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DECLARATION OF CONDOMINIUM
OF
THE DUNES, A CONDOMINIUM

State of Alabama, Baldwin County
I certify this instrument was filed
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2001 September-11 8: 54M

Instrument Number 615931 Pages 101
Recording 303.00 Mortgage
Deed Min tax
Index DP 1.00
Archive 3.00
Adrian T. Johns, Judge of Probate

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STATE OF ALABAMA
COUNTY OF BALDWIN

DECLARATION OF CONDOMINIUM
OF
THE DUNES, A CONDOMINIUM

This Declaration of Condominium of the Dunes, a condominium (The "Declaration") is made this _____ day of _____, 200__, by DUNES PARCEL, L.L.C., an Alabama limited liability company, (the "Developer" or "Declarant"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, Code of Alabama 1975, Section 35-8A-101 et seq. (the "Act"), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land.

ARTICLE I

SUBMISSION OF PROPERTY AND DEFINED TERMS

1.01 Submission of Property. The Developer is the owner of certain real property located in Baldwin County, Alabama, more particularly described on Exhibit "A", attached hereto and made a part hereof for all purposes, (the "Property" or "Condominium Property") on which is located certain buildings and other improvements. The Developer intends to develop the Condominium in no more than two (2) phases, but reserves the right and option, in the sole discretion of Developer to develop only the phase or phases which market or other relevant conditions may dictate. Phase I will consist of one (1) building containing sixty eight (68) residential Units and one (1) commercial Unit for a total of sixty nine (69) Units together with the appurtenant facilities described herein. It is the intent of the Developer that should all or a portion of the property described on Exhibit "H" hereto be improved by the construction of condominium Units and be submitted to the terms of this Declaration by amendments hereto as Phase II of the Condominium, such property shall be operated and administered as a Condominium in the same manner as Phase I.

It is the desire and intention of the Developer, by recording this Declaration, to submit the property set forth on Exhibit "A" hereto, together with all improvements, easements, rights and appurtenances thereto belonging, to the Act and create with respect to the Property, a condominium to be known as THE DUNES, A CONDOMINIUM ("Condominium") and to impose upon the Property mutually beneficial restrictions under a general plan for the benefit of all of the Condominium Units and the Owners in Phase I and any subsequent Phase which is added to the Property by amendment or amendments to this Declaration, as hereinafter provided.

The Developer, upon recording this Declaration, does submit the property described on Exhibit "A" as the Dunes Condominium, Phase I, together with the improvements thereon, owned by the Developer, in fee simple absolute, to the provisions of the Alabama Uniform Condominium Act of 1991, (Code of Alabama 1975, Section 35-8A-101 et seq.) to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and in any other manner utilized subject to the provisions of the Act and subject to the covenants, conditions, restrictions, easements, uses, limitations and affirmative obligations set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Property and the division thereof into condominium ownership and all of which shall run with the land and shall be binding on all parties (including Owners as hereinafter defined) having or acquiring any right, title or interest in the Property or any part thereof, and shall be for the benefit of each Owner of any portion of said Property or any interest therein, and shall inure to the benefit of and be binding upon each successor-in-interest to the Owners thereof.

This Declaration may be amended by the Developer without the consent of any Unit Owner, Mortgagee, or other person or entity in order to exercise any Development Rights or Special Declarant Rights, so long as said amendment complies with the requirements of the Act. The Developer shall have the unilateral right, privilege and option from time to time at any time (subject to the provisions of this Declaration) to subject all or any part of the property described in Exhibit "H", in one phase, to the provisions of this Declaration. The Developer shall further have the unilateral right, privilege and option from time to time at any time (subject to the provisions of this Declaration) to relocate the ingress/egress entrance easement from Dixie Graves Parkway (Hwy. 180) to a location on the Dune Drive.

1.02 Definitions. Certain terms as used in this Declaration shall be defined as follows, unless the context indicates a different meaning therefor, and shall be consistent with the meanings stated in the Act:

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

(B) "Alabama Beach Mouse" shall mean and refer to the Alabama Beach Mouse, *Peromyscus Polinotus Ammobates*, designated an endangered species in Title 50 Code of Federal Regulations Section 17.11(h).

(C) "Alabama Beach Mouse Assessment" shall mean the assessments assessed against any Unit or Owner by the Master Association or Association pursuant hereto.

(D) "Alabama Beach Mouse Fund" shall mean and refer to that fund created pursuant to the Permit and the HCP and administered by the Master Association.

(E) "Alabama Beach Mouse Covenants" or "Beach Mouse Covenants" shall mean the Declaration of Alabama Beach Mouse Protective Covenants For the Dunes, as recorded in Miscellaneous Book 89, page 113, et seq., as may be amended from time to time.

(F) "Association" shall mean The Dunes Condominium Association, Inc., a nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, Code of Alabama 1975, Section 10-3A-1 et seq.

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

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

(I) "Common Elements or Common Areas" shall mean:

(1) all portions of the Condominium Property other than the Private Elements which are held or designed for the use and enjoyment of the Owners and shall include, but not be limited to, the following:

(a) the Land'

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

(c) the roofs, lobbies, mechanical equipment, and storage areas designed as common, ramps, handrails, sidewalks, stairways and entrances and exits or communication ways;

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

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

(f) all common recreational facilities such as the swimming pool with spa and grounds, exercise and/or conference room, , sun decks, yards and walkways;

(g) sidewalk, boardwalk, lawn areas, landscaping, trees curbs, roads, walkways, lobbies, elevators, streets and parking lot;

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

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

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

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

(K) "Common Surplus" shall mean the excess of all the receipts of the Association including, but not limited to, assessments, rents, profits and revenues over the amount of the Common Expenses.

(L) "Condominium Documents" shall mean this Declaration and all exhibits hereto, the Rules and Regulations, the By-laws and the Articles of Incorporation of the Association, and the Plats and Plans as the same may be amended from time to time.

(M) "Covenants" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of The Dunes, dated June 27, 1996 and recorded in Miscellaneous Book 89, page 51, et seq. as the same maybe amended from time to time.

(N) "Declaration of Condominium" or "Declaration" shall mean this Declaration of Condominium of Dunes, a condominium, as the same may be amended from time to time.

(O) "Developer" or "Declarant" shall mean Dunes Parcel, L.L.C., an Alabama Limited Liability Company, and its successors and assigns, other than an Owner, who receive by assignment from Dunes Parcel, L.L.C. all, or a portion of its rights hereunder as the Developer, by an instrument expressly assigning such rights as the Developer to such assignee.

(P) "Development Rights" shall have the same meaning as is defined in the Act and as set forth in the Declaration.

(Q) "FWS" shall mean and refer to the Department of the Interior, U.S. Fish and Wildlife Service, an instrumentality of the government of the United States of America.

(R) "Governmental Authority" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Development.

(S) "HCP" The term "HCP" shall mean and refer to that habitat conservation plan developed by Sage Development, L.L.C. and submitted to FWS in connection with its application for the Permit, as approved in said Permit.

(T) "House Cat" shall mean and refer to *Felis domesticus*.

(U) "House Mice" shall mean and refer to *Mus musculus*.

(V) "Improvement" shall mean and refer to any building, structure, planting or devise constructed, erected or placed upon any portion of the Property or Common Area.

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

(X) "Limited Common Elements or Limited Common Areas" shall mean and include any area designated by this Declaration, including the Plats and Plans, as Limited Common Elements on the Plan and any amendment to the Plan and any areas defined in the act as Limited Common Areas for the Exclusive use of one or more, but fewer than all of the Units. The Limited Common Elements shall include, among any other property so designated, balconies or terraces, wires, conduits, bearing walls, bearing columns, or any other fixture serving only a specific Unit. Should any Limited Common Element ever be determined not to be a Limited Common Element under the Act, the same shall be part of the Common Elements with an exclusive easement of use appurtenant to the Private Elements to which it was originally assigned as a Limited Common Element.

(Y) "Limited Common Expenses" shall mean the expenses arising out of the ownership of the Limited Common Elements and shall include, but not be limited to, the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation, and betterment of the Limited Common Elements; and expenses declared to be Limited Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof.

