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Marion T. Johns, Judge of Probate

STATE OF ALABAMA
BALDWIN COUNTY

**DECLARATION OF CONDOMINIUM
OF
NAVY COVE HARBOR, A CONDOMINIUM
PHASES ONE AND TWO**

ARTICLE ONE
Preamble and Definitions

1. Preamble - Navy Cove Harbor, LLC, is the owner, in fee simple, of the real property described in Article Three hereto, subject to the encumbrances and other matters affecting title as set forth in said Article Three. Navy Cove Harbor, LLC, is the sole and exclusive developer of Navy Cove Harbor, a Condominium. Navy Cove Harbor, LLC, hereby submits the real property described in Article Three, below, and all improvements heretofore or hereafter erected thereon, hereinafter sometimes referred to as the "Property", to the provisions of the Alabama Uniform Condominium Act of 1991, §§ 35-8A-101 through 35 8A-417 CODE OF ALABAMA 1975, hereinafter sometimes referred to as the "Act". The Property will hereafter be known as Navy Cove Harbor, a Condominium. The construction lender for Navy Cove Harbor, a Condominium, Vision Bank, or such other lender as Developer may elect, is not a partner of or joint venturer with Navy Cove Harbor, LLC, but joins with Navy Cove Harbor, LLC, in the execution of this declaration for the sole and limited purpose of acquiescing in and validating this declaration.

2. Definitions - The following terms used herein shall have the meanings ascribed to them by §35-8A-103 of the Act, as follows:

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a. Affiliate of a Declarant - Any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interest in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

b. Allocated Interests - The undivided interest in the common elements, the common expense liability and votes in the association.

c. Association or Unit Owners' Association - The corporation organized to manage the common affairs of the unit owners.

d. Board - Board of Directors of the unit owners association.

e. Common Elements - All portions of a condominium other than the units.

f. Common Expenses - Expenditures made by or financial liabilities of the association, together with any allocations to reserves.

g. Common Expense Liability - The liability for common expenses allocated to each unit.

h. Condominium - Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

i. Declarant - Any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of, or (ii) reserves or succeeds to any special declarant right.

j. Declaration - Any instruments, however denominated, that create a condominium, and any amendments to those instruments.

k. Development Rights - Any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a condominium; (ii) to create units, common elements, or limited common elements within a condominium; (iii) to subdivide units or convert units into common elements; or (iv) to withdraw real estate from a condominium.

l. Dispose or Disposition - A voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

m. Horizontal Boundaries - The upper and lower boundaries of a unit.

n. Identifying Number - A symbol or address that identifies only one unit in a condominium.

o. Limited Common Element - A portion of the common elements allocated by the declaration or by operation of §35-8A-202(2) or (4) of the Act for the exclusive use of one or more but fewer than all of the units.

p. Master Association - An organization described in §35-8A-220 of the Act, whether or not it is also an association described in §35-8A-301 of the Act.

q. Person - A natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

r. Real Estate - Any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

s. Residential Purposes - Used for dwelling or recreational purposes, or both.

t. Security Interest - An interest in real estate or personal property created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, vendor's lien, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease, rents intended as security, or any similar security device, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

u. Special Declarant Rights - Rights reserved for the benefit of a declarant (i) to complete improvements indicated on plats and plans filed with the declaration, (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the condominium, and models; (iv) to use easements through the common elements for the purpose of

making improvements within the condominium or within real estate which may be added to the condominium; (v) to make the condominium subject to a master association; (vi) or to appoint or remove any officer of the association or any master association or any board member during any period of declarant control.

v. Time Share - A right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a condominium or a specified portion thereof.

w. Unit - A physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described herein.

x. Unit Owner - A declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation. The declarant is the initial owner of any unit created by the condominium.

y. Vertical Boundaries - The lateral or perimetric boundaries of a unit.

