STATE OF ALABAMA
BALDWIN COUNTY
I certify that this Instrument was filed on
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and that no tax was collected. Recorded in
Book 36 Misc. Page 410-428 Judge of Probate
MH $1.00 Index $

DECLARATION OF CONDOMINIUM

OF

BREAKERS CONDOMINIUM

THIS DECLARATION, made this 8th day of May, 1980, by BREAKERS DEVELOPMENTS, INC., an Alabama corporation (hereinafter sometimes called "Developer"), for itself and for its successors and assigns.

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, Developer is the fee simple owner of certain real property situated in Baldwin County, Alabama, as is more particularly described in Exhibit "A" which is attached hereto and made a part hereof; and

WHEREAS, Developer intends to improve the property described in Exhibit "A" by constructing thereon 32 units contained in one building, a swimming pool and a parking area, said building to be constructed substantially in accordance with the plans attached hereto as Exhibit "D" (and made a part hereof) and all of said improvements to be constructed within two years and to be located substantially as shown on the site plan attached hereto as Exhibit "C" (and made a part hereof); and

MISC. 36 PAGE 410

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

WHEREAS, Developer may improve the property described in Exhibit "B" attached hereto (and made a part hereof) by constructing thereon additional condominium units and common elements, which said lands and improvements may be submitted to the condominium form of ownership and use, by amendment or amendments to this Declaration, in not less than one, nor more than three, additional phases; and

WHEREAS, it is the intent of Developer that the condominium property hereby created as Phase I of Breakers Condominium, which said property is described in Exhibit "A", shall be operated and administered as condominium property; and

WHEREAS, it is the intent of Developer that should all or a portion of the property described on Exhibit "B" be submitted to the terms of this Declaration by amendment or amendments hereto as Phase II, Phase III, and/or Phase IV of Breakers Condominium, as hereinafter provided, such property shall be operated and administered as condominium property; and

WHEREAS, 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 the remaining real and personal property, which is hereinafter defined and referred to as the "common elements;"

NOW, THEREFORE, Breakers Developments, Inc. hereby makes the following declaration as to the division and uses of the property shown on Exhibit "A", the improvements to be constructed thereon (and, in the event that any or all of the property described on Exhibit "B" is submitted to the condominium form of ownership and use by amendment or amendments to this Declaration, said property and improvements constructed thereon), hereby specifying 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 of Condominium is to submit the property described on Exhibit "A", and the improvements constructed or to be constructed thereon, to the condominium form of ownership and use in the manner provided for by the Alabama Condominium Ownership Act (§§35-8-1, et seq., Code of Alabama, 1975), and to make provision for the future submission, by amendment or amendments to this Declaration, of the property described on 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 Act in the event that Developer determines to so submit said property.

2. Name. The name by which this condominium is to be known, whether it consists of one, two, three, or four phases, is "Breakers Condominium".

3. The Real Property.

(a) The Developer hereby submits to the condominium form of ownership the parcel of real property lying and being in Baldwin County, Alabama, described on Exhibit "A" hereto, and as shown on Exhibit "C" hereto.

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

(c) The Post Office address of the property is P.O. Box 912, Gulf Shores, Alabama, 36542.

4. Name and Address of Person to Receive Service. The name and address of the person to receive service of process for the condominium shall be A. R. Dempsey, P.O. Box 912, Gulf Shores, Alabama 36542.

5. Definitions. The terms used in this Declaration of Condominium and in the By-Laws of the Breakers Condominium Association, Inc., 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" means Breakers Condominium Association, Inc., and its successors.

B. "Condominium Documents" means the Declaration (and all amendments thereto), the By-Laws, and the Rules and Regulations.

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 as Phase II, Phase III, and/or Phase IV of the Breakers 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 or amendments hereto:

6.1(a). If Phases II, III, and/or IV are developed and are made subject to the terms of this Declaration, each such phase shall contain no more than 34 units and no less than 30 units, and each unit shall be at least as large as the smallest units contained in Phase I and shall be constructed of at least the same quality materials as the units located in Phase I of the Breakers Condominium.

6.1(b). Any Phase which is submitted to the terms of this Declaration shall contain common elements consistent with and complementary to those existing in Phase I (and in any other phase which may have theretofore been developed and submitted to this Declaration).

6.1(c). Any such additional Phase(s) may, from time to time, be added to, and made subject to, this Declaration by the execution, by the 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, describing the property so submitted to the 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 the Developer to add additional phases to the Breakers Condominium as herein provided shall cease and terminate as of December 31, 1999, 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.

6.1(e). Once a phase has been submitted to the terms and provisions of this Declaration, it shall comprise a portion of the Breakers Condominium, to be governed by and subject to all of the provisions of the Condominium Documents to the extent that said Documents are not inconsistent with the provisions of the amendment adding such phase to this Declaration.

6.2. Any person or entity who shall acquire any unit in the Breakers Condominium, or any interest in or lien upon any such unit, regardless of whether said unit shall be located in Phase I, II, III, or IV, agrees to be bound by the terms and provisions of paragraph 6.1, above, and that any amendment to this Declaration executed by the 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.

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 this Declaration, and unless submitted to the terms of this Declaration under the terms of paragraph 6.1, above, Developer shall have the right 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.

PARAGRAPHS 7.1 THROUGH 7.6(a) APPLY ONLY TO PHASE I.

7. Breakers Condominium Development Plan.

7.1. Plans. The building and units in Phase I have been, or will be, as the case may be, constructed by the Developer substantially in accordance with the plans and specifications attached hereto as Exhibit "D", which plans include a representative floor plan of the units and show the unit numbers, the location of the units within the building, and the dimensions of the private and common elements comprising the units. All of the improvements have been or will be, as the case may be, constructed by Developer on the property substantially as shown on Exhibit "C" hereto which shows the location of said improvements on the property. A complete set of plans and specifications is available for inspection at the Developer's office.

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 being 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, whether or not elsewhere required for an amendment; provided, however, that except as provided in Paragraph 6 hereof, 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 owners or change any unit without the prior written consent of the owner and holders of record of any liens of any such unit.

7.3. Easements are reserved throughout the condominium property as may be required 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 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, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the 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 remove violations therefrom, and to maintain, repair and replace the common elements contained therein or elsewhere in the building.

7.4. Description of the Building and Principal Materials of Which Constructed.

The building comprising Phase I will be constructed of concrete block masonry with a composition roof. The interior walls will be sheetrock. The common area walls will be painted.

The building will contain 32 two-bedroom apartments, one of which will be sold to the Association, if approved by the Association, and allocated to the common area as a manager's office/apartment. A parking area containing approximately 48 spaces will be provided substantially as shown in Exhibit "C". Each unit will be assigned one parking space. The remaining spaces will be used on a first-come basis for additional cars of the occupants and their guests.

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

7.5. The Common Elements. The common elements of Phase I of the condominium will include the property described on Exhibit "A" and the common areas and facilities located substantially as shown upon the site plan and floor plans (Exhibits "C" and "D"), including the following:

(a) The driveways and paved areas, including the individual parking slots servicing the buildings (even though assigned to the exclusive use of a unit).

(b) Foundation, columns, girders, beams, supports, main walls, roofs and floors (excluding the floor of the individual unit).

(c) Hallways, walkways, corridors, stairs, stairways, ramps and driveways.

(d) The foyer on the ground floor and the manager's office/apartment.

(e) Entrances and exits to the building and pool area.

(f) Elevators, shafts, wells, and appurtenant installations and apparatus.

(g) Swimming pool and surrounding area; lawn areas, landscaping and walkways.

7.6. The Units. The description and location of the particular units and the private elements which comprise the units are determined with the aid of the plans therefor as follows:

7.6(a) The building is situated facing the Gulf of Mexico. The building contains 32 two-bedroom units. The units are numbered as follows:

C81	C82	C83	C84
C71	C72	C73	C74
C61	C62	C63	C64
C51	C52	C53	C54
C41	C42	C43	C44
C31	C32	C33	C34
C21	C22	C23	C24
C11	C12	C13	C14

PARAGRAPHS 7.6(b) THROUGH 25 APPLY TO ALL PHASES.

7.6(b). Unit Boundaries. Each unit shall include that part of the area and air space of a building which lies within the following-described boundaries:

(i) Horizontal Boundaries. The upper and lower boundaries of each unit shall be:

(a) Upper Boundary - the plane of the under surfaces of the roof rafters.

(b) Lower Boundary - the upper surface of the floor slab.

(ii) Vertical Boundaries. The vertical boundaries of each unit shall be the plane of the inside surfaces of the studs which are the component parts of exterior walls and of interior walls separating a unit from another unit, and, as to the patio or balcony, the interior surfaces of the patio or balcony walls.

7.6(c). Private Elements. The private elements of each unit shall consist of the following:

(i) the air space and the area of the building lying within the unit boundaries.

(ii) the surfacing materials on the interior of exterior walls and on interior walls separating one unit from another unit.

(iii) the structural components and surfacing materials of all interior walls located within the boundaries of the unit.

(iv) the structural components and surfacing materials of the floors and ceilings of the unit.

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

(vi) all windows, doors, window screens, and all other interior trim and finishing materials.

7.6(d). Changes. The Developer reserves the right to change the interior design and arrangement of all units owned by the Developer. The Developer further reserves the right to alter the boundaries between units, and any such alteration shall be reflected by an amendment to this Declaration which may be executed by the Developer alone. However, no such alteration of boundaries shall increase or decrease the number of units nor alter the percentage or percentages of undivided interest of any such unit or units so altered without compliance with Section 19 of this Declaration.