(Z) "Master Association" shall mean and refer to The Dunes Master Owners' Association, Inc., an Alabama nonprofit corporation, the members of which shall be The Dunes Homeowners' Association, Inc., other residential property owners' associations, such commercial property owners' associations and condominium associations formed by Sage Development, L.L.C. or an affiliate of Sage, all as determined by Sage Development, L.L.C. to constitute members of the Master Association, as more fully defined in the Covenants.

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

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

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

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

(EE) "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Unit located within the Property. All actions or omission of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

(FF) "Permit" shall mean and refer to that certain permit from the Department of the Interior, U.S. Fish & Wildlife Service, under the authority of Title 16 U.S.C. Section 1539 (a)(1)(b) and the Regulations promulgated thereunder set forth at Title 50 Code of Federal Regulations Section 17.22 a copy of which is attached hereto as Exhibit "G".

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

(HH) "Private Elements" or "Unit" shall mean the parts of the Condominium Property as set forth in the Plan intended for the exclusive ownership and possession by an Owner. Each Private Element for Units W-100 through W-107 inclusive, Units W-200 through W-209, inclusive, Units W-300 through W-309 inclusive, Units W-400 through W-409 inclusive, Units W-500 through W-509 inclusive, Units W-600 through W-609 inclusive, Units W-700 through W-709 inclusive, and commercial Unit W-99 are identified in a diagrammatic floor plan of the floor on which it is situated

as shown on the Plan, and shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

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

(a) the upper boundary shall be the plane of the lower unfinished surface of the ceiling;

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

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

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

(GG) "Special Declarant Rights" shall have the same meaning as is defined in the Act and as set forth in this Declaration.

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

(II) "Rules and Regulations" shall mean the Rules and Regulations concerning the use of The Dunes, a condominium adopted from time to time by the Board of Directors of the Association that are deemed necessary for the use and enjoyment of the Condominium Property, provided they are not in conflict with the Act or the Condominium Documents.

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

A residential Unit is used as a single family residence as provided for in this Declaration. The residential Units shall be identified by using the letter "W" for the building designation followed by a three digit number with the first digit indicating the floor level of the Unit and the last two digits indicating the location of the Unit within that floor with the Unit with the last two digits being 00 being the Easternmost Unit and 07 being the Westernmost Unit for the first (1) floor. On floors two through seven, 00 being the Easternmost Unit and 09 being the Westernmost Unit. Unit numbering starts with the Easternmost Unit on each living level and goes in a Westerly direction. The commercial Unit located in the building is located on the first floor just South of the elevator lobby and is identified as Unit W-99.

The definitions of the Units enumerated above and other matters pertaining to the Units will be further defined and set out in this Declaration.

ARTICLE II

DESCRIPTION OF IMPROVEMENTS AND DEVELOPMENT PLANS

2.01 Submission of Property for Phase I. The Developer is the owner of certain real property located in Baldwin County, Alabama, more particularly described on Exhibit "A", attached hereto and made a part hereof for all purposes, (the "Property" or "Condominium Property") on which is located certain buildings and other improvements. The Developer intends to develop the Condominium in no more than two (2) phases, but reserves the right and option, in the sole discretion of Developer to develop only the phase or phases which market or other relevant conditions may dictate. Phase I will consist of one (1) building containing sixty eight (68) residential Units and one commercial Unit for a

total of sixty nine (69) Units together with the appurtenant facilities described herein. It is the intent of the Developer that should all or a portion of the property described on Exhibit "H" hereto be improved by the construction of condominium Units and be submitted to the terms of this Declaration by amendments hereto as Phase II of the Condominium, such property shall be operated and administered as a Condominium in the same manner as Phase I.

2.02 Identification of Units in Phase I. Phase I improvements are substantially complete and a Plat of the Land and improvements thereon and a graphic description of the improvements in which the Units are located identifying each Unit by a number so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify the Common Elements, the Limited Common Elements and each Unit and their relative locations and approximate dimensions, are set forth in the Plan attached hereto as Exhibits "C", and made a part hereof for all purposes.

There are forty (40) Type "C" Units which consist of one bedroom, two baths, living/dining room, kitchen and contains approximately 737 square feet of living area and one 117 square foot balcony with a 20 square foot storage area; and fourteen (14) Type "B" Unit which consist of two bedrooms, two baths, living/dining room, kitchen and contains approximately 978 square feet of living area and one 200 square foot balcony with a 30 square foot storage area; and fourteen (14) Type "A" Units which consist of three bedrooms, two and one-half baths, living/dining room, kitchen and contains approximately 1298 square feet of living area and one 197 square foot balcony with a 26 square foot storage area; and one (1) commercial Unit which contains approximately 226 square feet of commercial space. The Units vary in size and layout, as more specifically set forth on the Plats and Plans attached as Exhibit "C" hereto.

In Phase I, the Units are located in Building "W" on seven living levels and are numbered and identified as W-99 (commercial Unit), W-100, W-101, W-102, W-103, W-104, W-105, W-106, W-107, W-200, W-201, W-202, W-203, W-204, W-205, W-206, W-207, W-208, W-209, W-300, W-301, W-302, W-303, W-304, W-305, W-306, W-307, W-308, W-309, W-400, W-401, W-402, W-403, W-404, W-405, W-406, W-407, W-408, W-409, W-500, W-501, W-502, W-503, W-504, W-505, W-506, W-507, W-508, W-509, W-600, W-601, W-602, W-603, W-604, W-605, W-606, W-607, W-608, W-609, W-700, W-701, W-702, W-703, W-704, W-705, W-706, W-707, W-708 and W-709.

2.03 Development Plans. The Developer proposes to develop a possible one hundred thirty nine (139) Units in no more than two Phases. The improvements for Phase I have been substantially completed, as set forth on the Plans attached as Exhibit "C" hereto. Phase I consists of sixty nine (69) Units located in one (1) building, together with outside parking areas, indoor/outdoor swimming pool with spa, landscaping and other Common or Limited Common Elements, as set forth on the Plans.

The amenities located in the common elements of the Condominium will include parking areas, indoor/ outdoor swimming pool with spa and decks, exercise and/or conference room, corridors, walkways, foyers, mechanical rooms, maintenance rooms, and service areas. The balconies or terraces located adjacent to a Unit are Limited Common Element, as more specifically set forth on the Plats and Plans attached to Exhibit "C" to this Declaration. The Developer makes no assurances Phase II will be constructed and Phase II "NEED NOT BE BUILT". If Phase II, or any portion thereof is developed, the Developer makes no assurance it will be constructed of materials of a quality similar to or higher than the quality of the materials used in the construction of Phase I. The maximum number of Units which the Developer reserves the right to create is one hundred thirty nine (139).

2.04 Subsequent Phases. The Developer may or may not submit all or a portion the property described in Exhibit "H" to the condominium form of ownership at a future date as Phase II of the Condominium. However, subject to the terms and provisions of this Declaration, said property or any portion thereof, including any portion or portions of each phase, may be submitted to the condominium form of ownership and use in separate or different parcels at different times, by amendment or amendments to this Declaration. No assurances are made concerning whether or not any phase or portion thereof will be or will not be submitted to the condominium form of ownership and this Declaration or the Act, nor are any assurances made concerning the boundaries of the phase or portion thereof, or the number of Units located in said phase or the number of phases, or the order in which any phase or portion thereof may be or may not be subject to the exercise of these Development Rights. Nothing in this section is to be interpreted as requiring the Developer to submit the property or any portion thereof, described on Exhibit "H" to the condominium form of ownership. The maximum number of Units which the Declarant reserves the right to create is one hundred thirty nine (139).

