafter defined and referred to as the "common elements";

NOW, THEREFORE, Developer makes the following Declaration as to the division and uses of the property described above and improvements to be constructed thereon (and, in the event that any or all of the property described in Exhibit "B" is submitted to the condominium form of ownership and use by amendment to this Declaration, said property and improvement constructed thereon) hereby certifying that this Declaration shall constitute a covenant running with the land and shall be binding upon Developer, its successors and assigns, and upon all subsequent owners of all or any part of said real property and improvements, together with their grantees, lessees, successors, heirs, executors, administrators, devisees or assigns:

1. **PURPOSE.** The purpose of this Declaration is to submit the lands hereinafter described and the improvements to be constructed thereon to the condominium form of ownership and use in the manner provided by the Alabama Condominium Ownership Act (Section 35-8-1, et seq., Code of Alabama, 1975, as amended); and to make provisions for the future submission, by amendment to this Declaration, of the property described in Exhibit "B", in whole or in part, and any improvements thereon constructed, to the condominium form of ownership and use in the manner provided for by said Alabama Condominium Ownership Act, in the event Developer determines to so submit said property.

2. **NAME.** The name by which this condominium is to be identified is Magnolia Key Townhomes, a Condominium.

3. **THE REAL PROPERTY.**

3.1 The lands owned by the Developer which are herewith submitted to the condominium form of ownership are the following described lands, situated in Baldwin County, Alabama:

PARCEL A: Begin at the Northwest corner of the West half of the Southwest quarter of the Northwest quarter of Section 4, Township 9 South, Range 5 East; run thence East for 172 feet; run thence South 641.7 feet, more or less to the point of beginning, also being a point on the North right of way line of Alabama Highway 180; run thence eastwardly along the North right of way line of said Highway 180, 162.1 feet; run thence North 109 feet; run thence West 53 feet; run thence North 44° 28' 04" West, 45.68 feet; run thence West 77 feet; run thence South 144 feet to the point of beginning. Containing 0.47 acres, more or less, and lying in Section 4, Township 9 South, Range 5 East, Baldwin County, Alabama.

PARCEL B: A ten foot easement running North from the Northwest corner of said parcel to the South boundary of Wolf Bay, 427 feet, more or less and thence East for 30 feet along the boundary of said Wolf Bay.

3.2 The real property which may in the future be submitted, in whole or in part, to the condominium form of ownership by amendment to this Declaration is the parcel of real property lying and being in Baldwin County, Alabama, described in Exhibit "B" attached hereto.

4. **NAME AND ADDRESS OF PERSON TO RECEIVE SERVICE OF PROCESS.** The name and address of the person to receive service of process for the condominium shall be James W. Rayfield, Jr., Post Office Box 1398, Gulf Shores, Alabama 36542.

5. **DEFINITIONS.** The terms used in this Declaration and in the Articles of Incorporation of Magnolia Key Townhomes Owners' Association, Incorporated, and the By-Laws of Magnolia Key Townhomes Owners' Association, Incorporated, shall have the meanings stated in the Alabama Condominium Ownership Act, as said Act is written as of the date hereof, and as follows:

A. **Association.** Magnolia Key Townhomes Owners' Association, Incorporated, a non-profit corporation, or any successor entity, composed of all the unit owners, which shall be responsible for the administration and management of the condominium property, the Articles of Incorporation and By-Laws of Magnolia Key Townhomes Owners' Association, Incorporated, being attached hereto and made a part hereof as Exhibits "C" and "D".

B. **Board.** The Board of Directors of the Magnolia Key Townhomes Owners' Association, Incorporated.

C. **By-Laws.** The By-Laws of the Magnolia Key Townhomes Owners' Association, Incorporated, attached hereto as Exhibit "D" and made a part hereof by reference, as the same may from time to time be amended.

D. **Common Elements.** A part or parts of the condominium property as herein set forth in which all of the unit owners have an undivided interest. A schedule setting forth the method of determining the percentage of undivided ownership interest of each unit in the common elements is attached hereto as Exhibit "E" and made a part hereof by reference. In the event Developer, at its sole option, elects to incorporate subsequent phases into this condominium, the common elements will then become the common elements of the entire condominium, without difference or distinction; and any additional common elements which may be constructed in any subsequent phases will then become the common elements of the entire condominium, without difference or distinction.

The common elements shall consist of all of the condominium property which is not within or a part of the individual units as such units are shown on the attached Exhibit "A" or described herein and, without limitation of the foregoing, shall include the following:

(1) All attics, foundations, columns, girders, beams, and supports of buildings and such component parts of the walls, roofs, floors and ceilings as are not located within the units.

(2) All yards, gardens, lawn areas and landscaping;

(3) All compartments or installations of central services, including, but not limited to, power, gas, water, television cables and communications lines, which are not used or reserved for the exclusive use of certain units;

(4) All recreational areas and the like existing for the common use;

(5) All driveways, paved areas and all parking areas, whether or not assigned to the exclusive use of certain units

(6) Entry/monument and all walls and partitions on the perimeter of the lands and other ornamental works;

(7) All balconies and patios, whether or not assigned to the exclusive use of any unit;

(8) All other elements of the buildings or of the condominium property desirably or rationally of common use or otherwise not specifically enumerated under limited common elements or private elements.

E. **COMMON EXPENSES.** The expenses for which the unit owners will be assessed by the board, which expenses shall include, but shall not be limited to, the actual or estimated costs of:

(1) Taxes of all kinds which may be levied against the condominium property and which are not levied against an individual unit or unit owner;

(2) Maintenance, management, operation, repair and replacement of and additions to the common elements and those parts of the units as to which, pursuant to other provisions hereof, it is the responsibility of the association to maintain, repair and replace;

(3) Utilities incurred in the operation of the common elements not otherwise paid by any individual unit owner or owners;

(4) Management and administration of the association including, but not limited to, compensation paid by the association to a managing agent, accountant, attorney or other employees;

(5) Liability and casualty insurance carried by the association with respect to designated parts of the condominium property;

(6) Any other item held by or in accordance with this Declaration or recorded amendment thereto, the Articles of Incorporation or the By-Laws of the association, to be a common expense;

(7) Expenses agreed upon as common expenses by the unit owners or as determined by the board to be a common expense;

(8) The expense of purchasing and/or maintaining the unit occupied by the management and owned by the association as may be determined by the board;

F. **Condominium Documents.** This Declaration and the exhibits annexed hereto as the same may from time to time be amended. Such exhibits are as follows:

Exhibit "A": Plat of survey of land and buildings in Phase I and subsequent phases

Exhibit "B": Legal description of lands which may be submitted to the condominium form of ownership and use

Exhibit "C": Articles of Incorporation of Magnolia Key Townhomes Owners' Association, Incorporated

Exhibit "D": By-Laws of Magnolia Key Townhomes Owners' Association, Incorporated

Exhibit "E": Schedule of percentage of undivided ownership of each unit in the common elements

Exhibit "F": Rules and Regulations of Magnolia Key Townhomes Owners' Association, Incorporated

Exhibit "G": Proposed Budget

G. **Developer.** James W. Rayfield, Jr. and Fred H. Clay, Jr., d/b/a Magnolia Key Properties.

H. **Declaration.** This instrument, and the exhibits attached hereto, by which the property is submitted to the provisions of the Alabama Condominium Act, as herein provided, and as such Declaration may be from time to time amended.

I. **Limited Common Elements.** There are no limited common elements.

J. **Majority of unit owners.** The owners of more than fifty percent (50%) of the undivided ownership of the common elements. Any specific percentage of the unit owners means that percentage of the unit owners who, in the aggregate, own such specified percentage of the entire undivided ownership of the common elements.

K. **Mortgage.** A mortgage covering a unit and the undivided interest in the common elements appurtenant thereto.

L. **Mortgagee.** A beneficiary under a mortgage.

M. **Occupant.** A person or persons in possession of a unit, regardless or whether such person is a unit owner.

N. **Person.** Any natural person, corporation, partnership, association, trustee, fiduciary or other legal entity capable of holding title to real property.

O. **Private Elements.** That part of the property set forth herein and intended for the exclusive ownership or possession of a unit owner. The private elements of each unit shall consist of the following:

(1) The air space and the area of the building lying within the unit boundaries;

(2) The surfacing or finishing materials on the interior of exterior walls and on interior walls separating one unit from another unit and on the floors and ceilings;

(3) The studs and structural components of all interior walls located within the boundaries of the unit, which are not load bearing walls, pillars, columns, girders, beams, or supports utilized by or serving more than one unit;

(4) All bathtubs, toilets and sinks, the range, microwave oven, garbage disposal, dishwasher, water heater, air conditioning and heating unit and like fixtures and all hardware and interior lighting fixtures.