7.7. Determination of Percentages of Ownership in Common Elements, Common Expenses and Common Surplus. The common surplus shall be distributed among, and the common expenses shall be charged to, the unit owners according to the percentages of the undivided interest of the respective units in the common elements. A schedule setting forth the method for determining the percentage of undivided interest of each unit in the common elements is attached hereto as Exhibit "E" and is, by reference thereto, made a part hereof.

7.8. Limited Common Elements. There are no limited common elements.

8. Encroachments. If any portion of the common elements now encroaches upon the private elements of any unit, or if the private elements of any unit now encroach upon the private elements of any other unit or upon any portion of the common elements, as a result of the construction of the building, or if any such encroachment shall occur hereafter as a result of settling or shifting of the building, or as a result of any construction done subsequent to the date hereof, a valid easement for the encroachment and for the maintenance of the same shall exist so long as such building stands. In the event that

any part of any building shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the common elements upon the private elements of any unit or of the private elements 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 the building shall stand.

9. Rights and Duties of Owners, Tenants and Occupants of Units.

9.1. Units, Owners, Etc., Subject to Declaration, By-Laws and Rules and Regulations. All units and all present and future owners, tenants and occupants of units shall be subject to, and shall comply with, the provisions of this Declaration, the By-Laws, and the Rules and Regulations, as they 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 occupancy of any unit shall constitute an agreement that the provisions of 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, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person or entity having at any time any interest or estate in any unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof.

9.2. Exclusive Ownership and Share of Common Elements. Each owner shall be entitled to the exclusive ownership and possession of his unit and private elements and to an undivided interest in the common elements in the percentage determined as set forth in Exhibit "E" to this Declaration (as is set out in

Section 7.7 above). The percentage of the undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be deemed to be conveyed and to be encumbered by and released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each owner may use the common elements in accordance with the purposes for which the same are intended, without hindering or encroaching upon the lawful rights of other owners.

9.3. Enforcement. Failure of any owner to comply strictly with the provisions of this Declaration, the By-Laws, and the Rules and Regulations shall be ground for an action to recover sums due, or damages, or for injunctive relief or for any or all of them. Such actions may be maintained by the Association on its behalf or on behalf of the unit owners aggrieved. In any case of flagrant or repeated violation by a unit owner, he may be required by the Association to give sufficient surety or sureties for his future compliance with the provisions of this Declaration, the By-Laws, and the Rules and Regulations. Nothing herein contained shall prevent, in a proper case, an independent action by an aggrieved unit owner for such relief.

10. <u>Maintenance</u>. Subject to the provisions of Section 14 hereof concerning responsibility for reconstruction and repair after casualty, the responsibility for the maintenance of the condominium property shall be as follows:

10.1. Units.

10.1(a). By the Association. The Association shall maintain, repair and replace at its expense all portions of a unit which are common elements, including without limitation:

(i) those portions contributing to the support of the building, which portions shall include, but not be limited to, the outside walls and roofs (including roof rafters) of the buildings and all fixtures thereon (excluding exterior lights) and boundary walls of units, load-bearing columns and load-bearing walls, but which portions shall not include the ceiling rafters or walls lying within the unit boundaries; and

(ii) all conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services which are contained in the portions of a unit maintained by the Association; and all such facilities contained within a unit which service part or parts of the condominium in addition to or other than the unit within which contained.

Any incidental damage caused to a unit by such work shall be promptly repaired at the expense of the Association.

10.1(b). By the Unit Owner. The responsibility of the unit owner shall be as follows:

(i) To maintain, repair and replace at his expense all private elements of his unit, and to do so without disturbing the rights of other unit owners.

(ii) Not to [illegible] decorate or change the appearance of any portion of the exterior of the building in any manner other than as such portion or portions of the exterior appeared as originally constructed and finished, without the prior written approval of the Board of Directors of the Association.

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

10.1(c). Alteration and Improvement. Except as may otherwise be provided in this Declaration (or in any amendment thereto), neither a unit owner nor the Association shall make any alterations in the portions of a unit, or building containing units, which are to be maintained by the Association, or remove any portion thereof, or make any 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 of the Association, the initial expense of any such alteration or improvement to be borne by the party or parties seeking such alteration or improvement. Where necessary, any alterations or improvements so made shall be reflected in an Amendment to this Declaration which may be executed by the President of the Association, notwithstanding the procedures for Amendment described in Section 19 of this Declaration. Such Amendment shall state that it is being made pursuant to Section 10.1(c) of this Declaration.

10.2. Common Elements.

10.2(a). By the Association. In addition to the common elements referred to in Section 10.1(a), above, the maintenance and operation of all other common elements shall be the responsibility and the expense of the Association.

10.2(b). Alteration and Improvements. Except as provided in Section 10.1(c), above, after the completion of the improvements included in the common elements which are contemplated by this Declaration, there shall be no alteration or further improvement of the common elements without prior approval in writing of seventy-five (75%) percent of the votes of the unit owners; provided, however, that any alteration or improvement of the common elements bearing the approval in writing of unit owners entitled to cast fifty-one (51%) percent of the votes in the Association, and which does not prejudice the rights of any owners not consenting, may be done if the owners who do not approve are relieved from the initial cost thereof. Where necessary, any alterations or improvements that are made shall be reflected in an Amendment to this Declaration which may be executed by the President of the Association, notwithstanding the procedures for Amendment described in Section 19 of this Declaration. Such Amendment shall state that it is being made pursuant to this Section 10.2(b) of this Declaration.

11. Assessments. The making and collecting of assessments against unit owners for common expenses shall be pursuant to the By-Laws and subject to the following provisions:

11.1. Share of Common Expense. As set out in Section 7.7, above, each unit owner shall be liable for a proportionate share of the common expenses, and shall share in any common surplus, such share being the same as his percentage of ownership in the common elements, as determined in accordance with the method set forth in Exhibit "E".

11.2. Interest, Application of Payments. Assessments, and installments thereof, paid on or before fifteen (15) days after the date when due shall not bear interest, but all sums not paid on or before fifteen (15) days after the date when due shall bear interest at the rate of eight (8%) percent per annum from the date when due until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due.

11.3. Liens for Assessments. The Association shall have a lien upon each unit for any unpaid charge or assessment duly made by the Association for a share of the common expenses or otherwise, together with interest thereon as set out in Section 11.2, above, and reasonable attorneys' fees incurred by the Association in enforcing such lien. Any such lien shall be effective upon recordation in the records in the Office of the Judge of Probate of Baldwin County, Alabama, of a claim of lien signed and verified by an officer or agent of the Association, stating the description of the unit, the name of the record owner, the amount due and the date when due. Such lien may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property.

In any suit for the foreclosure of such lien, the Association shall be entitled to reasonable rental from the owner of the unit from the date of the commencement of such foreclosure proceedings and shall be entitled to the appointment of a receiver to collect same, without notice to the owner of such unit. The Association shall also have a lien for such advances for taxes and other payments as may be advanced or paid by the Association in order to preserve and protect its lien for assessments, and the Association shall further be entitled to interest at the rate of eight (8%) percent per annum on any such advances made for such purposes. The lien for such advances shall be effective upon recordation of a claim of lien in the form hereinabove described, and such lien may be foreclosed in a separate action or in any suit to foreclose the lien for unpaid assessments.

The lien granted to the Association shall be prior to all other liens, except only (i) tax liens on the unit; (ii) all sums unpaid on any mortgage of record; and (iii) any other lien recorded prior to the time of recording of the claim of the Association's lien. 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 of a first lien, such acquirer of title, his 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 collectable from all of the remaining unit owners including such acquirer, his successors and assigns.

11.4. No Exemption from Assessment. No owner of a unit may exempt himself from liability for contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of his unit.

12. Association. The operation and administration of the condominium shall be by an association, pursuant to the provisions of the Condominium Ownership Act of Alabama, which shall be incorporated as a non-profit corporation and which shall be organized and shall fulfill its function pursuant to the following provisions:

12.1. Name. The name of the Association shall be Breakers Condominium Association, Inc.

12.2. Powers. The powers and duties of the Association shall include those set forth in the Condominium Ownership Act, those set forth in this Declaration and the By-Laws of the Association, and those set forth in any Articles of Incorporation of the Association, and shall also include the power to purchase a unit of the condominium.

12.3. Members and Voting.

12.3(a). Qualification. The members of the Association shall consist of all of the unit owners.

12.3(b). Change of Membership. Change of membership in the Association shall, after compliance with Section 15 of this Declaration, be established by the recording in the public records of Baldwin County, Alabama, of a deed or other instrument establishing record title to a unit in the condominium and by the delivery to the Association of a certified copy of such instrument, the owner designated by such instrument thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated.

12.3(c). Voting Rights. Each unit shall have a vote equal to the undivided interest in the common elements attributable to the unit as determined by the method set forth in Exhibit "E". The vote for a unit shall be cast by the owner thereof or the owner of a possessory interest therein, or in the case of a corporate owner, by an officer or employee thereof. It is expressly understood that a lessee shall have no vote and shall not be entitled to cast the vote of the owner of the leased unit. Owners of more than one (1) unit shall be entitled to vote for each unit owned. However, should the Association be a unit owner, it shall not have the voting right for that unit.