2.05 Incremental Phasing Amendment. Any such additional Phase, may be added to, and made subject to, this Declaration by the execution, by the Declarant alone, of an incremental amendment to this Declaration, which said amendment shall comply with the provisions of the Act and shall become effective upon recordation in the Office of the Judge of Probate, Baldwin County, Alabama. Such amendment shall have Exhibits attached thereto similar in nature to the Exhibits attached to this Declaration and containing such other information as required by the Act and this Declaration, including but not limited to Plats and Plans, and a reallocation of the Common Interest and Common Expenses. The right of the Developer to add additional phases to the Condominium shall cease and terminate fifteen (15) years from the date of recordation of this Declaration, and upon recordation said Phase will have been validly submitted to this Declaration. Except as provided in the preceding sentence, no other time limitations shall be imposed on the right of the Declarant to add an additional Phase. Once any additional Phase has been submitted to the terms and provisions of this Declaration, it shall comprise a

portion of the Condominium, to be governed in accordance with the provisions of the Condominium Documents. Each purchaser of a Unit or any entity which acquires an interest in a Unit are prohibited from objecting to an incremental phase amendment and have agreed and consented that any amendment to this Declaration executed by the Developer alone shall be binding and effective as written notwithstanding the fact that the undivided interest of the Unit in the Common Elements will be reduced thereby.

This Declaration may be amended by the Developer without the consent of any Unit Owner, Mortgagee, or other person or entity in order to exercise any Development Rights or Special Declarant Rights, so long as said amendment complies with the requirements of the Act. The Developer shall have the unilateral right, privilege and option from time to time at any time (subject to the provisions of this Declaration) to subject all or any part of the property described in Exhibit "H", in one phase, to the provisions of this Declaration.

2.06 No Assurances. No assurances are made that any building or other improvements that may be constructed pursuant to any Development Rights reserved by the Declarant in any part of the Condominium will be compatible or will not be compatible with any existing building and improvements in the Condominium in terms of architectural style, quality of construction and size. Further, no assurances are made as to the locations of any building or other improvement that may be made within any part of the Condominium pursuant to any Development Rights reserved by the Declarant. Further, no assurances are made that any Common Elements or Limited Common Elements created pursuant to any Development Rights reserved by the Declarant will be of the same general types and sizes as the Common Elements or Limited Common Elements within other parts of the Condominium.

2.03 Balconies, Terraces and Storage Areas. Exterior balconies or terraces of residential Units are Limited Common Areas as designated by the Plat and Plans and this Declaration. Exterior balconies or terraces shall be deemed to be a Limited Common Element appurtenant to the Unit from which it is directly accessible. Each Unit Owner shall be entitled to an exclusive easement for the use of any exterior balcony or terrace directly accessible from such Owner's Unit, but such right shall not entitle an Owner to construct anything thereon nor to change any structural part thereof. If a storage area, as designated by the Plats and Plans set forth on Exhibit "C", is located on the balcony or terrace of a residential Unit, it shall be deemed to be a Limited Common Element appurtenant to the Unit from which it is directly accessible.

ARTICLE III

EASEMENTS AND RESTRICTIONS

3.01 Easements and Restrictions. The Private Elements, Common Elements and Limited Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions and covenants prescribed and established in the Condominium Documents governing the use of said Private Elements, Common Elements and Limited Common Elements in setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. Said Private Elements, Common Elements and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the Condominium Property, which easements and restrictions are described on Exhibit "D", attached hereto and made a part hereof for all purposes, and the easements, conditions and limitations set forth in this Declaration.

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

(B) Utility Equipment. There may be utility equipment located on the Common elements appurtenant to some Units. An easement is hereby reserved in favor of each Unit for the purpose of placement, maintenance, repair and replacement of said utility equipment by the Developer and the Owners of the appurtenant Unit; provided that no utility equipment shall be placed in any part of the Common Elements or Limited Common Elements other than its present location unless the written approval of the Association shall have first been obtained.

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

(D) Easement for Use of Leased or Acquired Property. Each Unit Owner shall have a nonexclusive easement for use of any property hereafter acquired by the Association for the common benefit of the Owners by purchase, lease or otherwise, for all

normal and proper purposes for which the same are reasonably intended, subject to all restrictions in the Condominium Documents and the Rules and Regulations.

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

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

(G) Easement for Use of Common Areas, Beach Area and roadways located in Dunes, a subdivision. Sage Development, L.L.C. and the Master Association, by separate instrument recorded in the office of the Judge of Probate, Baldwin County, Alabama as Instrument No. 545045, have heretofore granted the Developer and the Association, for the benefit of the Unit Owners or Occupants of the Condominium Property, a nonexclusive easement for ingress, egress, use and enjoyment of the Common Areas, Beach Area, and roadways located within or hereafter located within Dunes, Phase I and Phase II, a subdivision, and any future phases located within Dunes, a subdivision, for all normal and proper purposes for which the same are reasonably intended, subject to all restrictions in the Covenants, Permit, aforementioned Instrument No. 545045, and the Rules and Regulations of the Master Association, which said Rules and Regulations will not unnecessary impair the use of the easement granted herein.

(H) Easement for Use of a Bay Access Area to Mobile Bay. Sage Development, L.L.C. and the Master Association, by separate instrument recorded in the office of the Judge of Probate, Baldwin County, Alabama as Instrument No. 545045, have heretofore granted the Developer and the Association, for the benefit of the Unit Owners or Occupants of the Condominium Property, a nonexclusive easement for use and enjoyment of a bay access area on land owned by Sage Development, L.L.C. located North of Dixie Graves Parkway, for all normal and proper purposes for which the same are reasonably intended, subject to the restriction that Sage Development has the sole right to determine the location of the easement area and further is not required to provide or construct any improvements within the bay access area easement and further subject to the restrictions and covenants set forth in the aforementioned Instrument No. 545045.

(I) Easement for Use of Common Areas by Lot Owners in Dunes, a subdivision. The Developer and the Association, by separate instrument recorded in the office of the Judge of Probate, Baldwin County, Alabama as Instrument No. 545045, have heretofore granted the Sage Development, L.L.C. and The Dunes Master Homeowners' Association, Inc., for the benefit of its members, the Lot Owners or Occupant in Dunes, Phase I and Phase II, a subdivision or any future phases located within Dunes a nonexclusive easement for use and enjoyment of the Common Areas located on the first floor of the building, parking lot, pool and pool terrace of The Dunes, a condominium, as designated on the Plats and Plans, for all normal and proper purposes for which the same are reasonably intended, subject to all restrictions in this Declaration and the Rules and Regulations of the Association, which said Rules and Regulations will not unnecessarily impair the use of the easement granted herein and further subject to the restrictions and covenants set forth in the aforementioned Instrument No. 545045. The nonexclusive easement granted herein is not intended to include any Limited Common Elements.

(J) Easement for Use of Common Areas by Unit Owners or Occupants of any future condominium project developed by the Developer or Sage Development, L.L.C., on property owned by the Developer or Sage Development, L.L.C. The Developer hereby reserves the right to grant and convey to each Unit Owner or Occupant of any condominium project developed and established by the Developer or Sage Development, L.L.C., the Developer of Dunes, a subdivision, on property owned by Sage Development, L.L.C. which is adjacent to or near by the property described on Exhibit "A" a nonexclusive easement for use and enjoyment of the Common Areas located on the first floor of the building and parking lot, including but not limited to conference room, steam room, sauna, pool and pool deck, as designated on the Plats and Plans, for all normal and proper purposes for which the same are reasonably intended, subject to all restrictions in this Declaration and the Rules and Regulations of the Association. The nonexclusive easement reserved herein is not intended to include any Limited Common Elements.