P. **Unit.** Each unit shall include that part of the area and air space of a building which lies within the following described boundaries:

(1) Vertical Boundaries. The vertical boundaries shall be the plane of the interior surfaces of the unit's perimeter walls, but shall not include the sheetrock; at window and door openings, the vertical boundary shall extend to the interior surface of the window or door;

(2) Horizontal Boundaries. The lower boundary of all units shall be the upper surface of the concrete slab; the upper boundary of all units shall be the interior surface of the ceiling material;

(3) In addition to the foregoing, each unit shall include the respective undivided interest in the common elements assigned thereto as reflected in Exhibit "E" attached hereto and made a part hereof by reference. Each unit is numbered as shown on the plat attached hereto as Exhibit "A" and made a part hereof by reference. Included within each unit, without limitation, shall be any finishing materials applied or affixed to the interior surfaces of the common, exterior or interior walls, floors, or ceilings (including, but not limited to, paint, wallpaper, vinyl wall or floor coverings and carpet), interior walls and all utility pipes, lines, systems, fixtures or appliances serving only that unit (whether or not within the boundaries of such unit); provided, however, that no pipes, drains, wires, conduits, ducts, flues and shafts contained within a unit and forming a part of any system serving more than one shall be deemed to be a part of said unit.

Q. **Unit Owner.** The person or persons whose interest, individually or collectively, aggregate ownership of a unit and of the undivided interest in the common elements appurtenant thereto. Unless specifically provided otherwise herein, Developer shall be deemed a unit owner so long as it is the legal title holder of any unit.

6. **PHASING.**

6.1 The property described on Exhibit "B", which Developer may submit to the condominium form of ownership and use at a future date or dates in not less than one (1) and not more than five (5) additional phases of Magnolia Key Townhomes, a Condominium, is not hereby submitted to condominium ownership or use; however, subject to and in accordance with the following terms and provisions, said property, or a portion or portions thereof, may be submitted to the condominium form of ownership and use by amendment hereto:

6.1(A) In the event any additional phase or phases may be developed and made subject to this Declaration, the total number of buildings constructed pursuant to each such additional phase shall be one (1) and each such building shall contain not less than five (5) nor more than six (6) condominium units, and each such unit shall not be less than 1,000 square feet nor more than 1,500 square feet and shall be constructed with labor and materials of comparable quality as units located in Phase I; provided, however, the Developer may construct such building or buildings in a different style, type, design, fashion, floor plan, size, dimensions, exterior, or interior arrangements as Phase I.

6.1(B) Any phase or phases which may be developed and made subject to the provisions of this Declaration shall contain common elements consistent in nature with and complementary to those existing in Phase I of Magnolia Key Townhomes, a Condominium, (and in any other phase which may have been heretofore developed and made subject to the provisions of this Declaration), and as are reflected on the site plan attached hereto as Exhibit "A", with the exception that one such phase or phases may contain, in the sole discretion of Developer, a swimming pool, pier and bulkhead, as are reflected on the site plan attached hereto as Exhibit "A".

6.1(C) Any additional phases may, from time to time, be added to and made subject to this Declaration by the execution, by Developer alone, of an amendment to this Declaration, which said amendment shall be recorded in the Probate Court of Baldwin County, Alabama. Such amendment shall have attached to it exhibits similar to those attached to this Declaration and containing such other information concerning said property and the improvements constructed, or to be constructed, thereon as is required by law.

6.1(D) The right of Developer to add additional phase or phases to Magnolia Key Townhomes, a Condominium as herein provided shall cease and terminate as of October 1, 1992, and only those phases which shall have been submitted to this Declaration prior to said date shall be deemed to have been validly submitted to this Declaration.

6.2 Any person or entity who shall acquire any unit in Magnolia Key Townhomes, a Condominium, or any interest in or lien upon any such unit, regardless of whether said unit shall be located in Phase I or any additional phase or phases, agrees to be bound by the terms and provisions of Paragraph 6.1 above, and that any amendment to this Declaration executed by Developer alone pursuant to said Paragraph 6.1 shall be binding and effective as written notwithstanding the fact that the undivided interest of the unit owners in the common elements will be changed thereby. Further, any party which accepts or acquires an interest of any kind or nature in any unit located in the condominium, (including Phase I and any additional phase or phases), whether by deed, mortgage, judgment lien, or otherwise, shall thereby be deemed to have appointed Developer as that party's irrevocable true and lawful attorney-in-fact, coupled with an interest, for that party and in that party's name, place, and stead, to sign, seal, execute, and deliver the amendments as described hereinabove; and to alter, reallocate and reduce the percentage of undivided interest in the common elements and common surplus appurtenant to that unit in the manner set forth in this Declaration; all of which may be executed by Developer in its own name without setting forth or stating the principal party's name or making reference to this power of attorney or that the Developer is executing same as the attorney-in-fact of the principal party; and shall further take such interest subject to the right and authority of the Developer to submit and dedicate to the provisions of this Declaration, from time to time, all or any portion of the property described in Exhibit "B" pursuant to the aforesaid provisions, or not to submit or dedicate the same, or to develop the said property in any manner, fashion, degree, or extent Developer so desires, in its sole and exclusive option and election. The provisions of this subparagraph shall further constitute a covenant which shall forever bind and run with the lands affected by this Declaration. This power of attorney shall be a durable power of attorney and shall not be affected by the disability, incompetency, or incapacity of the principal.

Any party which accepts or acquires an interest of any kind or nature in any unit located in the condominium, as aforesaid, shall furthermore be deemed to acknowledge, consent, and agree that the following rights and conditions shall be binding and applicable upon the recording of each amendment for the submission of any additional phase or phases as described in Paragraph 6.1:

The land described in each such amendment submitting such phase or phases shall be governed in all applicable respects by the provisions of this Declaration.

The percentage of undivided interest in the common elements appurtenant to each unit in Phase I shall be automatically altered, reallocated and reduced in accordance with the exhibit or schedule which shall be set forth in any such amendment. Upon the recordation of each such amendment admitting any additional phase or phases the amount by which the undivided interest of a unit in Phase I in the common elements is reduced shall thereby be deemed released by and divested from such unit owner and shall thereby revert to and vest in the Developer, its successors or assigns.

Each deed, mortgage, or other instrument affecting a unit shall be deemed given subject to the limitations that the undivided interest in the common elements appurtenant to each unit shall, upon the recordation of each amendment admitting any additional phase or phases, be altered, reallocated and reduced in accordance with this Declaration.

The undivided interest in the common elements appurtenant to each unit shall be deemed to include any additional common elements submitted to this Declaration by amendment, which amendment shall grant and convey to the owners of interest in any unit the appropriate undivided interest, and each deed, mortgage, or other instrument affecting a unit shall be deemed to include such additional common elements and the ownership of any unit and lien of any mortgage shall automatically include and attach to such additional common elements upon the recordation of any such amendment admitting any additional phase or phases.

The recordation of an amendment to the Declaration admitting any additional phase or phases shall not alter the amount of the lien for common expenses assessed or to be assessed to a unit in Phase I, prior to the admission of such phase or phases. Each unit owner agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each amendment thereto admitting any additional phase or phases is and shall be deemed to be in accordance with the Act and, for the purpose of this Declaration and the Act, any changes in the undivided interest appurtenant to any unit as set forth in any such amendment to the Declaration which is in accordance with the provisions set forth herein shall be deemed to be made by agreement of the owners and holders of all interests in all units in this condominium.

The owner of any interest in any unit in this condominium agrees to execute and deliver such instruments, papers, and documents as are necessary or desirable to accomplish the admission of any additional phase or phases in accordance with the provisions and intent of this Declaration.

Any party which accepts or acquires an interest of any kind or nature in any unit located in the condominium, as aforesaid, shall thereby appoint Developer or its nominee as such party's attorney-in-fact for the purpose of altering, reducing or reallocating from time to time the undivided interest appurtenant to the subject unit in accordance with the provisions of this Declaration and, to the extent required by law to carry out the intent of Paragraph 6, on behalf of such party to consent to or vote in favor of the amendment of this Declaration. The appointment of Developer or its nominee as such attorney-in-fact and the granting of such special power to Developer or its nominee shall be deemed to be coupled with an interest, shall be irrevocable and binding upon the heirs, successors, and assigns of such party, but shall expire when all of the lands herein described in Exhibit "B" have been submitted to this Declaration or October 1, 1992, whichever first occurs.

Any amendment or amendments filed by the Developer, its successors or assigns, pursuant to the provisions of this Paragraph 6 need not be approved by the Association, unit owners, or lienors or mortgagors of units or of the condominium, whether or not elsewhere required for an amendment. No portion of the lands included in any additional phase or phases shall be subject to any claim of interest, title, or encumbrance in favor of the Association, unit owners, or lienors or mortgagors of units or of the condominium until such time as an amendment has been filed by the Developer, its successors or assigns, in the manner set forth in Paragraph 6.