12.3(d). Designation of Voting Representative. In the event a unit is owned by one (1) person, his right to vote shall be established by the record title to his unit. If a unit is owned by more than one (1) person, the person entitled to cast the vote for the unit shall be designated by a certificate signed by all of the record owners of the unit and filed with the Secretary of the Association. If a unit is owned by a corporation, partnership, or limited partnership, the officer, employee, or individual entitled to cast the vote for the unit shall be designated by a certificate of appointment signed by the president or vice-president and attested by the secretary or assistant secretary of the corporation (in the case of a corporation) or by the general partners (in the case of a partnership or limited partnership), which certificate shall be filed with the Secretary of the Association. If such a certificate is not on file with the Secretary of the Association for a unit owned by more than one (1) person or by a corporation, partnership, or limited partnership, the membership or vote of the unit concerned shall not be considered in determining the requirement for a quorum nor for any purpose requiring the approval of the person entitled to cast the vote for the unit. Such certificate shall be valid until revoked or until a change in the ownership of the unit concerned is effected. A certificate designating the person entitled to cast the vote of a unit may be revoked by any owner thereof.

12.3(e). Approval or Disapproval by Unit Owners. Whenever the approval or disapproval of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such approval or disapproval shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of all record owners is specifically required by this Declaration.

12.3(f). Restraint Upon Assignment of Shares in Assets. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.

12.4. Manager. The Association shall not fail to employ a manager for the condominium project unless holders of mortgages constituting first liens on units have given their prior written approval and such mortgagees shall be entitled to written notification from the Association thirty (30) days prior to any change of manager.

12.5. Board of Directors. The affairs of the Association shall be conducted by a board of not less than three (3) nor more than nine (9) Directors, who shall be designated in the manner provided in the By-Laws.

12.6. Indemnification. Every Director and Officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of a settlement, the indemnification herein provided shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which such Director or Officer may be entitled.

12.7. Limitation of Liability. Notwithstanding the liability of the Association to maintain and repair parts of the condominium property, the Association shall not be liable for injury or damage caused by a latent condition of the property to be maintained and repaired by the Association nor for injury or damage caused by the elements or other owners or persons.

12.8. By-Laws. A copy of the form of By-Laws to be used by the Association is attached hereto as Exhibit "F". Said By-Laws may be amended as provided for therein.

13. Insurance. Insurance (other than title insurance), which shall be carried upon the condominium property and the property of the unit owners, shall be governed by the following provisions:

MISC. 36 PAGE 430

13.1. Authority to Purchase. The Association shall purchase insurance policies upon the condominium property in the name of the Association as Trustee for each of the unit owners (in the percentages of ownership set forth in this Declaration), and their mortgagees, as their interests may appear, and provision shall be made for the issuance of certificates of mortgage endorsements to the mortgagees of unit owners. Such policies shall be deposited with the Association. Unit owners may obtain additional insurance coverage at their own expense upon their own personal property and such other coverage, including personal liability, as they may desire.

13.2. Coverage.

13.2(a). Casualty. All buildings and improvements upon the land and all personal property comprising the condominium property shall be insured with a single insurance agent in an amount sufficient to avoid application of a co-insurance clause, but not more than the maximum insurable replacement value, excluding foundation and excavation costs, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against:

(i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location, and use to the buildings on the land, including, but not limited to, vandalism and malicious mischief.

13.2(b). Public liability. The Association shall obtain public liability insurance in such amounts and with such coverage as shall be required by the Board of Directors of the Association.

13.2(c). Other. The Association shall obtain such other insurance, including Workman's Compensation coverage, as the Board of Directors of the Association shall determine from time to time to be necessary or desirable.

13.3. Provisions. Every such policy of insurance shall in substance and effect:

13.3(a). Provide that the liability of the insuror thereunder shall not be affected by, and that the insuror shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of, any other insurance obtained by or for any unit owner.

13.3(b). Contain no provisions relieving the insuror from liability for a loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Association, or because of any breach of warranty or condition or any other act or neglect by the Association or any unit owner or any other persons under either of them.

13.3(c). Provide that such policy may not be cancelled (whether or not requested by the Association) except by the insuror giving at least thirty (30) days' prior written notice thereof to the Association, the fee owner, and every other person in interest who shall have requested such notice of the insuror.

13.3(d). Contain a waiver by the insuror of any right of subrogation to any right of the Association or against the owner or lessee of any unit; and

13.3(e). Contain a standard mortgagee clause which shall:

(i) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages on any unit, whether or not named therein; and

(ii) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Association or unit owners or any persons under any of them; and

(iii) Waive any provision invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insuror of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

13.4. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a common expense.

13.5. Insurance Trustee; Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering casualty losses shall be paid to the Association, as Trustee for each of the unit owners and their mortgagees, in the percentages established by this Declaration, which said Association, for the purposes of these provisions, is herein referred to as the Insurance Trustee. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere herein stated and for the benefit of the unit owners and their mortgagees, as follows:

13.5(a). Common Elements. Proceeds on account of damage to common elements--an undivided share for each unit owner, such share being the same as his percentage of undivided interest in the common elements.

13.5(b). Units. Proceeds on account of damage to units shall be held for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Association.

13.5(c). Mortgagees. In the event a mortgagee endorsement has been issued for a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests may appear.

13.6. Distribution of Proceeds. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be used to defray the cost thereof as elsewhere herein provided. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners.

13.7. Association as Agent. The Association is hereby irrevocably appointed agent for each unit owner and his mortgagee to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon the payment of claims.

14. Reconstruction or Repair After Casualty. In the event more than two-thirds (2/3) of the total number of units are substantially damaged or destroyed by fire or other casualty and

members entitled to cast at least seventy-five (75%) percent of the votes (which 75% vote shall constitute an "agreement" for the purposes of Section 20(b)(1) and (2) of the Alabama Condominium Ownership Act) in the Association do not within sixty (60) days from the date of such casualty make request in writing to the Board of Directors of the Association to proceed with repair or reconstruction, then and in that event, upon the vote of a majority of unit owners in favor of removal, the property shall be subject to an action for removal from the condominium form of ownership and for partition at the suit of the owner of any unit, in which event the net proceeds of sale, together with the net proceeds of any insurance paid to the Insurance Trustee shall be considered as one fund and shall be distributed among the owners of all the units, each owner's share in said fund being determined in the manner set forth in Exhibit "E". Any distribution to the owner of a unit upon which there is a mortgage constituting a first lien shall be made to such owner and his mortgagee jointly.

If the mortgage so provides, for the purposes of this Section, should a mortgagee holding a mortgage which constitutes a first lien on a unit express in writing within sixty (60) days such mortgagee's desire either to rebuild, repair or reconstruct or not to rebuild, repair or reconstruct the damaged or destroyed property, the expression of said mortgagee shall be deemed to be that of the unit owner, and any contrary expression by the owner of said unit shall be disregarded.

Other than as hereinabove provided, any property damaged or destroyed by fire or other casualty shall be promptly repaired or restored.

14.1 Plans and Specifications. Any such reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, or as the building was last constructed.

14.2 Responsibility.

14.2(a) If the damage is only to the private elements of a unit, then the unit owner shall be responsible for reconstruction and repair after casualty. The obligation of the owner under this Declaration to reconstruct and rebuild shall create in the Association, acting through the Board of Directors, a right to require such owner to reconstruct and rebuild, which right shall be enforceable as provided by law. In addition to such right, and to any other rights and remedies which the Association may have under this Declaration or applicable law, in the event that a unit owner who is responsible for reconstruction or repair fails to undertake such reconstruction or repair within a reasonable time after the casualty creating the need therefor, the Association may, in the sole discretion of the Board of Directors, undertake such reconstruction and repair in the manner provided elsewhere in this Declaration, with similar rights of disbursement and assessment.

14.2(b) In all other instances (including, subject to the provisions of Sections 14.4(b) and 14.5(b)(iii) hereof, instances in which both private elements and common elements have been damaged), the responsibility of reconstruction and repair after casualty shall be that of the Association, provided, however, that in any case where the responsibility for reconstruction and repair of the private elements of a unit is that of the Association, the Association may, in the sole discretion of the Board of Directors and with the consent of the owner of the unit, delegate all or any part of such responsibility to such owner, in which event the actions of said owner, the Association and the Board of Directors shall be governed by the provisions of this Declaration relating to reconstruction and repair of private elements the responsibility for which lies with the unit owner.

14.3 Estimate of Costs. Immediately after a casualty causing damage, responsibility for reconstruction or repair of which is that of the Association, the Association shall obtain reliable and detailed estimates of the cost of rebuilding or repairing the damaged property so as to place it in as good condition as that before the casualty.

14.4 Additional Funds

14.4(a) In the case of damage to common elements, if the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, assessments shall be made against all unit owners in sufficient amounts to provide funds to pay the estimated costs. If at any time during such reconstruction or repair, or upon completion of same, the funds for the payment of the costs therefor are insufficient, assessments shall be made against all unit owners in sufficient amounts to provide funds for the payment of such costs. Such assessments for reconstruction and/or repair of damage shall be in proportion to the owners' percentage of undivided interest in the common elements, and shall be treated for all purposes as assessments for common expenses under Section 11 of this Declaration.

14.4(b) In the case of damage to the private elements of any unit (whether the responsibility for reconstruction and repair thereof lies with the Association or with the unit owner), if the proceeds of insurance representing damage to such private elements which are available for disbursement to meet costs of reconstruction and repair are not sufficient to defray such costs, the Association may assess the unit owner for additional funds sufficient to complete such reconstruction and repair. Such assessment shall be treated for all purposes as an assessment for common expenses under Section 11 of this Declaration. Any such assessment shall be payable by the owner in such manner and to such payees as the Board of Directors may direct.