(K) Easements Appurtenant to Units. The easements and other rights created herein for the Unit Owners shall be appurtenant to the Unit of that Owner and all conveyances of title to the Unit shall include a conveyance of the easements and rights as herein provided even though no specific reference to such easements and rights appear in such instrument. The Owners do hereby designate the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

3.02 Ownership of Common Elements and Limited Common Elements. Each Owner shall own an undivided interest in the Common Elements and Limited Common elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements and Limited Common Elements for all purposes incident to the use and occupancy of the Owner's Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run with the Unit. The extent or amount of such ownership shall be expressed by a percentage relating to each Unit as set forth on Exhibit "E" attached hereto and made a part hereof for all purposes, and shall remain constant, unless changed in accordance with the provisions of this Declaration or by the unanimous approval of all Owners and Mortgagees. In the event an Incremental Phasing Amendment is filed by the Developer, the percentage of undivided interest of each Owner shall be recomputed in accordance with the formula set forth on Exhibit "E" and the recomputed undivided percentage interest of an Owner shall be as set forth therein. For purposes of percentage of ownership in the Common elements, percentage of Common Expenses, and percentage of Common Surplus, and voting on all matters requiring action by the Owners, the percentage as set out on Exhibit "E", as amended from time to time, shall govern. The Owners of Units with Limited Common Elements which are appurtenant to such Unit as designated or described on the Plan attached hereto shall have the exclusive right to use such Limited Common Elements so designated or described unless changed by the Developer as permitted herein or by the approval of the Owners of the Units whose Limited Common Elements are affected and their respective Mortgagees. Each Owner of a Unit to which a Limited Common Element is attached shall have the right to use the Limited Common Element for all purposes incident to the use and occupancy of such Owner's Unit as herein provided without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run with the Units to which the Limited Common Elements are attached.

3.03 Common Elements and Limited Common Elements in Any Additional Phase. Any additional Phase, if constructed and dedicated as set forth herein, shall contain Common Elements and Limited Common Elements, as will be depicted on the Plat and Plans for said additional Phase. Developer makes no assurances the Common Elements and Limited Common Elements in any additional Phase and/or Phases will be identical with, or complimentary to those existing in any other Phase. The Developer shall have the

unilateral right, privilege, and option, at any time (subject to the provisions of this Declaration) to submit all or any portion of the property described on Exhibit "H" to this Declaration by the filing of an incremental phasing amendment. The Developer shall have the right to file said amendment without the consent of any Unit Owner, Mortgagee, or other person or entity, provided the amendment complies with the requirements of this Declaration and the Act.

ARTICLE IV

SPECIAL DECLARANT RIGHTS OR DEVELOPMENT RIGHTS

4.01 Amendment of Condominium Plan. The Developer reserves a Special Declarant Right to change the interior design and arrangement of all Units, to alter the boundaries between Units and to increase or decrease the number of Units so long as the Developer owns the Units so altered and to add additional real property to the Condominium, by the filing of Incremental Amendments. Changes in the boundaries between Private Elements, as hereinbefore provided, shall be reflected by an amendment to the Plan and, if necessary, an amendment to this Declaration. If two (2) adjoining Units are combined by the Developer to make one (1) large Unit, the Association's assessments and the ownership interest in the Common Elements attributable to the combined Unit shall remain as though there are two (2) separate Units. An amendment to the Plan or this Declaration reflecting an alteration of the boundaries of the Units owned by the Developer must be signed and acknowledged only by the Developer and need not be approved by the Owners and Mortgagees, whether or not such approval may elsewhere be required herein; provided, however, that any change which shall result in a change in the undivided interest in the Common Elements or the Limited Common Elements or a change in the share of the Common Expenses or the Limited Common Expenses with respect to Owners of Units other than the Developer at the time of such change or which shall result in the alteration of boundaries of Units (other than the common walls separating the Units owned by the Developer) may not be made without an amendment of this Declaration approved by the Owners and Mortgagees in the manner elsewhere required herein. The Special Declarant Right set forth in this section must be exercised within fifteen years from the anniversary of the filing of this Declaration.

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

4.03 Use for Sales Purposes. All Units and the Common Elements shall be subject to the statutory right concerning sales and management offices and models in Units and the Common Elements in favor of the Developer provided in Section 35-8A-215 of the Act. The Developer otherwise expressly reserves the right to use one (1) or more Units owned by the Developer as models, and any portion of the Common Elements for management offices and/or sales offices. The Developer reserves the right to relocate office and/or models from time to time within the Property. Upon relocation or sale of a model, the management office or sale office and the furnishings thereof may be removed by the Developer. The Developer further reserves the right to maintain on the Common Elements advertising signs in any location or locations and from time to time to relocate and/or remove the same, all in the sole discretion of the Developer.

4.04 Use by the Developer. Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board of Directors nor their use of the Condominium Property or application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the Condominium until the Developer has completed all of the Developer's contemplated improvements in Phase I or any additional Phase, and closed the sales of all of such Units in Phase I or any additional Phase, but in no event to exceed fifteen (15) years from the date of filing of this Declaration. Subject to the rights of the Mortgagee hereunder, the Developer may make such use of the unsold Units and of the Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office and model units, the showing of the Condominium Property and the Units therein, the display of signs thereon and therein, and the construction of improvements for the purpose of joining or modifying improvements in Phase I with improvements in any additional Phase. These Special Declarant Rights exist so long as the Developer holds any Unit in the Condominium for sale in the ordinary course of business or leases any Unit which it owns or contemplates developing additional Phases, but in no event to exceed fifteen (15) years from the date of filing of this Declaration. The Developer expressly reserves the right to lease any Unit which it may own in the Condominium Property on such terms as it may deem proper and desirable and may transfer Units subject to such lease.

4.05 Amendment to Include Additional Phase(s) to the Declaration. The Developer, its successor and/or assigns, expressly reserves the right until the fifteenth (15th) anniversary of the recordation of this Declaration to submit all or any portion of the real property described on Exhibit "H" to this Declaration and the Condominium form of ownership, by filing an Amendment to this Declaration in the Office of the Judge of Probate, Baldwin County, Alabama, submitting said parcel or parcels or any portion thereof to the terms and conditions of this Declaration, all in accordance with the provisions in the Act.

4.06 Special Rights as to Commercial Units. The Commercial Unit, which is designated on the Plans set out on Exhibit "C" or designated on the Plans for Phase II can be used for any commercial enterprise allowed by the local zoning ordinances, including, but in no way limited to real estate sales, leasing, management, and marketing activities. The Owner of such Unit shall also be granted an easement in, on, over, and through the Common Elements, including the use and access thereof, for the purpose of allowing its guests, licensees, and lessees to use the Common Elements for access to the Commercial Unit and to the amenities located in the Common Elements, if allowed by the Declaration, the Association's By-Laws or the Rules and Regulations for Unit Owners. All other Units, not designated as a Commercial Unit, shall be restricted for residential use only and the Common Elements, or any portion thereof, may not be used for commercial activities other than as provided in this Article and the Declaration.

4.07 Right to Relocate Ingress/Egress Easement From Dixie Graves Parkway to Dune Drive. Declaration. In connection with the construction and development of Phase II, should it be constructed and developed, the Developer, its successor and/or assigns, expressly reserves the right to relocate the entrance road from the easement area connected to Dixie Graves Parkway (Highway 180) to Dune Drive and/or to make modifications in design to the entrance road located in the easement area connected to Dixie Graves Parkway.

ARTICLE V

ORGANIZATION AND MANAGEMENT

5.01 Management of the Condominium Property. The operation and administration of the Common Elements and the Condominium Property shall be performed by the Association. The powers and duties of the Association shall include those set forth in the Act, the Alabama Nonprofit Corporation Act, Code of Alabama 1975, Section 10-3A-1 et seq., this Declaration, the Articles of Incorporation and the By-Laws.

5.02 Members. The Members of the Association shall constitute all record Owners of the Units. Change of membership in the Association shall be established by recording in the Probate records of Baldwin County, Alabama, the deed or other instrument establishing record title to a Unit of the Condominium Property, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a record Owner and a Member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners, tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. The votes shall be cast in the manner provided in the Articles and By-Laws of the Association. Each Unit shall be allocated one (1) vote, which

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4.07 Right to Relocate Ingress/Egress Easement From Dixie Graves Parkway to Dune Drive. In connection with the construction and development of Phase II, should it be constructed and developed, the Developer, its successor and/or assigns, expressly reserves the right to relocate the entrance road from the easement area connected to Dixie Graves Parkway (Highway 180) to Dune Drive and/or to make modifications in design to the entrance road located in the easement area connected to Dixie Graves Parkway.