6.3 Anything herein to the contrary notwithstanding, Developer does not hereby commit itself to submit the property described in Exhibit "B", in whole or in part, to the condominium form of ownership and use under the terms of Paragraph 6.1 of this Declaration. Developer shall have the right, but not the obligation, to develop any portion of said property in any manner and to any extent Developer sees fit, or to decline to develop said property entirely.

7. **MAGNOLIA KEY TOWNHOMES DEVELOPMENT PLAN.**

PARAGRAPHS 7.1 THROUGH 7.4 APPLY ONLY TO PHASE I:

7.1 The building and units have been, or will be, constructed by Developer substantially in accordance with the plans and specifications attached hereto as Exhibit "A", which plans include representative floor plans of the units and show the respective unit numbers, the location of the units within the building and the dimensions of the private and common elements comprising the units, and the location of said improvements on the property. (A complete set of plans and specifications is available for inspection in the office of the Developer.)

7.2 This Declaration may be amended by the filing of such additional plans as may be required to sufficiently identify and describe the improvements on the property and in order to show completion of improvements. Such identification, description and completion may be shown by a verified statement of a registered architect or licensed professional engineer certifying that the completed improvements have been constructed substantially as herein represented or, if not so constructed, then designating the changes made and certifying that the plans filed simultaneously with such verified statement depict the location and unit numbers of the units and the dimensions of the private and common elements comprising the units as built. Such plans or verified statement, or both, when signed and acknowledged by such registered architect or licensed professional engineer, shall constitute an amendment to this Declaration without approval of the association, unit owners, lessees, or mortgagees of units of the condominium; provided, however, that no such amendment shall increase or decrease the number of units without the prior written consent of all unit owners and holders of record of any liens thereon, nor alter the percentage of undivided interest of any unit owner or change any unit without the prior written consent of the owner and holders of record of any liens on any such unit, except as pursuant to Paragraph 6 of this Declaration.

7.3 The building will be constructed of wood frames on concrete slabs, with exteriors of brick, masonite, and wood siding, and a roof of fiberglass shingles over plywood. The interior walls will be sheetrock. A parking area containing approximately six (6) parking spaces will be provided substantially as shown on Exhibit "A". Each unit will have a designated parking space with the remaining parking spaces used on a "first come" basis subject to such Rules and Regulations for the use thereof as may be promulgated by the board from time to time.

Each unit will be equipped with a range and oven unit, refrigerator, dishwasher, in-sink garbage disposal, and microwave oven. Each unit will be supplied with water, sewer, electricity and with separate heating, air conditioning, and water heater.

7.4 Easements are reserved throughout the condominium property as may be required for ingress and egress to public right-of-ways and for utility services in order to adequately serve the units and the common elements; provided, however, such easements to a unit shall be only in accordance with the plans and specifications for the building as shown on the exhibits attached hereto or as constructed, unless approved in writing by the unit owner. Each owner shall have an easement in common with the owners of all other units to use all pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other units and located in such unit. The association shall have a right of access to each unit to inspect the same, to revoke violations therefrom and to maintain, repair and replace the common elements contained therein or elsewhere in the building.

PARAGRAPHS 7.5 THROUGH 7.8 APPLY TO ALL PHASES:

7.5 Developer reserves the right to change the interior design of all units. Developer further reserves the right to alter the boundaries between the units, and any such alteration shall be reflected by an amendment to this Declaration which may be executed by the Developer alone; provided, however, no such alteration of boundaries shall increase or decrease the number of units nor alter the percentage or percentages of undivided interests in the common elements of such unit or units so altered without compliance with Paragraph 20 of this Declaration, except as pursuant to Paragraph 6 of this said Declaration.

7.6 A valid exclusive easement is hereby declared and established for the benefit of each unit and its owner or occupant consisting of the exclusive right to use and occupy the patio, balcony and storage areas serving such unit.

7.7 The owner of each unit shall have an undivided interest in the common elements as tenants in common with all other owners equal to his unit's percentage of undivided interest. Each unit's percentage of undivided interest with respect to Phase I of the project, unless and until an additional phase is added by amendment to this Declaration, shall be determined in accordance with the proportion which the square feet in each unit bears to the total of the square feet in all of the units, pursuant to the following formula: The numerator of the fraction to determine the percentage of undivided interest of each unit shall be the total number of square feet in the total living area of the unit (that is, all square footage within the perimeter walls of the unit) all as determined and set forth in the plans; and, the denominator of the fraction to determine the percentage of undivided interest of each unit shall be the sum total of the total number of square feet in the living area of all units in Phase I, and in any additional phase or phases upon such time as it or they may be annexed by applicable amendment to this Declaration (that is, the sum total of all square feet of floor area within the perimeter walls of all units) all as determined and set forth in the plans in the respective phases. In order to calculate such percentages, the said numerator shall be divided by the said denominator and carried out and rounded up to the nearest third decimal place (such that if the quotient is .0185 or greater, that quotient shall be rounded up to .019).

A schedule setting forth the percentage of undivided interest of each unit in Phase I in the common elements in Phase I is attached hereto, marked Exhibit "E", and by reference made a part hereof. So long as the condominium consists only of Phase I, each unit's percentage of undivided interest shall be as set forth in Exhibit "E". If any additional phase or phases are developed and made subject to the terms of this Declaration as set forth in Paragraph 6, upon execution and recording of the applicable amendment to this Declaration, the percentage of undivided interest of each unit in Phase I shall automatically be altered, reallocated and reduced in accordance with the above formula, and the balance of such percentage of undivided interest shall be deemed released by and divested from each unit owner and shall thereby revert to the Developer, its successors or assigns. The owners of each unit in Phase I shall be granted and receive a percentage of undivided interest in the common elements of any additional phase or phases, and the owner of each unit in any additional phase or phases shall be granted and receive a percentage of undivided interest in the common elements of Phase I and any additional phase or phases, the precise percentage of which will be determined according to the aforesaid formula and designated in the amendment annexing such phase. The percentage of undivided interest of each unit determines and is each unit's percentage of ownership in the common elements, percentage of common expenses, percentage of common surplus, and voting on all matters requiring action by the owners. The common expenses shall be charged to the unit owners according to the percentages of the undivided interests of the respective units in the common elements. The common surplus shall be a trust fund for the unit owners and shall be either distributed among the unit owners according to the respective percentages of the undivided interest of the respective units in the common elements or applied against the following year's assessment, unless otherwise determined by the Board of Directors of the Association which shall not, in any event, use such surplus or any part thereof in any way other than to furnish services, insurance, goods or other items of value to the unit owners.

Each unit owner is hereby granted an easement in common with each other unit owner for ingress and egress through all common elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Association. Each unit is hereby burdened with and subjected to an easement for ingress and egress through all common elements by persons lawfully using or entitled to the same.

If any additional phase or phases are developed and made subject to the terms of this Declaration as set forth in Paragraph 6, the owner of each unit in Phase I shall be granted and receive a continuing easement and access to the common elements of such phase, and the owner of each unit in such phase or phases shall be granted and receive a continuing easement and access to the common elements of Phase I, such that each unit owner in Phase I and in any additional phase or phases shall have full and equal access, enjoyment, use, and benefit to all common elements in Phase I and such phase or phases (unless otherwise restricted in this Declaration, for example, the exclusive easement for use of the balcony, and patio assigned to each unit).

8. **ENCROACHMENTS.** If any portion of the common elements now encroach upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any building, a valid easement for the encroachment and for the maintenance of the same so long as such building stands shall exist. In the event any building, any unit, any adjoining unit, or any adjoining common element, shall be partially or totally destroyed as a result of fire, or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachment of parts of the common elements upon any unit or of any unit upon any other unit or upon any portion of the common elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such building shall stand.

9. **COVENANT AGAINST SUBDIVIDING.** No unit owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his unit to be separated into any tracts or parcels different from the whole unit as shown on the plat.

10. **COVENANT AGAINST PARTITION.** In order to effectuate the intent hereof and preserve the condominium and condominium method of ownership, the common elements shall remain undivided and no person, irrespective of the nature of his interest in the common elements, shall bring any action or proceeding for partition or division of the common elements or any part thereof until the termination of the condominium regime established by this Declaration in accordance with the provisions herein contained or until the condominium property is no longer tenantable, which ever occurs first, and in any event, all mortgages must be paid in full or all mortgagees must consent in writing, prior to bringing an action for partition.

11. **ASSOCIATION OF UNIT OWNERS AND ADMINISTRATION AND OPERATION OF THE PROPERTY.**

11.1 There has been, or will be, formed an association having the name Magnolia Key Townhomes Owners' Association, Incorporated, an Alabama non-profit corporation, which association shall be the governing body of the unit owners and shall be responsible for the maintenance, repair, replacement, administration and operation of the property. The Board of Directors of the association shall be elected and shall serve in accordance with the provisions of the By-Laws. The Board of Directors shall consist of such number not less than three (3) nor more than five (5) as shall from time to time be determined and fixed by vote of a majority of the voting rights present at any annual meeting of the members. The fiscal year of the association shall be determined by the Board of Directors and may be changed from time to time as the board deems advisable. The association shall not be deemed to be conducting a business of any kind. All activities and all funds received by the association shall be held and applied by it for the use and benefit of unit owners in accordance with the provisions of this Declaration and the By-Laws. Each unit owner shall be a member of the association so long as he is a unit owner. A unit owner's membership shall automatically terminate when he ceases to be a unit owner. Upon the conveyance or transfer of a unit owner's ownership interest to a new unit owner, the new unit owner shall simultaneously succeed to the former unit owner's membership in the association.