3. Incorporation of the Act - The Act contains a number of other definitions of terms and phrases, all of which are incorporated herein by reference. For the sake of clarity and convenience of reference, certain portions of the Act which are considered significant are set forth herein verbatim.

ARTICLE TWO

Location

1. Location - Navy Cove Harbor, a Condominium, is and shall be located solely in Baldwin County, Alabama.

ARTICLE THREE

The Real Estate

1. The Real Property - The real property upon which Navy Cove Harbor, a Condominium, is and shall be situated is described as follows:

Parcel A

Lots 1, 2, 3 and 4 according to a plat of Resubdivision "A" of Gulf Beach, located in part of Sections 1 and 2, Township 9 South, Range 1 East; said plat recorded in Map Book 1, page 142, AND a parcel of land adjacent to the East line of said Lot 1, 50 feet in width and bounded on the South by Dixie Graves Parkway (Alabama Highway 180) and on the North by Mobile Bay and on the East by a line parallel to and 50 feet from the East line of said Lot 1.

Parcel B

Commence at the Southeast corner of Lot #1, Subdivision "A". Gulf Beach, as recorded in the Probate Judge's Office, Baldwin County, Alabama, in Map Book 1, page 142, run thence North 87° 00' East 50.0 feet to the Point of Beginning; continue thence 87° 00' East 50.0 feet; run thence North and parallel with the East line of said Lot #1, 167.0 feet; run thence South 87° 00' West 50.0; run thence South and parallel with the East line of said Lot #1, 167.00 feet; run thence South and parallel with the East line of said Lot #1, 167.0 feet, to the Point of Beginning.

Parcel C

Commence at the Southeast corner of Lot #1, Subdivision "A". Gulf Beach, as recorded in the Probate Judge's Office, Baldwin County, Alabama, in Map Book 1, page 142, run thence North 87° East for 50 feet; run thence North 167.0 feet to the Point of Beginning; run thence North for 642 feet, more or less, to the margin of Mobile Bay; run thence in an Easterly direction along Mobile Bay for 50 feet; run thence South 642 feet, more or less, to a point that is North 87° East and 50 feet from the Point of Beginning; run thence South 87° West for 50 feet to the Point of Beginning.

LESS AND EXCEPT such oil, gas and other mineral interests and all rights and privileges in connection therewith, as may have been reserved or conveyed by prior owners, if any.

2. Permanent Encumbrances - Matters permanently affecting title to the Property, such as restrictive covenants, permanent easements, reservations of minerals, and the like, are as follows:

1. Reservations, restrictions, rights of way, easements, building setback lines and drainage and utility line easements as noted on plat.
2. Rules and regulations imposed on the property by permits issued for dredging and, bulkheads and water development.
3. Rights of the United States of America, State of Alabama, or other parties in and to the bed, shore and water of Mobile Bay.
4. Rights, if any, of the public to use as a public beach or recreation area any part of the herein described land lying between the body of water abutting said land and the natural line of vegetation, dunes, extreme high water line or other apparent boundary lines separating the publicly used area from the upland private area.
5. Reservations, restrictions, rights of way, easements, building setback lines and drainage and utility easements as noted on plat.
6. Reservation of all interest in and to all oil, gas and minerals, and rights in connection therewith as contained in deed from Gulf Beach Land and Development Company to D.P. Cammack dated November 19, 1949, and recorded in Deed Book 147, page 211.
7. Reservation of all interest in and to all oil, gas and minerals, and rights in connection therewith, as contained in deed from Amelia W. Reinhold to Melvin Troy McPherson dated October 26, 1990, and recorded in Real Property Book 405, page 980.
8. Reservation of all interest in and to all oil, gas and minerals and rights in connection therewith as contain in deed from Gulf Beach Land Development Company, Inc., to Alfard W. Snyder dated June 23, 1970, and recorded in Deed Book 411, page 98.
9. Conveyance to the Alabama State Commission of Forestry of a strip of land on the South side of the property described above for a portion of the highway and parkway referred to is the description of Parcel "A", above, as set forth in Deed Book 60, page 253.
10. Encroachment of bulkhead and breakwater, as shown on plat of survey by B. Craig Johnson, Lucido and Oliver, Inc., dated September 11, 2001, Project No. 501-017.dwg

The recording references are to the Office of the Judge of Probate of Baldwin County, Alabama.