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5.02 Members. The Members of the Association shall constitute all record Owners of the Units. Change of membership in the Association shall be established by recording in the Probate records of Baldwin County, Alabama, the deed or other instrument establishing record title to a Unit of the Condominium Property, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a record Owner and a Member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners, tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. The votes shall be cast in the manner provided in the Articles and By-Laws of the Association. Each Unit shall be allocated one (1) vote, which

vote is not divisible, the numerical value of which shall be the percentage of undivided interest in the Common Elements assigned to the Unit of which the member is the Owner, and as set forth in Exhibit "E" attached hereto and all amendments thereto.

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

ARTICLE VI

ASSESSMENTS

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

6.02 Assessments. All assessments for the payment of Common Expenses shall be levied annually and paid monthly by the Owners of all Units, and unless specifically otherwise provided for in this Declaration, each Owner of a Unit and each Owner's Unit shall bear the same fractional share of such assessment as the fractional share of ownership for the undivided interest in the Common Elements and Limited Common Elements appurtenant to said Unit. The assessments for Common Expenses and Limited Common Expenses shall be payable over the course of the year in advance in monthly installments commencing on the date of the purchase of a Unit or in such other installments and at such times as may be determined by the Board of Directors in accordance with the Association's By-Laws. Nothing to the contrary withstanding, the Association may individually assess an Owner of a Unit for the payment of expenses associated with or incurred in connection with the use of the Common Areas located in The Dunes subdivision or in connection with the Beach Mouse Assessments.

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

the Board of Directors shall so provide, in accordance with the Act and this Declaration. Said budget shall take into account any projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. Within thirty (30) days after adoption of such annual budget by the Board of Directors, copies of said budget shall be made available to each Member. The Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing or delivering the budget to the Members. Unless at such meeting a majority of the Members present in person or by proxy reject the budget, the budget is ratified. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time as a new budget is ratified. If the budget is ratified, the assessment for said year shall be established based upon such budget.

Should the Board of Directors at any time determine in the sole discretion of said Board of Directors that the assessments levied are or may prove to be insufficient for any reason, including emergencies and nonpayment of any Owner's assessment, the Board of Directors shall have the authority to levy such additional assessment as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents and the Act. The initial projected and estimated annual maintenance budget for the Condominium Property is attached to this Declaration as Exhibit "F", and made a part hereof.

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

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

6.06 Payment of Common Expenses and Limited Common Expenses by Unit Owners. All Unit Owners shall be obligated to pay the assessment for Common Expenses and/or Limited Common Expenses adopted by the Board of Directors pursuant to the terms of this Declaration. No Unit Owner may be exempted from liability for such Unit Owner's contribution toward Common Expenses or Limited Common Expenses by waiver of the use or enjoyment of any

of the Common Elements, Limited Common Elements or by abandonment of an Owner's Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses or Limited Common Expenses assessed against such Owner's Unit subsequent to a sale or other conveyance by the Owner of such Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against such Unit up to the time of conveyance without prejudice to the purchaser's right to recover from the selling Unit Owner the amounts paid by the purchaser thereof. Whenever any Unit may be sold or mortgaged by the Owner thereof, which sale shall be concluded only upon compliance with the other provisions of this Declaration, the Association, upon written request of the Owner or purchaser of such Unit, shall furnish to the Owner, the purchaser or any proposed Mortgagee (within the time period prescribed by the Act) a statement verifying the status of the payment of any assessment which shall be due and payable to the Association by the Owner of such Unit and the other information required by the Act. Any purchaser or proposed Mortgagee may rely upon such statement in concluding the proposed purchase or mortgage transaction and the Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged when any assessment is outstanding against the Owner of such Unit and such assessment due the Association is in default, the purchase or mortgage proceeds shall first be applied by the Purchaser or Mortgagee to the payment of any delinquent assessment or installment due the Association before application of the payment to the selling Unit Owner.

6.07 Default in Payment of Assessments. The payment of any assessment or installment thereof due the Association shall be in default if such Assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the rate established by the Board of Directors of the Association not exceeding eighteen percent (18%) per annum until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall have a lien against Units for delinquent assessments. Said lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Owner of each Unit, and such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association. Said lien shall also secure all costs and expenses, including late penalties and reasonable attorneys' fees and court costs incurred by the Association in collecting delinquent assessments and enforcing the same upon said Unit and its appurtenant undivided interest in the Common Elements and/or Limited Common Elements. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Alabama, which contain a power of sale. The lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest at the maximum

legal rate on judgments or the rate established by the Board of Directors, whichever is greater, on any such advance made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien, or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Unit expressly subject to the lien.

The lien herein granted to the Association shall be effective from and after the time of the recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama, and no further recordation of any claim of lien for assessment under this section is required. Such lien shall include only assessments which are due and payable when the action to enforce the lien is commenced plus late penalties and penalties imposed by the Association for Rules and Regulations violations, interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided.

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

6.09 Assessments owed Master Association. In the event the Master Association levies an Assessment against the Association for a portion of the expenses incurred by the Master Association for the up keep and maintenance of Dune Drive or the Access Easement from the Department of Conservation and the dune walkovers located within the beach access easements set out on the recorded plats of Dunes, a subdivision, the Association shall pay the same and assess each Unit owner for said assessment in the same manner as assessments for Common Elements. The Association further agrees to pay the Master Association, annually, or as directed by the Master Association, the amounts owed by each Unit in connection with the Beach Mouse Fund and the Permit and assess each Unit owner for said Beach Mouse Fund assessment, as more fully set out in Article XV below. Any Master Association Assessment for up keep & maintenance shall be reasonable and relate to proportionate amount of use.

ARTICLE VII

MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY

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

(A) the Common Elements which by definition exclude the surfaces of all interior walls, floors, ceilings, entrance doors, and windows (except the painting of the exterior faces of the exterior doors and window frames which shall be the responsibility of the Association);

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

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

(D) the Limited Common Elements.

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

7.02 Each Owner's Obligation to Repair.

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

(1) fixtures and equipment in such Owner's Unit, including the refrigerator, stove and all other appliances within the Unit; drains, sinks, plumbing and plumbing fixtures, and connections within the Unit; electrical panels, wiring, outlets, and electrical fixtures within the Unit; interior doors, window frames, screening and window glass; all exterior doors and windows (except the painting of the exterior faces of the exterior doors, exterior windows and exterior faces of storage areas which shall be the responsibility of the Association); all wall coverings including paint, wallpaper and light fixtures; and all

flooring including carpeting, vinyl and ceramic tile within a Unit. In the event an exterior door or exterior window or storage area or a portion thereof requires repair, maintenance or replacement and the same is not promptly done by the Unit Owner, the Association may perform the same, and the cost thereof shall constitute an assessment against the Unit Owner responsible therefor.

(2) plumbing, heating, air conditioning and electrical systems serving only that Unit, including the fuse boxes, wiring, flues, and all other plumbing, electrical, gas or mechanical systems. In the event any such system or a portion thereof is within another Unit or requires access to another Unit, the repair, maintenance or replacement thereof, shall be performed by the Association, and the cost thereof shall constitute an assessment against the Unit Owner responsible therefor.

(B) Each Unit Owner agrees as follows:

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

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

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

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

(5) not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, Limited Common Elements, or to any outside or exterior portion of the Unit, excluding any alteration or addition made pursuant to the procedure described in subparagraph (4) above and including, but not limited to, altering in any way exterior doors, windows, or the exterior faces of the exterior doors or windows, affixing outside shutters to windows or painting any part of the exterior of an Owner's Unit or storage area, without the prior written consent of the Association; provided that if such consent is granted, the Unit Owner shall use only a contractor approved by the Association, which approval will not be unreasonable withheld, who shall comply with all Rules and Regulations with respect to the work which may be adopted by the Association and the Unit

shall be liable for all damages to another Unit or to the Common Elements or Limited Common Elements caused by any contractor employed by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and,

(6) to promptly report to the Association any defects or needed repairs for which the Association is responsible. In the event the Unit Owner fails to promptly notify the Association of any such known defects which need to be repaired, the Unit Owner shall be responsible for the cost of any subsequent repairs which are created due to the initial repairs not being reported.