11.2 The maximum number of votes for all members of the Association shall be equal to the percentage of undivided interest of each such member's unit in the common elements, in accordance with the provisions of Paragraph 7.7 hereof.

11.3 Until and no later than the earlier of four (4) months after seventy-five percent (75%) of the units in Phase I and any additional phase or phases which may be constructed in accordance with the provisions of this Declaration have been sold, closed, and conveyed to the unit purchasers, or three (3) years after the first unit in Phase I is sold, closed, and conveyed to that unit purchaser, or the Developer elects to terminate its control of the condominium, the Directors of the Association shall be designated by the Developer and such Directors as may be so designated need not be unit owners.

11.4 The Board shall have the authority to employ for the condominium a "Managing Agent" at a compensation established by the Board. The managing agent shall perform such duties and services as the Board shall authorize, including, but not limited to, all of the duties listed in the Act, the Declaration and these By-Laws; provided, however, where a managing agent does not have the power to act under the Act, the Declaration or these By-Laws, such duties shall be performed as advisory to the Board. The Board may delegate to the managing agent all of the powers granted to the Board by the Act, the Declaration and these By-Laws other than the following powers:

(1) to adopt the annual budget, any amendment thereto or to assess any common expenses;

(2) to adopt, repeal or amend Rules and Regulations;

(3) to designate signatories on Association bank accounts;

(4) to borrow money on behalf of the Association;

(5) to acquire and mortgage units;

(6) to designate reserved common elements;

(7) to allocate limited common elements.

Any contract with the managing agent must provide that it may be terminated with cause on no more than thirty (30) days' written notice and without cause and without penalty or any termination fee on no more than ninety (90) days' written notice. The term of any such contract may not exceed one (1) year.

The Board shall also have the authority (but not the obligation) to engage, supervise and control such employees as it deems advisable to clean and maintain all or any part of the units to the extent the Board deems advisable to provide such services to all or any part of the unit owners. The cost of such services shall be a common expense.

11.5 The first Board, appointed as provided herein, may approve an initial management contract in accordance with the provisions of Paragraph 11.4 hereinabove; provided, that any such management agreement shall be terminable by the Association for cause upon thirty (30) days' written notice and without cause and without penalty or any termination fee on no more than ninety (90) days's written notice, by vote of not less than a majority of the individual unit owners, other than the Developer, within a one (1) year period immediately following the date on which the individual unit owners, other than the Developer, assume or acquire control of the Association.

11.6 During the period of sale by the Developer of any units, the Developer and its agents, employees, contractors and subcontractors, and their respective agents and employees, shall be entitled to access, ingress to and egress from, the building and property as may be required for the purposes of sale of units. While the Developer owns any of the units and until such units sold by it are occupied by purchasers, the Developer and its employees may use and show one or more of such unsold or unoccupied units as a sales office and may maintain customary signs in connection therewith.

11.7 Neither the directors, board of directors of the association nor officers of the association shall be personally liable to the unit owners for any mistake in judgment or for any acts or omissions of any nature whatsoever as such directors, board or officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. The unit owners shall indemnify and hold harmless each of the directors, the board and/or officers and their respective heirs, executors, administrators, successors and assigns in accordance with the provisions of the By-Laws and of the Articles of Incorporation of the association, and the association shall carry such insurance as the board may prescribe to protect the directors, the board of directors and/or the officers under said indemnity.

11.8 In the event of any dispute or disagreement between any unit owners relating to the property, or any questions of interpretation of and/or application of the provisions of the Declaration, By-Laws, Articles of Incorporation or the Rules and Regulations of the association, such dispute or disagreement shall be submitted to the board. The determination of such dispute or disagreement by the board shall be binding on each and every such unit owner, subject to the right of the unit owners to seek other remedies provided by law after such determination by the board.

11.9 Each unit owner shall be entitled to the percentage of ownership in the common elements allocated to the respective unit owned by such unit owner as is set forth in Exhibit "E" attached hereto and made a part hereof by reference. Said ownership interest in the common elements shall be an undivided interest and the common elements shall be owned by the unit owners jointly in accordance with their respective percentages of ownership. The ownership of each unit shall not be conveyed separate from the percentage of ownership in the common elements corresponding to said unit. The undivided percentage of ownership in the common elements corresponding to any unit shall be deemed conveyed or encumbered with that unit, even though the legal description in the instrument conveying or encumbering such unit may refer only to the title of that unit.

11.10 Each unit owner shall have the right to use the common elements in common with all other unit owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective unit owned by such unit owner. Such right to use the common elements shall extend not only to such unit owner, but also to his agents, servants, tenants, family members, customers, invitees and licensees; however, each unit owner shall have the right to the exclusive use and possession of the limited common elements serving such unit alone or with adjoining units. Such rights to use the common elements shall be subject to and governed by the provisions of the Act, Declaration, By-Laws, and Rules and Regulations (the latter being attached hereto as Exhibit "F" and made a part hereof by reference), of the association and the unit owners shall use the common elements in such manner as will not restrict, interfere with or impede the use thereof by other unit owners.

12. **ASSESSMENTS.** The making and collection of assessments against unit owners for common expenses and other charges shall be pursuant to the By-Laws and subject to the following provisions:

12.1 Each unit owner, including the Developer, shall be personally liable for a proportionate share of the common expenses and other charges, and shall share in the common surplus, such expenses and share being the same as his percentage of ownership in the common elements.

12.2 Assessments and installments thereon, including assessments paid in advance for working capital fund, shall begin the month in which the unit owner is to close the sale in accordance with notice from the Developer, and shall be due and payable monthly thereafter, and if paid on or before ten (10) days after the date when due shall not bear a penalty or interest, but to all sums not paid on or before ten (10) days after the date when due shall be assessed uniformly as to all unit owners similarly situated a monetary penalty and/or interest charge to be determined from time to time by the Board of Directors; provided, that as to any unsold unit or units in Phase I or in any additional phase or phases, the Developer shall become liable for a proportionate share of the common expenses, and shall share in the common surplus, such expenses and share being the same as such unit or units' percentage of ownership in the common elements, no later than sixty (60) days after the conveyance of the first unit in Phase I or such additional phase or phases.

12.3 The Association is hereby granted a lien upon each unit and its appurtenant undivided interest in the common elements, and the appliances, personal property, and contents therein located, which lien shall secure and does secure the monies due for all assessments now or hereafter levied or subject to being levied, against the owner of each unit, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said unit, its appurtenant undivided interest in the common elements, and/or the appliances, personal property, and contents therein located. The said lien for non-payment of assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except only: (1) tax lien on the unit in favor of the State, the County, and municipality and any special district, and (2) all sums unpaid on a first mortgage of record. In any suit for the foreclosure of said lien, the Association shall be entitled to rental from the owner of any unit from the date on which the payment of any assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said unit, without notice to the owner of such unit. The rental required to be paid shall be without notice to the owner of such unit. The rental required to be paid shall be equal to the rental charged on comparable types of dwelling units in the Romar Beach and Gulf Shores, Alabama area. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of eighteen (18%) percent per annum on any such advances made for such purposes. 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 granted to the Association.

12.4 No owner of a unit may exempt himself from liability for contribution toward the common expenses and other charges by waiver of the use of enjoyment of any of the common elements or by the abandonment of his unit, or by any other means.

12.5 The Association shall promptly provide any unit owner and/or the holder of a mortgage comprising a first lien on any unit or the grantee in any voluntary conveyance of a unit so requesting the same in writing, with a written statement of all unpaid assessments due from the unit.

12.6 The Board of Directors shall establish and maintain from the regular monthly assessments reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including non-payment of any unit owner's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the unit owners according to their respective common element interest, and which may be payable in a lump sum or in installments as the Board may determine. The Board of Directors shall serve notice of any such further assessment on unit owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due more than ten (10) days after the delivery of such notice of further assessment. All unit owners so notified shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable in installments, the amount of such assessment. Such assessment shall be a lien as of the effective date as set forth herein.

12.7 The Developer, as the agent of the Board of Directors, will collect from each initial purchaser at the time of settlement an "initial capital payment" equivalent to three (3) times the estimated monthly assessment for common expenses for such purchaser's unit. The Declarant will deliver the funds so collected to the Board of Directors to provide the necessary working capital for the association. Such funds may be used for certain prepaid items, initial equipment, supplies, organizational costs and other start-up costs, and for such other purposes as the Board of Directors may determine. The Board of Directors shall maintain such funds in a segregated account.