14.5 <u>Construction Funds</u>. The funds for payment of costs of reconstruction and repair after casualty, which funds shall consist of proceeds of insurance held by the Insurance Trustee and the funds collected by the Association from assessments against unit owners, shall be disbursed in payment of such costs in the following manner:

14.5(a) Unit Owner. The portion representing damage for which the responsibility of reconstruction lies with the unit owner shall be disbursed to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair, in such amounts and at such times as the unit owner may direct, or if there is a mortgagee endorsement, then to such payees as the unit owner and the first mortgagee may direct. Nothing herein contained shall, however, be construed so as to limit or modify the responsibility of the unit owner to make such reconstruction and repair.

14.5(b) Association. The portion representing damage for which the responsibility of reconstruction and repair lies with the Association shall be disbursed:

(i) In the case of damage only to common elements, to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair, in such amounts and at such times as the Board of Directors may direct.

(ii) In the case of damage to both private and common elements, to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair, in such amounts and at such times as the Board of Directors may direct; provided, however, that if such damage includes damage to the private elements of a unit as to which there is a mortgagee endorsement, the portion of the insurance proceeds representing damage to the private elements of such unit shall be disbursed at the direction of the Board of Directors to such payees as may be approved by the first mortgagee.

(iii) Disbursements as set forth in subsections (i) and (ii) of this section shall be subject to the following qualification: If the amount of estimated costs of reconstruction and repair which is the responsibility of the Association is more than the total of the annual assessments for recurring common expenses to be made during the year in which the casualty occurs, or if the Insurance Trustee is so requested by a mortgagee which is a beneficiary of an insurance policy the proceeds of which comprise a part of the amounts to be disbursed, then such funds shall be disbursed in payment of the costs of reconstruction and repair in the manner directed by the Board of Directors only upon approval thereof by an architect or engineer who is qualified to practice in the State of Alabama and who is employed by the Association to supervise the work.

15. Use Restriction. The use of the property of the condominium shall be in accordance with the following provisions:

15.1. Residential Use Only. The condominium property shall be used for residential purposes, and for the furnishing of services and facilities herein provided for the enjoyment of such residences.

15.2. Nuisances. No nuisance, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents, shall be allowed upon the condominium property. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist.

15.3. Lawful Use. No immoral, improper, offensive, or unlawful use shall be made of the condominium property or any part thereof; and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. Responsibility for meeting the requirements of governmental bodies which require maintenance, modification, or repair of the property shall be the same as the responsibility for the maintenance and repair of the property concerned.

15.4. Regulations. Reasonable regulations concerning the use of the condominium property may be made by the Developer and amended from time to time by the Board of Directors of the Association; provided, however, that any such amendment thereto shall be approved by not less than a majority of the votes of the Association before it shall become effective. Members not present at meetings considering such regulations or amendments thereto may express their approval or disapproval in writing. Copies of all regulations or amendments thereto shall be furnished by the Association to all unit owners and residents of the condominium upon request. A copy of the original Rules and Regulations is attached as Exhibit "G".

15.5. Proviso. Provided, however, that neither the unit owners nor the Association, nor the use of the condominium property by unit occupants, shall interfere with the completion of the improvements contemplated by this Declaration or by any amendments thereto or the sale of any units by Developer. Developer may make such use of the unsold units and of the common areas and facilities as may facilitate such completion and sale, including but not limited to, the showing of the property and the display of signs.

16. <u>Maintenance of Community Interests</u>. In order to maintain a community of congenial residents, to preserve the financial stability of the condominium regime, and to protect the value of the units, the transfer of condominium units by any owner other than the Developer shall be subject to the following provisions so long as the condominium exists:

16.1. Transfers Subject to Approval.

16.1(a). Sale. No unit owner may dispose of a condominium unit or of any interest therein by any sale without approval of the Transfer Committee (defined in Section 16.2(a), below) except to another unit owner.

16.1(b). Lease. A unit may be leased or rented by the owner or owners thereof without approval of the Association for any period up to two (2) years; provided, however, that there shall be no extensions or renewals of any such lease to the same lessee beyond the two (2) year period without compliance by the owner with the provisions of Section 16.2, below; and provided further that both the owner and the other parties to the lease or rental agreement shall at all times be subject to and be bound by all of the provisions of this Declaration, the By-Laws, and the Rules and Regulations of the Association, copies of which shall be furnished to the leasing or renting party or parties by the owner. It is expressly understood that the owner or owners shall at all times remain primarily liable to the Association for all common expenses and all assessments or other charges made against the leased or rented unit.

16.1(c). Gift. If any person or entity shall acquire title to or any interest in any unit by gift, the continuance of such title or interest shall be subject to the approval of the Transfer Committee.

16.1(d). Devise or Inheritance. If any person or entity shall acquire title to or any interest in any unit by devise or inheritance, the continuance of such title or interest shall be subject to the approval of the Transfer Committee.

16.1(e). Other Transfers. If any person or entity shall acquire title to or any interest in any unit in any manner not heretofore considered in the foregoing subsections, the continuance of such title or interest shall be subject to the approval of the Transfer Committee.

16.2. Approval by Transfer Committee. The approval of the Transfer Committee which is required for the transfer of condominium units shall be obtained in the following manner:

16.2(a). Transfer Committee. The board of Directors shall, at each of its annual meetings, appoint a Transfer Committee consisting of three (3) members of the Association. The members shall serve on said Committee for one year. All requests for approval shall be referred to this Committee, and the decision of this Committee shall be final. Approval of a transfer must be by a majority of the members of the Committee.

16.2(b). Notice to Committee.

(i) Sale. A unit owner intending to make a bona fide sale of his unit or any interest therein shall give to the Committee at least thirty (30) days' written notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Committee may reasonably require.

(ii) Lease. Except as is set out in Section 16.1(b), above, a unit owner intending to make a bona fide lease of his unit or of any interest therein shall give to the Committee at least thirty (30) days' written notice of such intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Committee may reasonably require, and a copy of the proposed lease.

(iii) Gift, Devise or Inheritance; Other Transfers. A person or entity who has obtained title to or any interest in any unit by gift, devise or inheritance, or by any other manner not heretofore considered, shall give to the Committee notice of the acquiring of such title or interest, together with such information concerning such person or entity as the Committee may reasonably require, and a certified copy of the instrument evidencing such title or interest.

(iv) Failure to Give Notice. If the notice to the Committee herein required is not given, then at any time after receiving knowledge of a transaction or event transferring an interest in, or ownership or possession of, a unit, the Committee at its election and without notice may approve or disapprove the transaction or ownership. If the Committee disapproves the transaction or ownership, the Committee shall proceed as if it had received the required notice on the date of such disapproval.

16.2(c). Certificate of Approval.

(i) Sale. If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information, the Committee must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the Chairman of the Committee in recordable form and shall be delivered to the purchaser who shall record said certificate in the Probate Court of Baldwin County, Alabama.

(ii) Lease. If the proposed transaction is a lease for a period of more than two (2) years (including all extension and renewal periods), then within thirty (30) days after receipt of such notice and information the Committee must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the Chairman of the Committee in recordable form and shall be delivered to the lessee.

(iii) Gift, Devise or Inheritance; Other Transfers. If the person or entity giving notice has acquired his title or interest by gift, devise or inheritance, or in any other manner not heretofore considered, then within thirty (30) days after receipt of such notice and information, the Committee must either approve or disapprove the continuance of such title or interest. If approved, the approval shall be stated in a certificate executed by the Chairman of the Committee in recordable form and shall be delivered to such person or entity and he or it shall record said certificate in the Probate Court of Baldwin County, Alabama.

16.2(d). Approval of Corporation, Partnership or Limited Partnership. Inasmuch as the condominium may be used only for residential purposes, and since a corporation, partnership, or limited partnership cannot occupy a unit for such use, the approval (as contemplated in this Section 16.2(d)) of a corporation, partnership, or limited partnership, may be conditioned by requiring that all persons who will use or occupy the unit be also first approved by the Committee.

16.3. Disapproval by the Committee. If the Committee shall disapprove a transfer of a unit or of any interest therein, the matter shall be disposed of in the following manner:

16.3(a). Sale. If the proposed transaction is a sale, then within ninety (90) days after notifying the unit owner of such disapproval, the Committee, on behalf of the Association, shall deliver or mail by certified mail to the unit owner an offer to purchase either by the Association or by a purchaser approved by the Committee, and the unit owner must sell the unit to the Association or such approved purchaser upon the following terms:

(i) At the option of the purchaser to be stated in his offer, the price to be paid shall be that stated in the disapproved contract to sell, or, if less, then the fair market value, determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who are familiar with the values of comparable properties in the Baldwin County area, and who shall base their determination upon an average of [illegible] of the unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(ii) The purchase price shall be paid in cash, unless otherwise agreed to by the owner and the purchaser.

(iii) The sale shall be closed within thirty (30) days after the delivery or mailing of said offer to purchase, or within ten (10) days after the determination of the sale price if such is by arbitration, whichever is the later.

(iv) If the Association shall fail to purchase or if the Committee shall fail to provide a purchaser as herein required, then notwithstanding the disapproval, such sale shall be deemed to have been approved, and the Committee shall furnish a certificate of approval as elsewhere herein provided.

16.3(b). Lease. If the proposed transaction is a lease for a period of more than two (2) years (including all extension and renewal periods), the unit owner shall be advised of the disapproval in writing, and the lease shall not be made.