BUT DELETING ANY COVENANT, CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION, OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN TO THE EXTENT SUCH COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE 42 USC 3604(C).

3. Temporary Encumbrances - Prior to commencement of construction of the actual buildings the declarant will obtain the funds necessary to construct the building by means of a construction loan that will be secured by a first mortgage on the condominium. Individual units, together with their related percentages of the common elements, will be released from the operation of the construction loan mortgage as they are sold, upon payment of a specified release payment to the construction mortgage holder, and therefore, no unit will be conveyed to a purchaser while still subject to that (or any other) mortgage.

ARTICLE FOUR **Number of Units**

1. Number of Units - The maximum number of condominium units which shall comprise Navy Cove Harbor, a Condominium, is eighty seven, (estimated number) in phases as follows: Phase One - thirty six units [UNDER CONSTRUCTION]; Phase Two - twenty eight units [NEED NOT BE BUILT]; and Phase Three - twenty three units (estimated number) [NEED NOT BE BUILT]. This original declaration deals only with Phases One and Two. If Phase Three is added, as set forth in Articles Eight and Nine, below, entitled, respectively, "Rights Reserved by Declarant" and "Development Rights", this declaration will be amended to reflect the additional units and the reallocation of the percentages of the common elements assigned to each unit, as permitted by this declaration and the terms of the Act.

ARTICLE FIVE **Units and Common Elements**

I - Phase One -

1. Building Configuration - Phase One - The thirty six units which will initially comprise Navy Cove Harbor, a Condominium, Phase One, are contained in a concrete and stucco building on pilings containing four habitable floors above the ground level, constructed as indicated

on the plats and plans recorded simultaneously with this declaration. Each Phase One habitable floor is identical, and contains nine private individual condominium units of four different types. Each Phase One individual unit is identified by a unique four digit number.

2. Unit Numbers - Formula for Determining - Phase One - The first digit of the unit number indicates the phase of the condominium (i.e. "1"). The second digit of the unit number indicates the habitable floor on which the unit is located (i.e. "1", "2", "3" or "4"). The third digit of each unit number is "0". The fourth digit of each unit number indicates the position of the unit on the floor, numbering clockwise from the elevator landing on each floor. The fourth digit of each unit number is thus "1" for the unit to the left (south) of the elevator, on the east side and south end of the hallway; "2" for the unit across the hall to the west from the unit whose number ends in "1"; then continuing northward toward Mobile Bay along the west side of the hall, "3", "4", "5", "6" and "7" for the remaining units on the west side of the building, and with the unit whose number ends in "7" overlooking Mobile Bay; "8" for the unit to the right or east of the unit whose number ends in "7" which unit also overlooks Mobile Bay; and, finally, "9" for the unit that is due south of the unit whose number ends in "8", the unit whose number ends in "9" being on the east side of the hallway and immediately adjacent to and north of the elevator landing.

3. Unit Numbers - Phase One -

(a) First Habitable Floor - Phase One - The nine units on the first habitable floor of the Phase One building are identified as follows: The southeasternmost unit, immediately to the left of the elevator landing, on the eastern side and south end of the hallway, is Unit 1101. The southwesternmost unit, directly across the hall from Unit 1101, located on the western side and south end of the hallway, is Unit 1102. Proceeding north toward Mobile Bay along the west side of the hallway from Unit 1102 the units are identified, in order, as follows: 1103, 1104, 1105, 1106 and 1107. Unit 1107 is the northwesternmost unit on the floor, is on the western side and northern end of the hallway, and overlooks Mobile Bay. Unit 1108 is directly adjacent to and East of Unit 1107. Unit 1108 is located on the eastern side and northern end of the hallway, is the northeasternmost unit on the floor and overlooks Mobile Bay. Unit 1109 is located on the eastern side of the hallway, immediately adjacent to and South of Unit 1108. Unit 1109 is immediately adjacent to and North of the elevator landing.