12.8 The lien for common expenses payable by a unit owner shall be subordinate to the lien for a recorded first mortgage on the interest of such unit owner; provided, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such unit pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser of the unit at such sale from liability for any assessments thereafter becoming due, nor from liability from the lien of any assessments thereafter becoming due. Where the holder of a first lien of record or a purchaser of a unit obtains title to the unit as a result of foreclosure on a first lien, such acquirer of title, its or his heirs, successors and assigns, shall not be fully liable for payment of the share of common expenses or other assessments by the association pertaining to such unit or chargeable to the former unit owner which became due prior to the acquisition of title to such unit as a result of foreclosure. Such unpaid share of common expenses or other assessments shall be deemed to be a common expense collectible from all of the remaining unit owners including such acquirer, its or his heirs, successors and assigns. This subparagraph shall not be amended, changed, modified or rescinded without the prior written consent of all mortgagees of record.

13. **MORTGAGES.** Each unit owner shall have the right, subject to the provisions herein, to make separate mortgages on his respective unit, together with his respective ownership interest in the common elements. No unit owner shall have the right or authority to make or create or cause to be made or created from the date hereof any mortgage or other lien on or affecting the property, or any part thereof, except of his own unit and the respective percentage interest in the common elements appurtenant thereto.

14. **SEPARATE REAL ESTATE TAXES.** Taxes, assessments, and other charges of any taxing or assessing authority shall be separately assessed to each unit owner for his unit and his corresponding percentage of ownership in the common elements, as provided in the Act.

15. **INSURANCE.**

15.1 Power of Attorney. The Association is hereby irrevocably appointed as attorney-in-fact for each unit owner and for each holder of a mortgage or other lien upon a unit and for each owner of any other interest in the property for the purpose of purchasing and maintaining insurance as set forth in Section 15.2 below including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

15.2 Types and Amounts. Commencing not later than the time of the conveyance of the first unit to a person other than the Declarant, the Association shall, to the extent reasonably available, obtain and maintain the types and amounts of insurance set forth below. Except as otherwise provided, the premiums for all such insurance policies shall be a common expense.

15.2.1 Hazard Insurance.

(a) Hazard insurance, with an endorsement for extended coverage, or such other fire and casualty insurance as the Board may determine provides equal or greater protection for the unit owners and their mortgagees, if any, in each case complying with the applicable requirements of Section 15.3 hereof. Such hazard insurance shall, if and to the extent reasonably available, provide coverage of the common elements (including the limited common elements), including fixtures and building service equipment and common personal property and supplies belonging to the Association, and the units. Such insurance shall, if so required by the Federal National Mortgage Association and if and to the extent reasonably available, also cover fixtures, equipment and other personal property inside a unit if such fixtures, equipment or personal property are financed by a mortgage purchased by the Federal National Mortgage Association. If such insurance is so provided, the Association shall require such unit owner to pay the additional cost incurred by the Association in so insuring such unit owner's fixtures, equipment or other personal property. Such hazard insurance shall insure against all risks of direct physical loss commonly insured against. If such hazard insurance no longer becomes available in the future, the Association shall obtain such comparable insurance as is then available. The amount of any such hazard insurance obtained pursuant to this Section shall be equal to the full insurable replacement value of the insured property, without deduction for depreciation (i.e., one hundred percent (100%) of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverages, but including all building service equipment), with an "agreed amount endorsement" or its equivalent, if available, or an "inflation guard endorsement", if available, and construction code endorsements, if applicable and to the extent required by the Federal National Mortgage Association. Notwithstanding the foregoing, in no event shall the aggregate amount of the insuracne obtained be less than the amount of the initial principal sum of all eligible mortgages in effect from time to time.

(b) Such hazard insurance shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;

(2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available;

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(3) such other risks as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation may require by reason of their holding one or more eligible mortgages.

(c) Such hazard insurance policy may, at the option of the Association, contain a "deductible provision in an amount to be determined by the Board but not to exceed TEN THOUSAND DOLLARS ($10,000.00).

15.2.2 Comprehensive Liability Insurance.

(a) Comprehensive Liability Insurance policies, complying with the requirements of Section 15.3 hereof, insuring the unit owners, in their capacity as unit owners and Association members and any managing agent retained by the Association, against any liability to the public or to other unit owners, their tenants or invitees, relating in any way to the ownership, operation, maintenance and/or use of the common elements and any part thereof, the public ways of the project, any other areas under the Association's supervision, and commercial spaces owned by the Association whether or not leased to some third party.

(b) Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of a unit owner because of the negligent acts of the Association or another unit owner.

(c) Limits of liability shall be at least ONE MILLION DOLLARS ($1,000,000.00) covering all claims for personal injury and/or property damage arising out of a single occurrence.

(d) Coverage under this policy shall include legal liability arising out of lawsuits related to employment contracts of the Association.

(e) If the property herein submitted to the condominium form of ownership and use, or which may be submitted to the condominium form of ownership and use in any subsequent phase or phases, shall ever be designated as a part of a flood plain area or any other designation which would render such property subject to the Federal Flood Insurance Act of 1968, as amended heretofore or hereafter, or any similar law, then the Board shall do all acts within its power so as to comply with the requirements of such law (including all regulations and other requirements applicable thereto) and so as to obtain such flood insurance on behalf of the unit owners and their respective mortgagees. Such insurance policies shall provide that the same cannot be cancelled or substantially modified without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage which is listed as such holder in the insurance policy. Such policies of insurance must also contain a waiver of subrogation rights by the insurer against individual unit owners and members of their household. The premium for such insurance shall be a common expense.

15.2.3 Fidelity Bonds.

(a) Fidelity bonds or insurance coverage against dishonest acts on the part of such persons (including by way of illustration and not limitation, Association members, officers, directors, trustees, managers, agents, employees and volunteers) handling or responsible for funds belonging to or administered by the Association. In the event the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds or insurance coverage shall include officers, employees and agents of such management agent, and such managing agent shall, in addition, procure in its own behalf fidelity bonds or insurance coverage of the type and in the amounts as are required of the Association.

(b) Such fidelity bond or insurance shall name the Association as the named insured and shall be written in an

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amount sufficient to cover the maximum funds that will be in the custody of the Association or its managing agent at any time while the bond is in force which shall in no event be less than three (3) months' assessments on all units, plus reserve funds.

(c) In connection with such coverage, an appropriate endorsement to such policy or bond in order to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Such fidelity bond or insurance shall also

(1) name the Associaton as an obligee;

(2) contain waivers by the issurers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;

(3) provide that same may not be cancelled ~~or substantially modified (Including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Association and all eligible mortgagees~~.

15.2.4 Steam Boiler Coverage. If a steam boiler shall be operated in connection with the property there shall be maintained boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing as a minimum $100,000.00 per accident per location.

15.2.5 Indemnification Insurance. Insurance to satisfy the indemnification obligation of the Association and all unit owners set out in Section 11.7, if and to the extent available at the election of the Executive Board.

15.2.6 Other Insurance. The Association may carry any other insurance it deems appropriate to protect the Association or the unit owners.

15.3 Required Provisions. Insurance obtained by the Association shall be in accordance with the following provisions:

(a) All policies shall be written with a company licensed to do business in the State of Alabama and, for the Hazard Insurance Policy described in Section 15.2.1 hereof, such company must hold a rating of Class VI or better by Best's Insurance Reports (or a rating of Class V, provided it has general policy holder's rating of at least "A"), or by an equivalent rating bureau should Best's Insurance Reports cease to be issued.

(b) Exclusive authority to adjust losses under policies hereafter in force on the property shall be vested in the Board or its authorized representative.

(c) With respect to the insurance policies issued to the Association and covering all or any part of the property, the Association shall endeavor to cause such policies to provide that:

(1) the enforceability of such policies is not affected by any waiver of subrogation as to any and all claims against the Association, any managing agent, the unit owners and their respective tenants, employees, agents, customers and guests, such subrogation being hereby waived;

(2) such policies cannot be cancelled, invalidated or suspended by means of the conduct of any one or more unit owners, all defenses based upon co-insurance or acts of the insured being waived by the insurer, and in no event may cancellation, material modification, invalidation or suspension for any reason be effected without at least thirty (30) days' prior written notice to the Association, each unit owner and all holders of eligible mortgages whose names and addresses are on file with the insurer;

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(3) such policies cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee ofhe Association oor of any managing agent without a prior demand in writing that the Association or any managing agent, as the case may be, cure the defect within a reasonable period of time;

(4) any "no other insurance" clause in such policies shall not prohibit unit owners from obtaining insurance on their individual unit provided such insurance policy conforms with the requirements of this Section;

(5) the name of the insured under each policy required pursuant to this Section shall be stated in form and substance substantially as follows: Magnolia Key Townhomes Owner's Association for the use and benefit of the individual owners, of the units contained in Magnolia Key Townhomes, a condominium;

(6) loss payable under each policy required pursuant to this Section shall be in favor of the Association, as a trustee for each unit owner and each such owner's eligible mortgagees as their interests may appear. Policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution) or shall otherwise be endorsed to fully protect all eligible mortgagees' interest. If the Federal National Mortgage Association holds one or more eligible mortgages, the policies must name as mortgagee either the Federal National Mortgage Association or the servicers for the eligible mortgages it holds; such servicer's name shall be followed by the phrase "its successors and assigns";

(7) coverage may not be prejudiced by: (1) any act or negligence of one or more owners of units when such act or neglect is not within the control of the Association; or (2) any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control;

(8) all policies of property insurance shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such options shall not be exercisable without the prior written approval of the Executive Board;

(9) insurance coverage obtained and maintained by the Association pursuant to the requirements of this Section may not be brought into contribution with insurance purchased by unit owners or their mortgagees;

(10) insurance coverage obtained and maintained by the Association pursuant to the requirements of this Section shall provide that no assessment may be made against eligible mortgagees or may become a lien on the mortgaged premises superior to the lien of any eligible mortgagees.