16.3(c). Gift, Devise or Inheritance; Other Transfers. If the person or entity giving notice has acquired title to or any interest in any unit by gift, devise, or inheritance, or in any other manner not herein otherwise specified, then within thirty (30) days after receipt from such person or entity of the notice and information required to be furnished, the Committee, on behalf of the Association, shall deliver or mail by certified mail to such person or entity an offer to purchase either by the Association or by a purchaser approved [illegible] person or entity must sell his [illegible] following:

(i) The sale price shall be the fair market value determined by agreement within thirty (30) days from the delivery or mailing of such offer, and, in the absence of such agreement, by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who are familar with values of comparable properties in the Baldwin County area and who shall base their determination upon an average of their appraisals of the unit;

and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of arbitration shall be paid by the purchaser.

(ii) The purchase price shall be paid in cash, unless otherwise agreed to by the person or entity and the purchaser.

(iii) The sale shall be closed within ten (10) days following the determination of the sale price.

(iv) If the Association shall fail to purchase or if the Committee shall fail to provide a purchaser as herein required, then notwithstanding the disapproval, such title or interest shall be deemed to have been approved, and the Committee shall furnish a certificate of approval as elsewhere provided.

16.4. Mortgage. Other than to a bank, a life insurance company, a federal savings and loan association, an FHA approved mortgagee, or a lending institution approved by the Developer, no unit owner may mortgage his unit, or any interest therein, without the approval of the Board of Directors of the Association. The approval of any other mortgagee may be upon conditions determined by the Association or may be arbitrarily withheld.

16.5. Exceptions. The foregoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to, or purchase by, a bank, life insurance company, federal savings and loan association, or mortgagee approved by FHA, by Developer, or by the Association which acquires its title as the result of owning a mortgage upon the unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings. Further, said provisions shall not apply to a transfer, sale, or lease by a bank, life insurance company, federal savings and loan association, or mortgagee approved by Developer, by the FHA, or by the Association which so acquires its title; nor shall said provisions require the approval of a purchaser who acquires title to a unit at a duly advertised public sale with open bidding as may be provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale, or tax sale.

16.6. Unauthorized Transactions. Any sale, lease or other transfer or mortgage which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Committee or the Board of Directors of the Association, as the case may be.

16.7. Notice of Lien or Suit.

16.7(a). Notice of Lien. A unit owner shall give notice to the Association of every lien upon his unit other than for permitted mortgages, taxes, and special assessments, within five (5) days after the owner's receipt of notice thereof.

16.7(b). Notice of Suit. A unit owner shall give notice to the Association of every suit or other proceeding which may affect the title to his unit, such notice to be given within give (5) days after the unit owner receives knowledge thereof.

16.7(c). Failure to comply with this subsection concerning liens will not affect the validity of any judicial sale.

17. Compliance and Default. Each unit owner shall be governed by and shall comply with the terms of the Condominium Documents and the regulations adopted pursuant thereto and said documents and regulations as they may be amended from time to time. A default shall entitle the Association or other unit owners to the following relief in addition to the remedies provided by the Alabama Condominium Ownership Act:

17.1. Negligence. A unit owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, negligence, or carelessness or by that of any member of his family or of his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a unit or its appurtenances.

17.2. Costs and Attorneys' Fees. In any proceeding arising because of an alleged default by a unit owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.

17.3. No Waiver of Rights. The failure of the Association or of any unit owner to enforce any covenant, restriction or other provision of the Alabama Condominium Ownership Act, this Declaration, the By-Laws, or the Rules and Regulations shall not constitute a waiver of the right to do so thereafter.

18. <u>Covenant Against Partition</u>. There shall be no judicial or other partition of the condominium property or of any part thereof, nor shall Developer or any person acquiring any interest in the condominium property or any part thereof seek any such partition unless the property has been removed from the provisions of the Condominium Ownership Act as provided in said Act or in this Declaration.

19. <u>Amendment</u>. Except as provided in Sections 6, 7, and 10, hereof, this Declaration of Condominium, including exhibits hereto (except for the By-Laws), shall be amended in accordance with, and subject to, the following provisions:

19.1. Notice. 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.

19.2. Resolution. A resolution adopting a proposed amendment may be proposed by a majority of either the Board of Directors of the Association or the members of the Association, and after being proposed and 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, providing such approval or disapproval is delivered to the Secretary at or prior to the meeting. Such approvals must be by not less than a majority of the Directors and by 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 any 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.

19.3. Recording. 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 Probate Court records of Baldwin County, Alabama.

19.4. Agreement. In the alternative, an amendment may be made by an agreement signed and acknowledged by all of the record owners of units in the condominium and those holding mortgages comprising first liens thereon in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Probate Court records of Baldwin County, Alabama.

19.5. Provisos.

19.5(a). 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 Sections 6 and 7 hereof, no such amendment shall increase or decrease the number of units, nor change the owners' 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.

19.5(b). 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 on 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 one or more phases, as provided herein, and any such amendment shall be null and void and of no effect.

20. <u>Provisions Pertaining to the Developer</u>.

20.1. Notwithstanding any other provisions herein contained:

20.1(a). Developer reserves the unrestricted right to sell, assign, or lease any unit which it may now or hereafter own, whether such unit be located on the property described in Exhibit "A" or Exhibit "B" hereto, after the recording or filing of this Declaration or any amendment hereto, and to post signs on the condominium property.

20.1(b). Until Developer has completed and sold all of the units located on the property described on Exhibit "A" attached hereto, or until Developer elects to terminate its control of the condominium, whichever shall first occur, the following additional provisions shall be deemed to be in full force and effect:

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

(ii) The Directors of the Association shall be designated by Developer, and such Directors as may be so designated need not be unit owners.

20.1(c). In the event Developer, pursuant to Paragraph 6 of this Declaration, files an amendment or amendments to this Declaration submitting to the provisions hereof any or all of the property described on Exhibit "B" attached hereto as Phases II, III and/or IV of the Breakers Condominium, then, for each such amendment, from the time of the filing of such amendment until Developer has completed and sold all of the units located on the property submitted to the terms of this Declaration by such amendment, the following additional provisions shall be deemed to be in full force and effect:

(i) Developer shall have the right to amend the By-Laws of the Association to the extent deemed by it to be necessary or appropriate in light of the submission of such additional phase to the provisions of this Declaration.

(ii) Developer shall have the right, but not the obligation, to designate a majority of the Directors of the Association, and such Directors as may be so designated need not be unit owners.

20.1(d). Any mortgage of any form taken by Developer in connection with the sale of a unit may be assigned by Developer at any time to any bank or other financing institution of its choosing. Any such mortgage shall contain a provision recognizing this right of assignment.

20.1(e). Anything herein to the contrary notwithstanding, neither unit owners nor the Association, nor the holder of any lien or mortgage on any unit, shall take any action which interferes in any way with Developer's efforts to sell or otherwise dispose of any unit which it may now or hereafter own, or which would in any way prejudice or conflict with the rights of Developer to develop the property described on Exhibit "B" attached hereto, including its right to submit said property to the condominium form of ownership and use by amendment to this Declaration in one or more phases, and any such action shall, at the option of Developer, be void.

20.2. None of the provisions contained in this paragraph 20 shall be construed so as to relieve 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. Blanket Mortgage. It is hereby expressly provided that the entire condominium property, or some or all of the units in the condominium may be placed under a single or blanket mortgage upon execution by the owners of the property or the units covered thereby of a recordable instrument which creates a first lien on the property or units covered therein. Any such mortgage shall contain release provisions by which any unit owner may obtain a release of his unit from the lien of such mortgage and a satisfaction and discharge in recordable form upon payment to the holder of the mortgage of a sum equal to the proportionate share attributable to his unit of the then outstanding balance of unpaid principal and accrued interest and any other charges then due and unpaid. Such proportionate share attributable to each unit shall be the proportion in which all unit owners, whose units are then subject to the lien of the mortgage, own among themselves the common elements as provided in this Declaration, or such other reasonable proportion as shall be specifically provided in the mortgage instrument. Such mortgage may contain provisions for converting such mortgage to individual mortgages on the individual units included therein.

22. Notice to Mortgagee of Default by Unit Owner. In the event of any default in the performance by a unit owner of any of his duties or obligations under this Declaration, the By-Laws, or the Rules and Regulations of the Association, the Association shall, if such default is not cured within thirty (30) days, give written notice of such default to the holder of a mortgage constituting a first lien on the unit of such defaulting owner; provided, however, that if the default is a failure to pay any charges or assessments to the Association, such notice shall be given if such default is not cured within fifteen (15) days.

23. Notice of Mortgage. Notwithstanding any other provision to the contrary in this Declaration, the Association shall have no obligation to give any notices to, or to take any other actions required by this Declaration with respect to, any mortgagees other than those from whom the Association has received a copy of the mortgage or written notice which sets out the unit number of the mortgaged unit, the name of the mortgagor, the name and address of the mortgagee, and the date of the mortgage.

The Secretary of the Association shall keep a list of mortgagees which shall contain the information set out above.

24. Termination. The Condominium may be terminated in the manner provided by the Condominium Ownership Act and amendments thereto; provided, however, that in the event of termination, each unit shall be subject to the payment of its percentage of the common expenses as heretofore defined.

25. Severability. The invalidity in whole or in part of any covenant, restriction, section, subsection, sentence, clause, phrase, word, or other provision of this Declaration of Condominium and the By-Laws of the Association shall not affect the validity of the remaining portion thereof.