(C) The Association shall be obligated to answer any request by a Unit Owner for any required approval of a proposed addition, alteration or improvement (by painting or otherwise) within forty-five (45) days after such request, but its failure to do so within the stipulated time shall not constitute a consent of the Association to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to an Unit shall be executed by the Association, without, however, its incurring any liability on the part of the Board of Directors or any one (1) of them or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim of injury to a person or damage to property arising therefrom. The review by the Association under this section shall in no way make the Association liable for any alterations, additions, or improvements by any Unit Owner. Rather, such review is for purposes of aesthetics and control only. The provisions of this section shall not apply to Units owned by the Developer until a deed for such Unit has been delivered to a purchaser other than the Developer.

7.03 Alterations, Additions and Improvements by the Association. Except in the case of loss or damage to the Common Elements or Limited Common Elements as contemplated by Article XII of this Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements or Limited Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements or Limited Common Elements which is in accordance with this Declaration and which does not require an expenditure of more than Fifty Thousand and No/100 (\$50,000.00) Dollars, exclusive of any funds applied from the reserves maintained hereunder) unless the same is authorized by the Board of Directors and ratified by the affirmative vote of the voting members casting not less than sixty percent (60%) of the total votes of the Members of the Association present at any regular or special meeting of the Members called for that purpose at which a quorum is present and approved by a majority of the Mortgagees eligible to vote therefor. The cost of the foregoing shall be assessed against the Owners of Units as provided herein except as otherwise provided in this section. Where any alterations or

additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners exclusively, or substantially exclusively, benefitting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors. Alterations, improvements or repairs of an emergency nature may be made upon authorization by a vote of the majority of the Directors available for consultation if the same is necessary and in the best interest of the Members.

7.04 Utilities. Each Unit Owner shall be required to pay all charges for utilities, including but not limited to electricity, gas, cable television, and telephone service, used or consumed in an Owner's Unit. The utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association shall be responsible for the payment of the common water and sewage used in the Units and the Common Elements. The Association shall have authority to pay the cost of the utilities used or consumed in the Units and have the costs thereof apportioned among the Units based upon use of the utility or any other formula the Association may deem appropriate. The cost of any utilities which service an individual Boat Slip in the Private Marina shall be the responsibility of the Owner of the Unit to which it has been assigned.

ARTICLE VIII

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

8.01 Rules and Regulations of the Association. The Association is authorized to promulgate, amend and enforce the Rules and Regulations concerning the operation and use of the Condominium provided that such Rules and Regulations are not contrary to or inconsistent with the Act and the Condominium Documents. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners, tenants, occupants, and any person who uses any part of the Condominium Property in any manner, are subject to, and shall comply with the provisions of the Condominium Documents and the Rules and Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any one (1) person shall constitute such person's agreement to be subject to and bound by the provisions of the Condominium Documents and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions

for violation of any Rule or Regulation by an Owner, Occupant, or an Owner's family members, guests, invitees, lessees or renters, including the payment of penalties for such violations.

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

(A) Each Unit, except a commercial Unit, is restricted to residential use and the parking spaces located on the Common Elements, shall be used in accordance with the rules and regulations of the Association. The restriction that a Unit can only be used as for residential usage shall not preclude a Unit Owner or Occupant from maintaining a personal professional library in his Unit, nor preclude him from keeping his personal business records or handling his personal business telephone calls or correspondence. The one commercial Unit can be used for commercial purposes which do not violate any governmental zoning or use restrictions.

(B) Parking Spaces located on the Common Elements are restricted to passenger automobiles, motorcycles, passenger vans, and small to intermediate pick-up trucks. The parking of Recreational vehicles (R/V), motorhomes, travel trailers, boat trailers, boats, jet skis, tractor/trailer rigs, and similar types of motorized vehicles are restricted to areas designated by the Association, if any. Delivery trucks, service trucks and similar types of vehicles which are servicing the commercial Unit or are there at the request of the Association or the Owner of the commercial Unit will be allowed on a temporary basis.

(C) There shall be no obstruction of the Common Elements or Limited Common Elements, nor shall anything be kept or stored in the Common Elements or stored in the Limited Common Elements except in approved storage areas, nor shall anything be constructed on or planted in or removed from the Common Elements or Limited Common Elements, nor shall the Common Elements in any other way be altered without the prior written consent of the Association.

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

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

(F) No "For Sale" or "For Rent" or similar type sign of any kind shall be displayed to the public view on or from any part of the Condominium Property, all other signs must have prior written consent of the Board of Directors, EXCEPT signs used by the Developer in the selling or leasing of the Units, or signs used in connection with a Commercial Unit, or signs used in accordance with the Declaration.

(G) No noxious or offensive activities shall be carried on, nor shall any outside lighting or sound speakers or other sound producing devices be used, nor shall anything be done, on any part of the Condominium Property which, in the judgment of the Board of Directors, may be or become an unreasonable annoyance or nuisance to the other Unit owners.

(H) No Owner shall cause or permit anything to be placed on the outside walls of any Owner's Unit, and no sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to or placed upon the exterior walls or roof of any building or any part thereof, without the prior written consent of the Board of Directors. The owner of a Commercial Unit is allowed to place a sign on the outside walls of the Commercial Unit, which indicates its name or type of business and does not exceed eight (8) square feet in area. The Owner of a commercial Unit has the right to place directional and informational signs throughout the Common Areas, which do not exceed six (6) square feet in area, and which have been approved by the Board of Directors, whose approval can not be unreasonable withheld.

(I) No clothes, sheets, towels, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements or Limited Common Elements. No gas, charcoal or other open flame grills or cooking equipment shall be used or placed on Common Elements or Limited Common Elements, including but not limited to balconies and terraces, unless the same is approved by the Board of Directors. The Common Elements and Limited Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

(J) No animals or pets of any kind shall be kept in any Unit or on any portion of the Condominium Property except with the written consent of the Board of Directors and shall be subject to the rules and regulations of the Association governing the keeping of pets and the Beach Mouse Covenants; provided that such consent may be terminated without cause at any time by the Board of Directors of the Association. No animal shall be kept for commercial purposes nor be allowed to create or cause any disturbance or nuisance of any kind, and if an animal or pet does cause or create a nuisance or an unreasonable disturbance, said animal or pet shall be permanently removed from the Condominium Property within seven (7) days from the day the owner receives the written notice to remove the animal or pet. The Owner of any pet

or animal shall be liable for any and all damage caused by such pet or animal to any part of the Condominium Property. NO FERAL OR DOMESTICATED CATS SHALL BE ALLOWED. Nothing to the contrary withstanding, no animal or pet of any kind shall be kept in any Unit or on any portion of the Condominium Property which is in violation of the Alabama Beach Mouse Covenants or Permit.

(K) Motorcycles, motor bikes, motor scooters, recreational vehicles or other similar vehicles shall not be operated within the Condominium Property except for the purpose of ingress or egress or transportation, it being intended that said vehicles shall not be operated so as to annoy or disturb persons or endanger persons or property.

(L) All persons using the swimming pool, spa, steam room do so at their own risk and the Association is not responsible for any accident or injury in connection with use of the pool, spa or steam room or for any loss or damage to personal property. Persons using the pool area, spa or steam room agree not to hold the Association, its officers, employees or agents liable for any actions of whatever nature occurring within the pool areas. The pool areas, spa and steam room shall be used in accordance with such rules and regulations as shall from time to time, be promulgated by the Board of Health of Baldwin County, Alabama, and/or by the Board of Directors of the Association.

(M) The Association shall have the right to promulgate rules and regulations concerning the use and enjoyment of the Common Areas and Limited Common Areas.

(N) Units may be leased or rented by the Unit Owners; and the rights of any tenant is hereby made subject to the power of the Association to prescribe reasonable rules and regulations relating to the leasing or rental of a Unit and to enforce the same directly against a tenant or other occupant by the exercise of such remedies as the Board of Directors deems appropriate, including eviction. Each Unit Owner who shall lease or rent his Unit irrevocably empowers the Association or its managing agent to enforce the rules and regulations and to terminate the lease and evict any tenant or occupant who fails to comply with the rules and regulations. The Association, the Board of Directors, or any agent thereof, shall not become liable to any Unit Owner or any person who sublets a Unit, or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this paragraph. Nothing to the contrary withstanding, a Unit Owner is primarily responsible for the acts or omissions of its family, tenants, quests, invitees, or occupants. Individual rooms located within a Unit shall not be leased or rented.