15.4 Units Owner's Insurance.

15.4.1 Each unit owner may obtain additional insurance at his own expense; provided, however, that: (1) such policies shall not be invalidated by the waivers of subrogation contained in the Condominium Documents; and (2) no unit owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association may realize under any insurance policy which the Association may have in force on the property at any particular time.

15.4.2 Any unit owner who obtains individual insurance policies covering any portion of the property, other than: (1) personal property belonging to such owner; or (2) the individual unit of such owner, shall be required to file a copy of such individual policy or policies with the Association within thirty (30) days after purchase of such insurance.

15.4.3 The Board shall have the power to require all unit owners to carry such types of insurance on their units as the Board may reasonably require, including, without limitation, insurance on all portions of the unit.

15.5 THE FOLLOWING PROVISIONS SHALL APPLY WITH RESPECT TO DAMAGE BY ANY CAUSE:

15.5.1 If any one of the buildings is damaged by fire or other casualty and said damage is limited to a single unit, all insurance proceeds shall be paid to the owner or one or more mortgagees of such unit, as their respective interests may appear, and such unit owner or mortgagee shall use the same to rebuild or repair such unit substantially in accordance with the original plans and specifications therefor. If such damage extends to two or more units, or extends to any part of the common elements, such insurance proceeds shall be paid to the Board, as trustee, or to such bank or trust company as may be designated by amendment hereto, to be held in trust for the benefit of the unit owners and their mortgagees as their respective interests may appear. The Board shall thereupon contract to repair or rebuild the damaged portions of all units, the buildings and the common elements substantially in accordance with the original plans and specifications therefor and the funds held in the insurance trust fund shall be used for such purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board shall levy a special assessment on all unit owners, in proportion to the percentage of interest of each unit owner in the common elements, to make up any deficiency. If any unit owner shall fail to pay the special assessement within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the common expense fund; provided, however, that such unit owner shall remain liable for such special assessment.

15.5.2 Notwithstanding the provisions of subparagraph 15.5.1 above, reconstruction shall not be compulsory where the whole or more than sixty-seven percent (67%) of all units and of the common elements is destroyed by fire or other casualty, as determined by the Board.

In such case and unless otherwise unanimously agreed upon by the unit owners, the insurance proceeds shall be delivered by the Board to the unit owners or their mortgagees, as their interests may appear, in proportion to the percentage interest of each unit owner in the common elements; and the Board, as soon as reasonably possible and as agent for the unit owners, shall sell the property, in its then condition, free from the effect of this Declaration, which shall terminate upon such sale, and all funds held by said insurance trustee shall thereupon be distributed to the unit owners or their mortgagees, as their interest may appear, in proportion to the percentage interest of each unit owner in the common elements.

15.5.3 Within sixty (60) days after any such damage occurs, the managing agent or the Board shall, or if they do not any unit owner, the insurer, the insurance trustee or any mortgagee, record a sworn declaration stating that such damage has occurred, describing it, indentifying the building or buildings suffering such damage, the name of any insurer against whom claim is made and the name of any insurance trustee, reciting that the sworn declaration is recorded pursuant to this subparagraph of this Declaration, and that a copy of such sworn declaration has been served on the unit owners pursuant to the provisions of paragraph 28 of this Declaration.

15.5.4 If the unit owners shall not rebuild pursuant to subparagraph 15.5.2 hereinabove, and the Board shall fail to consummate a sale pursuant to said paragraph within twenty-four (24) months after the destruction or damage occurs, then the managing agent or the Board shall, or if they do not any unit owner or mortgagee may, record a sworn declaration setting forth such decision and reciting that under the provisions of this Declaration the prohibition against judicial partition provided for in this Declaration has terminated and that judicial partition of the property may be obtained pursuant to the laws of the State of Alabama. Upon the final judgment of a court of competent jurisdiction decreeing such partition, this Declaration shall terminate.

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16. **MAINTENANCE.** The responsibility for the maintenance of the condominium property shall be as follows:

16.1 The responsiblity of the Association shall be as follows:

(a) To maintain, repair and replace all portions of a unit contributing to the support of the building, which portions shall include but not be limited to the outside walls of the building and all fixtures thereon, and boundary walls of units, floors, load-bearing columns and load-bearing walls but which do not include the private elements, interior surfaces and surfacing material.

(b) To maintain, repair, and replace all plumbing, wiring, heating, air conditioning, utility and mechanical equipment and other facilities for the furnishing of utility services, and all sewer and water lines, including all pipes, ducts, wires, cables and conduits used in connection therewith, which are not for the exclusive use of one unit, whether or not located within the boundaries of that unit.

(c) To maintain and replace all balconies and balcony railings.

(d) To repair all incidental damages caused to a unit in the performance of any of the foregoing work.

16.2 The responsibility of the unit owner shall be as follows:

(a) To maintain, repair, and replace all portions of his unit except the portions to be maintained, repaired and replaced by the Association. Such shall be done without disturbing the rights of other unit owners.

(b) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the building and/or the exterior of the balconies assigned to the exclusive use of the unit owner, and/or the exterior of the balcony railings surrounding the balcony area assigned to the exclusive use of the unit owner.

(c) To maintain the surfacing materials within the unit.

(d) To maintain, repair and replace all plumbing, wiring, heating, air conditioning, utility and mechanical equipment and other facilities for the furnishing of utility services, and all sewer and water lines, including all pipes, ducts, wires, cables and conduits used in connection therewith, which are for the exclusive use of his unit, whether or not located within the boundaries of his unit.

(e) To maintain, repair and replace the interior appurtenances of his unit, including but not limited to the floor coverings, wall coverings, window shades and screens, draperies, furnishings, light fixtures, and all appliances located therein.

(f) To promptly report in writing to the Association any defect or need for repairs, the responsibility for the remedying of which is that of the Association.

(g) To be responsible for the cost of all incidental and consequential damage caused to the common elements in the performance of the foregoing work.

16.3 Neither a unit owner nor the Association shall make any material alterations in the portions of a unit or building which are to be maintained by the Association, or remove any material portion thereof, or make any material additions thereto, or do any work which would jeopardize the safety or soundness of the building, or impair any easement, without first obtaining approval in writing of the owners of all other units in the building concerned and the approval of the Board of Directors.

16.4 The maintenance and operation of the common elements shall be the responsibility and the expense of the Association.

16.5 In addition to the discretionary authority provided herein for maintenance of all or any portion of the units, the Board shall have the authority to maintain and repair any unit, if such maintenance or repair is reasonably necessary in the discretion of the board to protect the common elements or preserve the appearance and the value of the property, and the unit owner of such unit has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance and repair delivered by the Board, and the board shall levy a special assessment against the unit of such unit owner for the cost of said necessary maintenance or repair.

16.6 If damage shall be caused to the common elements or to a unit or units owned by others, due to the act or neglect of a unit owner, or maintenance, repair or replacement are required which would otherwise be a common expense, then such unit owner shall pay for such damage or such maintenance, repair or replacements, as may be determined by the association; however, the provisions of this paragraph are subject to the provisions of Paragraph 15 hereof providing for waiver of subrogation rights with respect to casualty damage insured against under the policies of insurance maintained by the board.

16.7 The authorized representative of the association or board, or the managing agent, with approval of the board and the Department of Housing and Urban Development, Federal National Mortgage Association and Veterans Administration, shall be entitled to reasonable access to the individual units and limited common elements as may be required in connection with the preservation of any individual unit or limited common elements in the event of an emergency, or in connection with the maintenance of, repairs to or replacement within the common elements or limited common elements of any equipment, facilities or fixtures affecting or serving other units, common elements and limited common elements or to make any alteration required by a governmental authority. In order to carry out the intent and purpose of this subparagraph, there is specifically granted to the board and its authorized representatives, servitudes through the units and common elements for maintenance, repair and/or replacement of portions of the units and common elements. Use of such servitudes, however, for access to the individual units, shall be limited to reasonable hours, except for access may be had at any time in case of any emergency.