IN WITNESS WHEREOF, Breakers Developments, Inc., a corporation, has caused this declaration to be executed by its officers thereunto duly authorized, and its corporate seal to be hereunto affixed, all on this 8th day of May ______, 1980.

Developer:

BREAKERS DEVELOPMENTS, INC.

By Thomas E. McCown
As its President

ATTEST:

By A R Dempsey
As its Secretary

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned Notary Public in and for said County in said State, hereby certify that THOMAS E. McCOWN and A. R. DEMPSEY, whose names as President and Secretary, respectively, of BREAKERS DEVELOPMENTS, INC., an Alabama corporation, 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 said instrument, they as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 8th day of May, 1980.

Mona Lynn Reece
Notary Public

My Commission Expires:
Oct. 23, 1982

(AFFIX NOTARIAL SEAL)

MONA LYNN REECE NOTARY PUBLIC ALABAMA STATE AT LARGE

This instrument prepared by:
ARMBRECHT, JACKSON, DeMOUY,
CROWE, HOLMES & REEVES
Christopher I. Gruenewald
P. O. Box 290
Mobile, Alabama 36601

MISC. 36 PAGE 454

EXHIBIT "A"

STATE OF ALABAMA

COUNTY OF BALDWIN

Commencing at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East Baldwin County, Alabama; run thence South 00°09'30" West a distance of 611.72' feet to a point on the southerly line of Alabama Highway No. 182; thence run North 75° 59' East along said Highway 182 a distance of 2403.40' feet to the point of beginning of the property herein described; thence continue North 75°59' East a distance of 150.0' feet; thence run South a distance of 440' feet more or less to the mean high tide line of the Gulf of Mexico; thence run Southwestwardly along the said mean high tide line a distance of 150' feet more or less; thence run North a distance of 450' feet more or less to the point of beginning.

PREPARED BY:

DAVID M. GIVENS SURVEYING COMPANY

EXHIBIT "B"

STATE OF ALABAMA

COUNTY OF BALDWIN

Commencing at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East Baldwin County, Alabama; run thence South 00°09'30" West a distance of 611.72' feet to a point on the southerly line of Alabama Highway No. 182; thence run North 75°59' East along said Highway 182 a distance of 1953.40' feet to the point of beginning of the property herein described; thence continue North 75°59' East a distance of 450 feet; thence run South a distance of 440' feet more or less to the mean high tide line of the Gulf of Mexico; thence run Southwestwardly along the said mean high tide line a distance of 450' feet more or less; thence run North a distance of 450' feet more or less to the point of beginning.

PREPARED BY:

DAVID M. GIVENS SURVEYING COMPANY

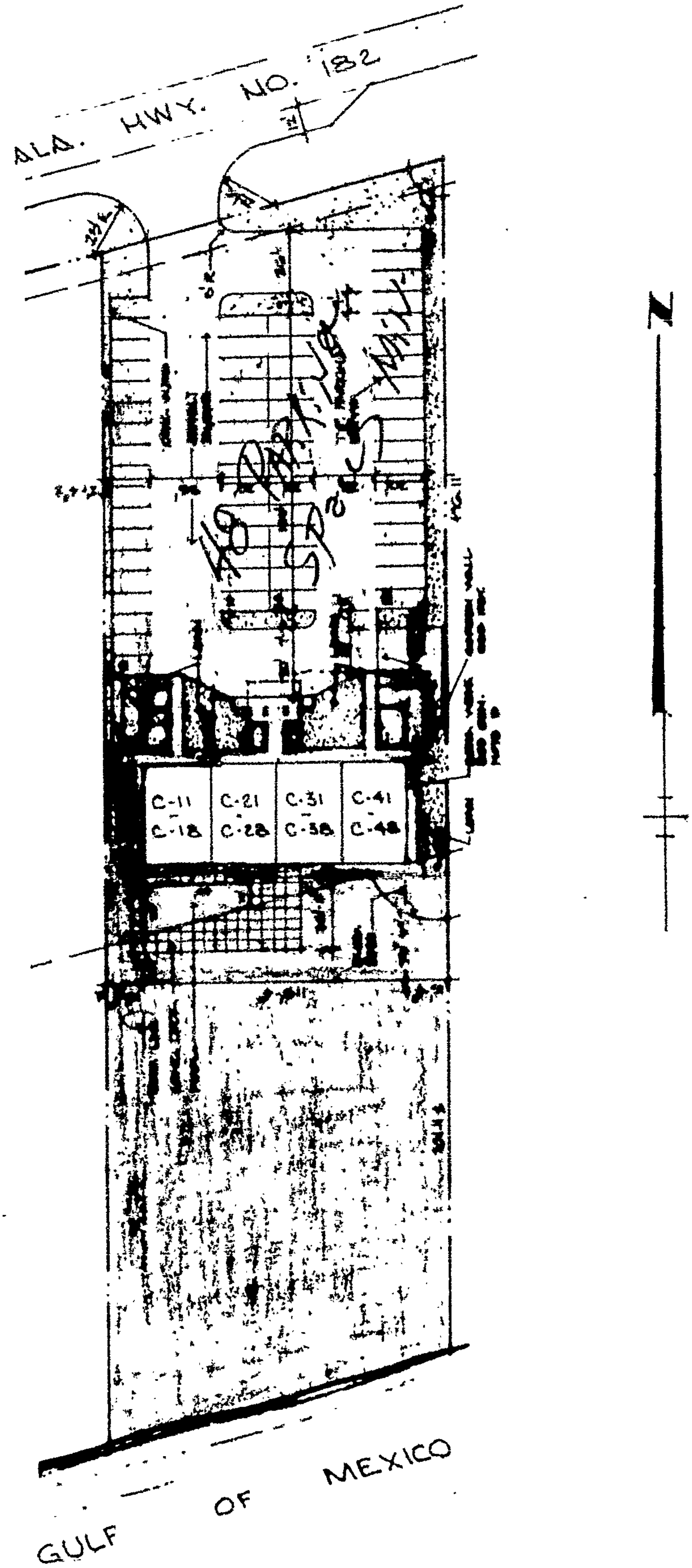

EXHIBIT "C"

LAYOUT OF COMMON AREAS

SHADED AREA DENOTES THE COMMON AREAS

EXHIBIT "D"

Page 1 of 4

RELATIVE LOCATIONS OF UNITS WITHIN BUILDING

C81	C82	C83	C84	8th Floor
C71	C72	C73	C74	7th Floor
C61	C62	C63	C64	6th Floor
C51	C52	C53	C54	5th Floor
C41	C42	C43	C44	4th Floor
C31	C32	C33	C34	3rd Floor
C21	C22	C23	C24	2nd Floor
C11	C12	C13	C14	1st Floor

Phase I will contain 32 units. All units will be located in one building of eight floors, with four units per floor. The above diagram shows the relative locations of the units, by number, in the building as viewed from the south, i.e., the diagram represents the side of the building which will face the Gulf of Mexico.

EXHIBIT "E"

OWNERSHIP OF COMMON ELEMENTS

PHASE I

Subject to the provisions of the Declaration of Condominium, and the provisions of this Exhibit "E", the owner or owners of each unit within Phase I shall own, as an appurtenance to each such unit, an undivided 1/32 (i.e. 3.125%) interest in the common elements of Phase I.

PHASES II, III, & IV

In the event of, and upon, the submission of each of Phases II, III and IV to the condominium form of ownership in accordance with the provisions of this Declaration, there shall be allocated to each phase, including Phase I, a total undivided interest in all common elements in all phases determined by dividing the total number of square feet of floor surface in all units in such phase by the total number of square feet of floor surface in all units in all phases. There shall be allocated to each unit in Phase I an undivided 3.125% of the total interest in the common elements allocated to Phase I in accordance with the immediately preceding sentence. The undivided interest to be allocated to each unit within each of Phases II, III, and IV shall be determined in the manner provided in the amendment to this Declaration by which that phase is submitted to the condominium form of ownership.

EXHIBIT "F"

BY-LAWS

OF

BREAKERS CONDOMINIUM ASSOCIATION, INC.

1. IDENTITY. These are the By-Laws of Breakers Condominium Association, Inc., an association organized pursuant to §§35-8-1, et seq., of the Code of Alabama, 1975, (herein called the Condominium Ownership Act), and §§10-3-1, et seq., of the Code of Alabama, 1975 (the Alabama Nonprofit Corporation Act), for the purpose of administering Breakers Condominium, a condominium located in Gulf Shores, Baldwin County, Alabama (the "condominium").

1.1. Office. The office of the Association shall be at P. O. Box 912, Gulf Shores, Alabama 36542, in the place provided therefor.

1.2. Fiscal year. The fiscal year of the Association shall be the calendar year.

2. MEMBERS' MEETINGS.

2.1. Annual Meeting. The annual members' meeting shall be held at the office of the Association or at such other place in Baldwin County, Alabama, as the Board of Directors may direct at 8:00 p.m., local time, on the third Tuesday in each year for the purpose of electing directors and transacting business authorized to be transacted by the members; provided, however, if that day is a legal holiday, the meeting shall be held at the same hour on the next day following that is not a legal holiday.

2.2. Special Meetings. Special members' meetings shall be held whenever called by the President or Vice-President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast twenty-five (25%) percent of the votes in the Association.