8.03 Right of Access. Each Unit Owner grants a right of access to such Owner's Unit to the Association, and to any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in an Owner's Unit and threatening other Units, Common

Elements or Limited Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within an Owner's Unit, if any, or to correct any conditions which violates the provisions of any Mortgage covering another Unit or to enforce any provisions of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency such right of entry shall be immediate whether the Unit Owner is present at the time or not. Each Unit Owner further grants a right of access to such Owner's Unit to the Developer and/or the Developer's agent for the purpose of making all repairs required by any warranty delivered to the Unit Owner at the closing of an Owner's Unit. To the extent that damages inflicted on the Common Elements, Limited Common elements or any Unit through which access is taken, the Unit Owner or the Association, if it causes the same, shall be liable for the prompt repair thereof.

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

8.05 Abatement of Violations. The violation of any Rule or Regulation adopted by the Board of Directors or breach of the provisions of the Condominium Documents, shall give the Developer, the Association, or any Unit Owner the right, in addition to any other right or remedy elsewhere available, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting Unit Owner, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting Owner, and the Association shall have a lien for all of the same upon the Unit of such defaulting Owner, upon all of such defaulting Owner's additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon all of such defaulting Owner's personal property in such defaulting Owner's Unit or located elsewhere on the Condominium Property. Nothing herein

contained shall prevent an Owner from maintaining such an action or proceeding against the Association and the expense of any action to remedy a default of the Association shall be a Common Expense if a court of competent jurisdiction finds the Association to be in default as alleged in such action or proceeding.

8.06 Failure of the Association to Insist on Strict Performance; No Waiver. Failure of the Association to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment from the future performance of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed to be a waiver of such breach and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors of the Association.

ARTICLE IX

RIGHTS OF MORTGAGEES

9.01 Notification of Mortgagees Required. Any Mortgagee shall have the right to be given written notification by the Association of (a) any ninety (90) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements or Limited Common Elements if such loss or taking exceeds Thirty Thousand and No/100 (\$30,000.00) Dollars; (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds Twenty-five Thousand and No/100 (\$25,000.00) Dollars; (d) any condemnation of all or a portion of the Condominium Property; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Mortgagees.

9.02 Right of Inspection. Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property and to receive annual reports, other financial data, and, upon request, an annual audited statement, within ninety (90) days following the end of any fiscal year of the Association. Any cost associated with providing a Mortgagee with requested information shall be paid by the Mortgagee requesting the information.

9.03 Required Reserve Funds and Working Capital Fund. Assessments levied by the Board of Directors shall include an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common Elements that must be replaced or repaired on a periodic basis, and may be payable in

regular installments rather than by special assessments. A working capital fund shall be established for each unit Owner purchasing a Unit from the Developer and will be payable at the time of closing the sale from the Developer to be used by the Association as working capital.

9.04 Priority of Mortgagees.

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

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

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

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

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

9.05 Request for Protection by Mortgagees. Whenever any Mortgagee desires the benefit of the provisions of this Article IX to be applicable to such Mortgagee, the Mortgagee shall serve written notice of such fact upon the Association, by registered or certified mail, addressed to the Association, and actually mailed

to the Association's address, identifying the Unit upon which it holds a Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by the Mortgagee. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee.

ARTICLE X

CASUALTY LOSS AND INSURANCE

10.01 Responsibility of Owners; Separate Insurance Coverage.

(A) The Owner of each Unit may, at the Unit Owner's expense, obtain insurance coverage for loss of or damage to the Private Elements, any furniture, furnishings, personal effects, and other property belonging to such Owner, and may, at the Unit Owner's expense, obtain insurance coverage against personal liability for injury to the person or property of another while within such Owner's Unit or upon the Common Elements or Limited Common Elements. Risk of loss of or damage to any furniture, furnishings and personal property belonging to or carried on the person of the Owner, or which may be stored in any Unit, or in or upon Common Elements or Limited Common Elements, shall be borne by the owner of each Unit. All furniture, furnishings and personal property constituting a portion of the Common Elements and held for the joint use and benefit of all Owners of Units shall be covered by such insurance as the same shall be maintained in force and effect by the Association as hereinafter provided. All insurance obtained by the Owner of each Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or the Developer, and their respective servants, agents, employees and guests. The Association shall not be responsible for providing insurance coverage on any Private Elements.

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

10.02 Insurance to be Maintained by the Association.

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

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

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

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

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

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

(A) All policies shall be written with a company licensed to do business in the State of Alabama and holding a financial rating of "A" or better by Best's Insurance Reports or other then comparable rating.

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

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

(D) The Association shall be required to made every effort to secure insurance policies that will provide for the following:

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

(2) An agreement by the insurer that the insurance coverage cannot be terminated or materially changed without thirty (30) days prior written notice to the Association and the Mortgagee of each Unit;

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

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

(5) The insurance coverage will comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, as they apply to condominiums.

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

10.05 Insurance Trustee. The Association may engage the services of a bank or trust company authorized to do trust business in the State of Alabama to act on its behalf as an insurance trustee ("Insurance Trustee") and to receive and disburse the insurance proceeds in accordance with the provisions of this Declaration. In the event the lowest of two (2) bids from reputable contractors for making all repairs required by any such loss shall exceed Two Hundred Thousand and No/100 (\$200,000.00) Dollars, the Association upon written demand of the Mortgagee of any Unit shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The Association, as a Common Expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only, for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Whenever the Insurance Trustee may be required to make distribution of insurance proceeds to Owners of Units and their Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee the name of the Owner of each Unit, the name of the Mortgagee who may hold a Mortgage encumbering each Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any Unit, and the Unit Owner's respective Mortgagee, as their respective interest may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Condominium Property. The rights of the Mortgagee of any Unit shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provision hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property;

provided, however, that if the Association or the Insurance Trustee fails to perform all the conditions precedent required by the policy or policies of insurance, and fails to collect the amount of the loss within the time required by law, and the Mortgagee or Mortgagees are required to avail themselves of their rights under the standard mortgagee clause to collect the proceeds of the policy or policies of insurance, any amount so collected through the efforts of said Mortgagee or Mortgagees shall be applied as directed by said Mortgagee or Mortgagees. No provision hereof shall entitle an Owner or any other party to any priority over a Mortgagee with respect to the distribution of any insurance proceeds with respect to such Unit.

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

10.07 Loss to Common Elements, Limited Common Elements and/or Private Elements. In the event of loss of or damage to Common Elements, Limited Common Elements and/or any Private Element of any Unit by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance, the proceeds paid

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

casualty insurance proceeds shall be levied and collected as an assessment from the Owners of all Units in the same manner as would be levied and collected had the loss or damage sustained been solely to the Common Elements and the fire and casualty insurance proceeds been not sufficient to cover the cost of repair, replacement or reconstruction. The cost of repair, replacement or reconstruction of the Limited Common Elements and the Private Elements of each Unit sustaining loss or damage shall then be levied and collected by assessment of the Owners of the Private Elements sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of Limited Common Elements and Private Elements sustaining Loss or damage.

10.08 Estimates of Repair; Plans and Specifications; Payment of Assessments. In the event of loss or damage to Condominium Property, the Association shall, within sixty (60) days after any such occurrence, obtain reliable and detailed estimates of the cost of restoring damaged property to a condition as good as that which prevailed before such loss or damage. The estimate of repair shall be based upon the plans and specifications of the original buildings, portions of which are attached as Exhibit "C" to this Declaration as the same may from time to time be amended, or such other plans and specifications as may be approved by the Board of Directors, by all of the Owners of the damaged Units, and by not less than sixty percent (60%) of the Members of the Association including the Owners of damaged Units. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Condominium Property. Such estimates are to contain and include the cost of any professional fees and premiums for such bonds as the Board of Directors may deem to be in the best interest of the membership of said Association. Whenever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of repair, replacement or reconstruction thereof, the additional money required to completely pay for such repair, replacement or reconstruction of said loss or damage whether to be paid by all of the Owners of Units or only by the Owners of Units sustaining loss or damage, or both, as herein provided, shall be paid to the Association and deposited with the Insurance Trustee, if any, not later than thirty (30) days from the date on which the Association or the Insurance Trustee, as the case may be, shall receive the monies payable from the policies of fire and casualty insurance.