17. ALTERATIONS, ADDITIONS OR IMPROVEMENTS. No alteration of any common elements or any additions or improvements thereto, shall be made by any unit owner without the prior written consent of the board. The board may authorize and charge as common expenses any alterations, additions and improvements to the common elements as provided in this Declaration or in the By-Laws. Any unit owner may make alterations, additions or improvements within the unit of such unit owner without the prior written approval of the board, but such unit owner shall be responsible for any damage to other units, the common elements, the property or any part thereof, resulting from such alterations, additions or improvements.

18. REMEDIES.

18.1 All present and future owners, tenants and occupants of units shall be subject to and shall comply with the provisions of the Alabama Condominium Ownership Act, this Declaration, the By-Laws, and the Rules and Regulations, as the same may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into of occupancy of any unit shall constitute an agreement that the provisions of the Alabama Condominium Ownership Act, this Declaration, the By-Laws, and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant and occupant, and all of such provisions shall be deemed and taken to be 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 at length in each and every deed or conveyance or lease thereof. In the event of a conflict in any of such documents, the documents shall govern or control in the following order of preference: (1) the Alabama Condominium Ownership Act; (2) this Declaration; (3) the Articles of Incorporation of the association; (4) the By-Laws of the association; and (5) the Rules and Regulations of the association.

18.2 In the event of any violation of the provisions of the Alabama Condominium Ownership Act, this Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations of the association by any unit owner (whether by his own conduct or by the conduct of any other occupant of his unit), the association or its successors or assigns, or the board or its agent, shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, Articles of Incorporation, By-Laws, or Rules and Regulations of the association, or which may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting unit owner and/or others for enforcement of any lien and the appointment of a receiver for the unit and ownership interest of such unit owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief as may be permitted by law. All expenses of the board in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of twelve percent (12%) per annum until paid, shall be charged to and assessed against such defaulting unit owner and shall be added to and deemed part of his respective share of the common expenses, and the board shall have a lien for all of the same, as well as for nonpayment of his respective share of the common expenses, upon the unit and ownership interest in the common elements of such defaulting unit owner and upon all of his additions and improvements thereto and upon all of his personal property in his unit or located elsewhere on the property; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such unit owner, except for the amount of the proportionate share of said common expenses which becomes due and payable from and after the date on which the said mortgage owner or holder either takes possession of the unit, accepts a conveyance of any interest therein other than through a deed in lieu of foreclosure or forecloses its mortgage. This paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holders of record of mortgages against units.

18.3 In the event of any such default by any owner, the board or the managing agent, if so authorized by the board, shall have the authority to correct any such default and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting unit owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise by the board.

18.4 The violation of any restriction or condition or regulation adopted by the board or the breach of any covenant or provision herein contained, shall give the board the right, in addition to any other rights provided for in this Declaration, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach; provided, however, that the failure of the board to enforce any such restriction, condition, regulation, covenant or provision shall not constitute a waiver of the right to enforce the same.

19. SALES AND OTHER TRANSFERS.

19.1 No unit owner shall sell, assign, convey or otherwise transfer his unit or any interest therein unless, at least ten days prior to any such sale, assignment, conveyance or transfer, he gives written notice to the board of the name and address of each proposed purchaser, assignee or transferee. The purpose of this section is to ascertain that any proposed purchaser, assignee or transferee is made aware of the provisions of this Declaration, as well as any delinquent assessments, if any attributable to the applicable unit, prior to the consummation of any such purchase, assignment or transfer.

19.2 In the event of a resale of a unit by a unit owner other than Declarant, the unit owner shall furnish to such purchaser, before execution of any contract to purchase a unit, or otherwise before conveyance, a copy of this Declaration, other than plats and plans, a copy of the Articles of Incorporation creating the association, the By-Laws, and a certificate containing:

(a) A statement setting forth the amount of any current common expense assessments;

(b) A statement of any capital expenditures approved by the association for the current and next two succeeding fiscal years;

(c) A statement of the amount of any reserves or capital expenditures and of any portions of those reserves designated by the association for any specific projects;

(d) The most recent balance sheet and income and expense statement of the association, if any;

(e) The current operating budget of the association, if any;

(f) A statement of any unsatisfied judgments against the association and the status of any pending suits to which the association is a party;

(g) A statement describing any insurance coverage provided by the association.

19.3 Within ten (10) days after a request by a unit owner, the association shall furnish a certificate containing the information necessary to enable a unit owner to comply with the provisions of this section. The unit owner providing a certificate pursuant to this section shall not be liable to the purchaser for any erroneous information provided by the association and included in the certificate. Further, a unit owner shall not be liable to the purchaser for the failure or delay of the association to provide the certificate in a timely manner; however, the contract of purchase shall be voidable by the purchaser until a certificate has been provided and for five (5) days thereafter, or until conveyance, whichever first occurs.

20. AMENDMENT.

Except as otherwise specifically provided herein, this Declaration of Condominium and the By-Laws of Magnolia Key Townhomes Owners' Association, Inc., may be amended in the following manner:

20.1 A resolution to adopt a proposed amendment of a material nature, as hereinafter defined, may be proposed in writing bay either the Board of Directors of the Association, or by members having not less than ten percent (10%) of the total percentage values of those votes entitled to be cast at a meeting of the Association. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered, and notice of the subject matter of the proposed amendment shall be given to all eligible mortgage holders (defined as those holders of a first mortgage on a unit(s) who have requested the Association to notify them of any proposed action that requires the consent of a specified percentage of eligible mortgage holders). In order to adopt the resolution and amend the condominium documents, it must be agreed to by unit owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association and by eligible mortgage holders representing at least fifty-one percent (51%) of the votes ofnits that are subject to mortgages held by eligible holders. Unit owners and eligible mortgage holders not present at the meeting considering the amendments may express their approval or disapproval in writing, provided such approval or disapproval is delivered to the Secretary at or prior to the meeting. A change to any of the following would be considered as material:

(a) voting rights;

(b) assessments, assessment liens, or subordination of assessment liens;

(c) reserves for maintenance, repair and replacement of common areas;

(d) responsibility for maintenance and repairs;

(e) reallocation of interests in the common elements or rights to their use;

(f) boundaries of any unit;

(g) convertibility of units into common areas or vice versa;

(h) expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;

(i) insurance or fidelity bonds;

(j) leasing of units;

(k) imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;

(l) a decision by the owners' association to establish self-management when professional management had been required previously by an eligible mortgage holder;

(m) restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;

(n) any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or

(o) any provisions that expressly benefit mortgage holders, insurers or guarantors.

Provided, however, that eligible mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged units must agree to the termination of the legal status of the condominium project for reasons other than the substantial destruction or condemnation of the project.

20.2 A resolution to adopt a proposed amendment not of a material nature may be proposed by either the Board of Directors of the Association or by members having not less than ten percent (10%) of the total percentage values of those votes entitled to be cast at a meeting and after being so proposed and thereafter approved by one (1) of such bodies, it must then be approved by the other to become effective. Directors and members not present at the meeting considering the amendment may express their approval or disapproval in writing, provided such approval or disapproval is delivered to the Secretary at or prior to the meeting. Such approvals must be not by less than a majority of the Directors and not less than a majority of the votes of the Association. If the mortgage so provides, for the purposes of this subsection, if any mortgagee holding a mortgage comprising a first lien upon a unit shall express its approval or disapproval of such resolution in writing, the expression of such mortgagee shall be deemed to be that of the unit owner, and any contrary expression by the owner of such unit shall be disregarded. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered, and such notice shall be given to all eligible mortgage holders (as hereinabove defined), however, implied approval by the eligible mortgage holders (if required) is to be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is made.

20.3 A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

20.4 In the alternative, an amendment may be made by an agreement signed and acknowledged by all of the record owners, including first mortgagees, of units in the condominium in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

20.5 Provided, however, that no such amendment shall discriminate against any unit owner nor against any unit or class or group of units unless the unit owners, so affected shall consent; and, with the exception of amendment(s) filed in accordance with and pursuant to Paragraphs 6 and 7 hereof, no such amendment shall increase or decrease the number of units, nor change the owner's percentage of undivided interest in the common elements unless all owners and all record holders of mortgages comprising first liens thereon shall join in the execution of the amendment.

Provided, further, that in no event shall the Declaration be amended in any manner so as to prejudice or conflict with Developer's rights to develop the property described in Exhibit "B" attached hereto, including the right of Developer to submit any or all of said property to the condominium form of ownership and use in phases, as provided herein, and any such amendment shall be null and void and of no effect.