2.3. Notice. Notice of all members' meetings stating the time and place and the objects for which the meeting is called shall be given by the President or Vice-President or Secretary unless waived in writing. Such notice shall be in writing to each member at his address as it appears on the books of the Association and shall be mailed not less than ten (10) days nor more than thirty (30) days prior to the date of the meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Notice of meeting may be waived before or after meetings.

2.4. Voting. Each unit shall have a vote equal to the undivided interest in the common elements attributable to the unit, subject to the provisions of Section 12 of the Declaration of Condominium of Breakers Condominium (the "Declaration").

2.5. Quorum. A quorum at members' meetings shall consist of persons entitled to cast a majority of the votes of the entire membership. As used in these By-Laws, the term "majority" means fifty-one (51%) percent of the votes of the members.

2.6. Proxies. Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote and shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting.

2.7. Vote Required to Transact Business. When a quorum is present at any meeting, the holders of a majority of the voting rights present in person or represented by written proxy shall decide any questions brought before the meeting, unless the question is one upon which, by express provision of the statutes, the Declaration, or the By-Laws, a different number is required, in which case the express provision shall govern and control the decision in question.

Anything herein to the contrary notwithstanding, any action required or permitted to be taken at any meeting of the members of the Association or any Committee thereof may be taken without a meeting, if prior to such action a written consent thereto is signed by all members or all the members of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Association or committee.

2.8. Adjourned Meetings. If any meeting of members cannot be organized because a quorum is not present, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

2.9. Order of Business. The order of business at annual members' meetings and, as far as practical, at all other members' meetings, shall be:

(a) Call to order;

(b) Calling of the roll and certifying of proxies;

(c) Proof of notice of meeting or waiver of notice;

(d) Reading and disposal of any unapproved minutes;

(e) Reports of officers;

(f) Reports of committees;

(g) Election of directors;

(h) Unfinished business;

(i) New business;

(j) Adjournment.

2.10. Proviso. Provided, however, that until Breakers Developments, Inc. (the "Developer"), has completed and sold all of the units of Phase I of the condominium or until Developer elects to terminate its control of the condominium, whichever shall first occur, there shall be no meeting of members of the Association unless a meeting is called by the Board of Directors.

3. BOARD OF DIRECTORS.

3.1. Membership. The affairs of the Association shall be conducted by a Board of Directors consisting of such number not less than three (3) nor more than nine (9) 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. Each Director shall be a person entitled to cast a vote in the Association, except as provided in subparagraph 3.2(d) below.

3.2. Election of Directors. Election of directors shall be conducted in the following manner:

3.2(a). Directors shall be elected at the annual meeting of the members of the Association.

3.2(b). Except as to vacancies created by removal of directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining directors.

3.2(c). Any director may be removed by concurrence of two-thirds of the members of the Association at a special meeting of the members called for that purpose. The vacancy thus created shall be filled at the same meeting by the members of the Association in the same manner as was provided for the election of the removed director.

3.2(d). Anything herein to the contrary notwithstanding, however, until Developer has completed and sold all of the units in Phase I of the condominium or until Developer elects to terminate its control of the condominium, whichever shall first occur, all directors shall be designated by Developer and need not be owners of units in the condominium; and provided, further, that in the event the Developer, pursuant to Paragraph 6 of the Declaration, files an amendment or amendments to the Declaration submitting to the provisions thereof any or all of the property described on Exhibit "B" attached to the Declaration as Phases II, III and/or IV of the Breakers Condominium, then, in the case of each such amendment, from the time of the filing of such amendment until Developer has completed and sold all of the units located on the property submitted to the terms of the Declaration by such amendment, the Developer shall have the right, but not the obligation, to designate a majority of the Directors, and such Directors as may be so designated need not be owners of units in the Condominium.

3.3. Term. The term of each director's service shall be extended until the next annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere herein provided.

3.4. Organization Meeting. The organization meeting of the newly elected or designated Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary, provided a quorum shall be present.

3.5. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

3.6. Special Meetings. Special meetings of the Board of Directors may be called by the President, and must be called by the Secretary at the written request of one-third of the votes of the Board. Not less than three (3) days' notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

3.7. Waiver of Notice. Any director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

3.8. Quorum. A quorum at Directors' meetings shall consist of the directors entitled to cast a majority of the votes of the entire Board of Directors. The acts of the Board approved by a majority of votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except where approval by a greater number of directors is required by the Declaration or by these By-Laws. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such director for the purpose of determining a quorum.

3.9. Presiding Officer. The presiding officer of directors' meetings shall be the President. In the absence of the President, the directors present shall designate one (1) of their number to preside.

3.10. Compensation. Directors shall serve without compensation.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

4.1. Exercise. All of the powers and duties of the Association existing under the Condominium Ownership Act, the Declaration, and these By-Laws shall be exercised exclusively by the Board of Directors or its agents or employees, subject to approval by unit owners only when such is specifically required.

4.2. Duties. In addition to duties imposed by these By-Laws or by resolutions of the Association, the Board of Directors shall be responsible for the following:

4.2(a). Care, upkeep and surveillance of the condominium and its common areas and facilities.

4.2(b). Collection of monthly assessments from the owners.

4.2(c). Designation and dismissal of the personnel necessary for the maintenance and operation of the condominium and its common elements and facilities.

5. OFFICERS.

5.1. Executive Officers. The executive officers of the Association shall be a President, who shall be a Director; a Vice President, who shall be a Director; a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be preemptorily removed by a vote of the Directors at any meeting. Any person may hold two (2) or more offices except that the President shall not also be the Secretary. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

5.2. President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of an association, including but not limited to the power to appoint committees from among the members from time to time, as he may in his discretion determine appropriate, and to assist in the conduct of the affairs of the Association.

5.3. Vice President. The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

5.4. Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the Secretary of an association and as may be directed by the Directors or the President.

5.5. Treasurer. The treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the financial records and books of account of the Association in accordance with good accounting practices; shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance [redacted] and any other [redacted] duties incident to the office of Treasurer. The records, books of account, and the vouchers authorizing payments shall be available for examination by a member of the Association at convenient hours of week days.

5.6. Compensation. The compensation of all employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association nor preclude the contracting with a Director for the management of the condominium.

6. FISCAL MANAGEMENT.

6.1. Budget. The Board of Directors shall adopt a budget for each calendar year which shall include estimated common expenses, including a reasonable allowance for contingencies and reserves less the unneeded fund balances on hand. Copies of the budget and proposed assessments shall be transmitted to each member on or before December 1st preceding the year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member concerned.

6.2. Assessments For Recurring Common Expenses. Assessments for recurring common expenses which include, but are not limited to, expenses for administration, maintenance, repair or replacement of the common elements, shall be made by the Board of Directors for the calendar year annually in advance, on or before December 20th preceding the year for which the assessments are made. Such assessments shall be due in equal monthly installments on the 1st day of each month of the year for which the assessments are made. If such annual assessment is not made as required, an installment in the amount required by the last prior assessment shall be due upon each installment payment date until changed by a new assessment. The total of the assessments for recurring common expenses for any year shall not be more than one hundred ten (110%) percent of the assessments for such purpose for the immediately preceding year unless assessments in a greater amount are approved in writing by unit owners entitled to cast a majority of the votes in the Association. In the event such an annual assessment proves to be insufficient, it may be amended at any time after approval in writing by unit owners entitled to cast a majority of the votes in the Association, and the amended assessment for the remaining portion of the calendar year shall become effective upon the due date of the next monthly installment.

The time and amount of the first assessment shall be determined by the initial Board of Directors of the Association, and, if made for a period of less than a full year, shall be annualized for purposes of the one hundred ten (110%) percent limitation set forth in this Section 6.2.

6.3. Acceleration of Assessment Installments Upon Default. If a unit owner shall be in default in the payment of any two consecutive installments of any assessment, the Board of Directors may accelerate the remaining installments of such assessment upon notice thereof to the unit owner, and thereupon the unpaid balance of the assessment shall become due and payable upon the date stated in the notice, but not less than ten (10) days after delivery thereof to the unit owner, or not less than twenty (20) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur. The Association shall have a lien on the unit for such accelerated amount, which lien shall be effective upon the recordation of a claim of lien in form and in the manner provided in Section 11.3 of the Declaration, and may be foreclosed in accordance with the provisions of the Declaration and these By-Laws.

6.4. Assessments for Emergencies. Assessments for common expenses or emergency expenditures which cannot be paid from the assessments for recurring expenses shall be made only after notice of the need therefor to the unit owners concerned. Except as may be otherwise provided in the Declaration, after such notice and upon approval in writing of more than one-half of such unit owners concerned, the assessment shall become effective, and it shall be due after thirty (30) days' notice thereof in such manner as the Board of Directors of the Association may require.

6.5. Default. In the event an owner of a unit does not pay any sums, charges, or assessments duly made by the

Association on the due date, the Association may foreclose the lien encumbering the unit created by non-payment of the required monies in accordance with the provisions of the Declaration. The Association shall be entitled to the appointment of a Receiver, if it so requests. The Association shall have the right to bid-in the unit at a foreclosure sale and to acquire, hold, mortgage and convey the same. In lieu of foreclosing its lien, the Association may bring suit to recover a money judgment for any sums, charges or assessments required to be paid to the Association without waiving its lien securing same. In any action either to foreclose its lien or to recover a money judgment, brought by or on behalf of the Association against a unit owner, the losing defendants shall pay the cost thereof together with a reasonable attorneys' fee.