ARTICLE XI

CONDEMNATION

11.01 Condemnation Considered a Casualty Loss. The taking of a portion of a Unit or Private Element, the Common Elements or the Limited Common Elements by eminent domain shall be deemed to be a casualty loss, and except as otherwise provided below, the awards for such taking shall be deemed to be proceeds from

insurance on account of the casualty and shall be applied and distributed by the Association in accordance with the provisions of Article XII. Even though the awards may be payable to the Owners, the Owners shall deposit the awards with the Association or Insurance Trustee, as the case may be; in the event of failure to do so, at the discretion of the Board of Directors, a special assessment shall be made against a defaulting Owner in the amount of such defaulting Owner's award, or the amount of such award shall be set off against the sums hereinafter made payable to such Owner. If any Unit or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of such Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition as provided herein, and no provision hereof shall entitle the Owner of such Unit or other party to priority over such Mortgagee with respect to the distribution of any award or settlement to the Owner of the Unit.

11.02 Partial Condemnation. In the event that the Condominium Property is not to be terminated and one or more Units are taken in part, the taking shall have the following effects:

(A) If the taking reduces the size of a Unit and the remaining portion of that Unit can be made tenantable, the award for the taking for a portion of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

(1) The Unit shall be made tenantable.

(2) The balance of the award, if any, shall be distributed to the Owner of the Unit and the Mortgagee of the Unit, as their respective interests may appear.

(3) If there is a balance of the award distributed to the Owner and the Mortgagee, the share of the Common Elements or Limited Common Elements, if any, appurtenant to the Unit shall be equitably reduced. This shall be done by reducing such share by the proportion which the balance of the award so distributed bears to the market value of the Unit immediately prior to the taking, and then re-computing the percentage interest of all Owners in the Common Elements and the Limited Common Elements as percentages of the total of their shares as reduced by the taking.

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

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

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

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

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

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

(C) Changes in the Units, in the Common Elements and/or Limited Common Elements, in the ownership of the Common Elements and/or Limited Common Elements and in the shares of liability for Common Expenses and/or Limited Common Expenses which are effected by eminent domain, shall be evidenced by an amendment of this Declaration which is approved by the Board of Directors in accordance with this Declaration and the Association's By-Laws.

11.03 Association Appointed as Attorney-In-Fact for Unit Owners. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the condemnation or taking by eminent domain of the Condominium Property or any portion thereof.

ARTICLE XII

TERMINATION

121.01 Destruction of the Condominium Property.

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

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

(2) the Condominium Property has been in existence in excess of fifty (50) years and substantially all of the Units in the structure have substantially deteriorated and have been rendered substantially obsolete; then the Board of Directors may call a meeting of the Members of the Association to consider and vote upon whether to restore, repair and/or rebuild the Condominium Property, and if not, whether to terminate the Declaration and remove the Condominium Property from the provisions of the Act if approved by the affirmative vote of at least eighty percent (80%) of the owners of all Units (based upon one vote for each Unit) and by at least eighty percent (80%) of all Mortgagees (based upon one vote for each Mortgage owned) after notice given as provided herein, the Declaration and plan of condominium ownership established herein shall be subject to termination as provided in the Act and the Association shall be authorized to file on behalf of and in the name of the Unit Owners and shall file a petition for such termination and removal with the Circuit Court of Baldwin County, Alabama. If less than eighty percent (80%) of the Owners of all Units and/or less than eighty percent (80%) of the Mortgagees vote in favor of terminating the Condominium Property as herein required, the Condominium Property shall be restored, repaired and/or rebuilt in accordance with these provisions.

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

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

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

12.03 The Association Appointed as Attorney-In-Fact for Unit Owners. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the termination of this Declaration and plan of condominium ownership established herein.

ARTICLE XIII

AMENDMENT

13.01 Amendments by Developer. Without limiting the rights of the Developer to alter the plans as described above, or file incremental amendments to bring in any additional Phase or Phases, and notwithstanding any other provision herein contained, the following provisions shall be deemed to be in full force and effect, none of which shall be construed as to relieve the Developer from any obligations as a Unit Owner to pay assessments as to Units owned by it in accordance with the Condominium Documents.

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

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

(C) The Developer reserves the right to amend this Declaration to add an additional Phase or Phases by the filing of an incremental amendment in accordance with the provisions of this Declaration.

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

(A) A proposal to amend this Declaration may be considered at any meeting of the Members of the Association called for that purpose in accordance with the provisions of the By-Laws. The proposal to amend the Declaration must be approved by the affirmative vote of the members representing not less than sixty-six and two-thirds percent (66 2/3%) of the total allocated votes of the Association; or,

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

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

(1) change a Unit, including the ownership in Common Elements, responsibility for Common Expenses and voting rights without the prior written approval of the Unit Owner or Unit Owners so affected and prior written approval of the holders of record of any mortgage or other liens on the Unit or Units so affected; or,

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

13.03 Effectiveness of Amendments. Each amendment, other than amendments by the Developer or its successor or assigns, adopted shall be certified by the President or a Vice President and Secretary or Assistant Secretary of the Association as having been fully adopted, and shall be effective when recorded in the Probate Court of Baldwin County, Alabama.

ARTICLE XIV

CONTROL OF THE ASSOCIATION

14.01 Election of Board of Directors. The Developer, its successors or assigns, may appoint and remove the members of the Board of Directors, and in the event of vacancies, the Developer shall fill the vacancies, until no later than the earlier of either (i) sixty (60) days after seventy-five percent (75%) of the total number of Units which may be created have been conveyed to purchasers of Units, or (ii) two (2) years have elapsed from the date the Developer has ceased to offer Units for sale in the ordinary course of business; or (iii) four (4) years after any Development Rights to add new Units was last exercised; provided that the Developer may, at its option, terminate its control of the Association at an earlier date. Notwithstanding the foregoing, within ninety (90) days after conveyance of twenty-five percent (25%) of the Units, the Unit Owners other than Developer shall be entitled to elect twenty-five percent (25%) of the members of the Board of Directors. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than Developer, not less than thirty-three and one-third (33 1/3%) of the members of the Board shall be elected by the Unit Owners. The Developer shall be entitled to appoint at least one (1) member of the Board of Directors as long as the Developer has Development Rights or holds for sale in the ordinary course of business at least one Unit in the Condominium, and such is not contrary to the other provisions hereof.

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

14.03 Status of Unsold Units.

(A) The Developer shall be deemed to be the Owner of each Unit which has not been conveyed to a person other than the Developer. Unless otherwise provided in the Condominium Documents, the Developer shall be entitled to all rights and

privileges available to, and shall be subject to any and all obligations and duties imposed upon, the Owner of any such Unit under the Condominium Documents.

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

(C) Notwithstanding the provision above, no assessments (excluding the working capital, which will be collected from a purchaser of a Unit at the time of closing) shall be imposed by the Association against the Developer or any other Unit owner for so long as the Developer pays all of the Common Expenses. During such period, Developer shall be responsible for the Common Expenses and Limited Common Expenses of the Condominium Property. The date of the first assessment imposed by the Association shall be determined by the Association, and notice of the assessment will be mailed or delivered to all Owners of Units prior to the effective date of the assessment.

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

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

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

ARTICLE XV

ALABAMA BEACH MOUSE COVENANTS

15.01 GENERAL RECITALS.

(A) The Property is located in close proximity to an area which has been designated critical habitat for the Alabama Beach Mouse ("*Peromyscus Polinotus Ammobates*") a species that has been designated as an endangered species by the United States of America. The designation as an endangered species is set forth in the Title 50 Code of Federal Regulations Section 17.11(h) and the