20.6(A) Notwithstanding any other provisions herein contained, for so long as the Developer continues to own any of the units, the Developer reserves the unrestricted right to sell, assign or lease any unit which it continues to own after the recording or filing of this Declaration, and to post signs on the condominium property.

20.6(B) Provided, however, that the following additional provisions shall be deemed to be in full force and effect, until and no later than the earlier of four (4) months after 75% of the units in Phase I and any additional phase or phases have been sold, closed, and conveyed to the unit purchasers, or three (3) years after the first unit in Phase I is sold, closed, and conveyed to that unit purchaser, or the Developer elects to terminate its control of the condominium:

(a) The Developer reserves the right to amend the By-Laws of the Association.

(b) The Directors of the Association shall be designated by the Developer and such Directors as may be so designated need not be unit owners, as provided in paragraph 11.3 hereof.

20.6(C) None of the provisions contained in this subparagraph shall be construed so as to relieve the Developer from any obligations of a unit owner to pay assessments as to each unit owned by it, in accordance with the condominium documents.

21. **PRIOR MORTGAGE APPROVAL.** The prior written approval of each institutional holder of a first mortgage, deed of trust or equivalent security interest on the units in the project shall be required for at least the following: (a) the abandonment or termination of the project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (b) any material amendment to the Declaration or to the By-Laws or Articles of Incorporation of the Association, including, but not limited to, any amendment which would change the percentage interests of the unit owners, except as herein specifically provided to the contrary; (c) the effectuation of any decision of the Association to terminate professional management and assume self-management of the condominium.

22. **RIGHTS OF ELIGIBLE MORTGAGEES.** Upon the specific written request of a holder of an eligible mortgage on a unit or its servicer to the Board, the mortgagee shall be entitled to receive some or all of the following as designated in the request:

A. Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Board to the owner of the unit covered by the mortgage;

B. Any audited or unaudited financial statements of the Board which are prepared for the Board and distributed to the unit owners. The holder of any mortgage on a unit shall be entitled to have an audited statement prepared at its own expense if one is not otherwise available;

C. Copies of notices of meetings of the unit owners and the right to be represented at any such meetings by a designated representative;

D. Notice of substantial damage to or destruction of any unit (in excess of $1,000.00) or any part of the common elements (in excess of $10,000.00);

E. Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the property;

F. Notice of any default of the owner of the unit which is subject to the mortgage, or any deliquency of more than sixty (60) days in the payment of assessments by the owner of such unit, where such default is not cured by the unit owner within thirty (30) days after the giving of notice by the Association to the unit owner of the existence of the default;

G. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

H. Notice of any decision by the Board to terminate professional management and assume self-management of the property;

I. Any condemnation or casualty loss that affects either a material part of the condominium or the unit securing the mortgagee's mortgage;

J. Such other financial data as such eligible mortgagee shall reasonably request; or

K. Any proposed action which would require the consent of a specified percentage of first mortgagees.

The request of an eligible mortgagee or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Board. The Board need not inquire into the validity of any request made hereunder by an eligible mortgagee. The Board may refuse to honor any request where, after reasonable inquiry, it shall determine that the person making such request is not entitled to the material so requested and may establish reasonable rules to implement this Section.

Failure to comply with the requirements set forth above shall in no way invalidate the otherwise proper actions of the Association and the Board.

Any eligible mortgagee shall have the right, exercisable upon written request to the Board, to examine the books and records of the Association at any reasonable time.

23. **EMINENT DOMAIN.** Whenever all or part of the condominium property be taken, injured or destroyed by eminent domain, the Association shall represent the unit owners in negotiations, settlements and agreements with the condemning authority. Each unit owner appoints the Association as attorney-in-fact for this purpose. The association shall give timely written notice of the existence of such proceedings to all owners and to all first mortgagees known to the association to have an interest in a unit. The expense of participation in such proceedings by the association shall be borne by the common fund. The association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the association, in its discretion, deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for such taking shall be deposited with the association and such damages or awards shall be applied as provided to defend or resist any such proceedings. With respect to any such taking, all damages and awards shall be determined for such taking as a whole and not for each owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid or applied to the account of each owner and first mortgagee, if any, as their interests may appear, in proportion to their percentage ownership interest in the common elements, unless restoration takes place as herein provided. The association, if it deems advisable, may call a meeting of the owners at which the owners, by a majority vote, shall decide whether to replace or restore, as far as possible, the general common elements so taken or damaged. In the event it is determined that the general common elements so taken should be replaced or restored by obtaining other land or by building additional structures, this Declaration and the plat attached hereto shall be duly amended by an instrument executed by the board on behalf of the owners. In the event such eminent domain proceeding results in the taking or damage to one or more, but less than sixty-seven percent (67%) of the total number of condominium units, then the damage and awards for such taking shall be determined for each condominium unit and the following shall apply:

A. The association shall determine which of the condominium units damaged by such taking may be made tenantable for the purposes set forth in this Declaration, taking into account the nature of this condominium project and the reduced size of each condominium so damaged;

B. The association shall determine whether it is reasonably practical to operate the remaining condominium units of the project, including those damaged units which may be tenantable, as a condominium in the manner provided in this Declaration;

C. In the event the association determines it is reasonably practical to operate the undamaged condominium units and the damaged units which can be made tenantable as a condominium unit, then the damages and awards made with respect to each unit which has been determined to be capable of being made tenantable shall be applied to repair and to reconstruct such condominium unit so that it is made tenantable. If the cost of the work exceeds the amount of the award, the additional funds required shall be assessed against those condominium units which are tenantable. With respect to those units which may not be made tenantable, the award shall be paid as set forth in Exhibit "E" of this Declaration, and the remaining portion of such units, if any, shall become a part of the general common elements. Upon payment of such award for the account of such owner as herein provided, such condominium unit shall no longer be a part of the condominium project and the percentage ownership interest in the general common elements appurtenant to each remaining condominium unit which shall continue as a part of the condominium project shall be equitably adjusted to distribute the ownership of the undivided interest in the general common elements among the reduced number of owners and the association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocation. If the entire condominium project is taken, or sixty-seven percent (67%) or more of the condominium units are taken or damaged by such taking, all damages and awards shall be paid to the account of the owners of the units, as provided herein, in proportion to their percentage ownership interests in the general common elements and this condominium regime shall terminate upon such payment. Upon such termination, the condominium units and general common elements shall be deemed to be regrouped and merged into a single estate owned in undivided interests by all owners as tenants in common, in the percentage ownership interest previously owned by each owner in the general common elements. Any damages or awards provided in this paragraph shall be paid to or for the account of any owner and first mortgagee, if any, as their interests may appear.

24. **NOTICES.** Notices provided for in the Alabama Condominium Ownership Act, this Declaration or the By-Laws shall be in writing and shall be addressed to the association, board, unit owner, or mortgagee, as the case may be, and as such addresses may be from time to time provided. Notices addressed to any such entity shall be deemed delivered when mailed by United States mail with postage prepaid, or when hand delivered.

Upon written request to the Board, the holder of any recorded mortgage encumbering any unit shall be given a copy of all notices permitted or required by this Declaration to be given to the owner or owners whose unit is subject to such mortgage.

25. **SEVERABILITY.** If any provision of the Declaration or By-Laws, or any word, phrase, clause, sentence, paragraph or section, or the application thereof, in any circumstance be held invalid, the validity of the remainder of this Declaration and the By-Laws and of the application of any such provision, word, phrase, clause, sentence, paragraph or section in any other circumstance shall not be affected thereby and the remainder of this Declaration or the By-Laws shall be construed as if such invalid part was never included therein.

26. **SPECIAL AMENDMENTS.** Developer hereby reserves and is granted the right and power to record a special amendment to this Declaration at any time and from time to time, which amends this Declaration (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those which are currently performed by such entities and/or (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages governing units. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a special amendment on behalf of each unit owner. Each title, mortgage, other evidence of obligation or other instrument affecting a unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of and a consent to the reservation of the power of the Developer to make, execute and record special amendments. No special amendment made by Developer shall affect or impair the lien of any first mortgage upon a unit or any warranties made by an owner in order to induce any of the above agencies or entities to make, purchase, insure or guarantee the first mortgage on such owner's unit.

IN WITNESS WHEREOF, Developer has hereunto caused its hand and seal to be affixed on this the 28th day of October, 1985.

James W. Rayfield Jr.

JAMES W. RAYFIELD, JR.

Fred H. Clay Jr.

FRED H. CLAY, JR.

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STATE OF ALABAMA)
)
BALDWIN COUNTY)

I, the undersigned notary public in and for said County and State, hereby certify that JAMES W. RAYFIELD, JR. and FRED H. CLAY, JR., whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office on this the 28th day of October, 1985.

Susan W. Bibby

Notary Public

My commission expires: 9-5-88

SUSAN W. BIBBY NOTARY PUBLIC ALABAMA STATE AT LARGE

THIS INSTRUMENT PREPARED BY:

Martha E. Durant
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Gulf Shores, Alabama 36542