If the Association becomes the owner of a unit by reason of foreclosure, it shall offer said unit for sale; and at such time as a sale is consummated, it shall deduct from such proceeds all sums of money due it for monthly assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorneys' fees, and any and all expenses incurred in the re-sale of the unit which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurnishing of the unit in question. All monies remaining after deducting the foregoing items of expense shall be returned to the former owner of the unit in question.

6.6 Depository. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

6.7. Audit. An audit of the accounts of the Association shall be made annually by a certified public accountant, not a member of the Association, and a copy of the report shall be furnished to each member not later than April 1st of the year for which the report is made.

6.8. Records.

6.8(a). Accounting Records. The Association shall maintain accounting records in accordance with generally accepted accounting principles. Such records shall be open to inspection by unit owners at reasonable hours and shall include:

(i) a record of all expenditures and receipts of the Association, and

(ii) an account for each unit, setting forth the shares of common expenses or other charges due, the due dates thereof, the present balance due, and any interest in common surpluses.

6.8(b) Record of Mortgages. The Association shall keep a record of holders of first mortgages on units, which record shall include a copy of any such mortgage or shall contain the identity and address of the mortgagee, the number of the unit covered by such mortgage, the name of the unit owner, and the date of the mortgage; provided, however, that the Association shall have no liability or obligation to include in such record any mortgage information with regard to a mortgage unless a copy of the mortgage or written notice of the mortgage has been furnished to it.

6.8(c) Miscellaneous Records. The Association shall maintain such other records as are required by the Declaration or these By-Laws or as may be deemed necessary by the Board of Directors.

6.9. Fidelity Bonds. Fidelity bonds shall be required by the Board of Directors from all officers and employees of the Association and from any manager handling or responsible for Association funds. The amount of such bond shall be determined by the Directors, but shall be at least the amount of the total annual assessments against members for recurring expenses. The premiums on such bonds shall be paid by the Association.

7. MAINTENANCE, REPAIR AND REPLACEMENT OF COMMON ELEMENTS. The necessary work of maintenance, repair and replacement of the common elements and the making of any additions or improvements thereto shall be carried out as provided in the Declaration.

8. PARLIAMENTARY RULES. Roberts Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with applicable law, the Declaration, or these By-Laws.

9. AMENDMENTS. These By-Laws may be amended in the manner set forth in Section 19 of the Declaration, subject, however, to the Developer's rights under Section 20 thereof.

EXHIBIT "G"

RULES AND REGULATIONS

Governing the Use of the Breakers Condominium

by Unit Owners, Tenants and Occupants, and Their Guests

The following Rules and Regulations shall be binding upon and apply to all unit owners, tenants and occupants, and their guests, and shall be enforceable by the Breakers Condominium Association, Inc. (the "Association") in any manner permitted by applicable law. Unit owners shall use their best efforts to see that said Rules and Regulations are faithfully observed by their families, guests, invitees, servants, lessees and persons over whom they exercise control and supervision.

1. Each unit owner shall regulate and be responsible for the occupancy and use of his unit. The owner may not occupy or use or allow his unit to be used in any manner which will unreasonably disturb other residents or the general operation of the condominium property. The owner shall not allow any disturbing noises in the building nor shall he interfere with the rights, comforts or conveniences of other residents. The owner shall not permit any musical instrument to be played or any phonograph, television, radio or hi-fi stereo equipment to be operated in his unit in any manner which will disturb or annoy other residents of the building. The owner shall use all reasonable efforts to minimize any noises emanating from his unit.

2. There shall be no running or loud noises in halls, lobbies or elevators at any time.

3. Children are not to play in halls, lobby or elevators at any time.

4. Automobiles may be parked only in the areas provided for that purpose and in specific areas assigned. VEHICLES AND BOAT TRAILERS PARKED IN OTHER THAN THE ASSIGNED PARKING SPACES/AREA WILL BE TOWED AWAY AT THE OWNER'S EXPENSE.

5. An owner may identify his unit with a name plate of a type and size approved by the Association and mounted in a place and manner approved by the Association. No other signs may be displayed except as approved by the Association. This restriction shall not apply to the Developer until after all units are sold.

6. No flower pots, boxes or other similar materials shall be suspended from windows. Hanging plants may be hung from balconies provided that they do not create an eyesore. In the event that any hanging plant is adjudged by the Association's Board of Directors (the "Board of Directors") to constitute an eyesore or a safety hazard, the Board of Directors may order that such plant be removed. Any person refusing to obey such an order by the Board of Directors shall be in violation of these Rules and Regulations.

7. The balconies, terraces and stairways shall not be used for hanging bathing suits, towels, garments, rugs or other objects.

8. With the exception of the master antenna, if any, and/or the cable television system, if any, maintained by the Association, no antenna shall be installed outside of any unit or building. No Citizen's Band or short-wave radio or similar apparatus which would have an adverse effect on the reception of television or radio signals by others is permitted.

9. No liquid or gel mattresses shall be allowed in any unit unless approved by the Board of Directors.

10. No storage of any kind shall be permitted in walkways, stairwells or other public spaces or common areas (except such common areas as shall be designated for such use by the Board of Directors).

11. Common areas of buildings, such as loggia, lobbies, and halls, shall be used only for the purposes for which such areas are customarily used and are to be kept free of obstruction. No articles belonging to unit owners, tenants, occupants or guests shall be kept in these areas. Each owner, tenant and occupant shall be responsible for removing any refuse he or his guest has left in any common area.

12. Elevators may be used for the carrying of freight only under the supervision of the management.

13. Alteration and repair of the exterior of the building is the responsibility of the Association. No work of any kind is to be done upon exterior building walls or upon interior boundary walls without first obtaining the approval required by the Declaration of Condominium.

Except as provided in 5 above, entrance doors to apartments shall not be permanently changed or altered in any manner. This regulation does not prohibit temporary decorations on apartment doors to celebrate festive holiday periods. No owner, tenant or occupant shall alter the exterior appearance of any balcony, patio or terrace except with planters or carpet of color approved by the Association.

14. No owner, tenant or occupant shall exhibit, inscribe, paint or affix any sign, advertisement or notice on any part of the outside or common areas of the building or which is viewable from the outside or common areas of the building.

15. No owner, tenant or occupant shall attach any awning, enclosure, shutter, shielding or any other projection of a similar nature to any window or to the outside walls of any building nor to any balcony, terrace or patio.

16. No owner, tenant, occupant or guest shall use the sidewalks, entrances, passageways, stairwells, corridors or lobbies for any purpose other than ingress and egress to and from the premises.

17. No garbage or trash shall be disposed of on the premises except through the use of garbage disposal units or by use of receptacles in areas designated by the Association.

18. No owner, tenant, occupant or guest shall use the recreational facilities except in such a way as to respect the rights of all other persons entitled to the use of such facilities, and each shall conform his use of the facilities to reasonable standards of health and safety.

19. Pool equipment is to be used by authorized personnel only.

20. The swimming pool shall be open only during the hours designated by the Board of Directors. Pool users are to conduct themselves in a quiet and orderly fashion at all times.

21. Before entering the pool, each pool user shall shower.

22. No glass items shall be permitted in the pool area. No smoking, drinking or eating shall be permitted on the pool ledge. No running or pushing shall be allowed near the pool.

23. No child under the age of 13 shall be permitted to use the pool unless he or she is supervised and accompanied by an adult. Infants in diapers are not permitted to use

the pool. Parents shall be responsible for any damage to common property caused by their children.

24. The Association regulates the presence of pets on the condominium property. Owners' pets are permitted only through application to the Board of Directors of the Association and, if such application is approved, only under such restrictions and conditions as the Board shall require in each individual case. Persons other than unit owners may not bring pets upon the condominium property.

25. All residents are to inform guests of the Rules and Regulations. Copies are available in the front office or from the Manager.

26. The driving speed limit is 5 miles per hour on the property.

27. No person shall repair or maintain any motor vehicle, including automobiles, boats, dune buggies, motorcycles, recreational vehicles, campers, trucks and trailers on the Condominium property, nor may any unit owner or any other person store, or place on blocks, on the Condominium premises, a boat, dune buggy, motorcycle, camper, recreational vehicle, truck or trailer or unlicensed vehicle without the prior written consent of the Board of Directors.

28. All interior window treatment and decoration shall be limited to appropriate and normally used materials.

29. In order to utilize employees efficiently and minimize the cost of performing maintenance work, no owner, tenant or occupant shall be permitted to give direct orders or directions to any employee of the Association. All requests for service shall be directed to the Manager or to an officer of the Association.

30. The Manager shall keep a pass-key to all units. Such pass-key will be used for emergency purposes only. No owner shall alter his unit entrance door lock, or install a new or additional lock, without the prior written consent of the Board of Directors.

31. By permission of the Board of Directors, an owner may install on the exterior door(s) of his unit a safety-lock, provided that such lock may be opened from the outside by use of a key. In the event that any such lock is installed, the owner shall deliver a pass-key to the lock to the Manager of the condominium, which pass-key shall be kept in a sealed envelope and used to enter the unit in emergency situations only.

32. The owners, tenants and/or occupants of each unit shall maintain such unit and all of the fixtures therein in good condition and repair.

33. No owner, tenant or occupant may install any plumbing, wiring or air-conditioning equipment without the prior written approval of the Board of Directors.

34. The management personnel and staff are compensated adequately and no gratuities are to be given them. This paragraph shall not preclude appropriate voluntary remembrances at Christmas or other appropriate occasions, if desired.

The foregoing Regulations are subject to amendment, and further regulations may be promulgated, in the manner provided by the Declaration of Condominium.