(b) Second Habitable Floor - Phase One - The nine units on the second habitable floor of the Phase One building are identified as follows: The southeasternmost unit, immediately to the left of the elevator landing, on the eastern side and south end of the hallway, is Unit 1201. The southwesternmost unit, directly across the hall from Unit 1201, located on the western side and south end of the hallway, is Unit 1202. Proceeding North toward Mobile Bay along the west side of the hallway from Unit 1202 the units are identified, in order, as follows: 1203, 1204, 1205, 1206 and 1207. Unit 1207 is the northwesternmost unit on the floor, is on the western side and northern end of the hallway, and overlooks Mobile Bay. Unit 1208 is directly adjacent to and East of Unit 1207. Unit 1208 is located on the eastern side and northern end of the hallway, is the northeasternmost unit on the floor and overlooks Mobile Bay. Unit 1209 is located on the eastern

side of the hallway, immediately adjacent to and South of Unit 1208. Unit 1209 is immediately adjacent to and North of the elevator landing.

(c) Third Habitable Floor - Phase One - The nine units on the third habitable floor of the Phase One Building are identified as follows: The southeasternmost unit, immediately to the left of the elevator landing, on the eastern side and south end of the hallway, is Unit 1301. The southwesternmost unit, directly across the hall from Unit 1301, located on the western side and south end of the hallway, is Unit 1302. Proceeding north toward Mobile Bay along the west side of the hallway from Unit 1302 the units are identified, in order, as follows: 1303, 1304, 1305, 1306 and 1307. Unit 1307 is the northwesternmost unit on the floor, is on the western side and northern end of the hallway, and overlooks Mobile Bay. Unit 1308 is directly adjacent to and East of Unit 1307. Unit 1308 is located on the eastern side and northern end of the hallway, is the northeasternmost unit on the floor and overlooks Mobile Bay. Unit 1309 is located on the eastern side of the hallway, immediately adjacent to and South of Unit 1308. Unit 1309 is immediately adjacent to and North of the elevator landing.

(d) Fourth Habitable Floor - Phase One - The nine units on the fourth habitable floor of the Phase One Building are identified as follows: The southeasternmost unit, immediately to the left of the elevator landing, on the eastern side and south end of the hallway, is Unit 1401. The southwesternmost unit, directly across the hall from Unit 1401, located on the western side and south end of the hallway, is Unit 1402. Proceeding north toward Mobile Bay along the west side of the hallway from Unit 1402 the units are identified, in order, as follows: 1403, 1404, 1405, 1406 and 1407. Unit 1407 is the northwesternmost unit on the floor, is on the western side and northern end of the hallway, and overlooks Mobile Bay. Unit 1408 is directly adjacent to and East of Unit 1407. Unit 1408 is located on the eastern side and northern end of the hallway, is the northeasternmost unit on the floor and overlooks Mobile Bay. Unit 1409 is located on the eastern side of the hallway, immediately adjacent to and South of Unit 1408. Unit 1409 is immediately adjacent to and North of the elevator landing.

4. Unit Types and Configurations - Phase One - The thirty six units in Phase One are of four different types, designated as Type A, Type B, Type C and Type D.

(a) Type A Units - Phase One - The twenty Phase One Type A units contain 1,270 square feet, more or less, of heated and cooled living area and include a master suite containing a bedroom and master bath, a second bedroom and bath, a kitchen, a living and dining area, a storage closet, a washer and dryer closet, and a veranda. The Phase One Type A units are: 1102, 1103, 1104, 1105, 1106, 1202, 1203, 1204, 1205, 1206, 1302, 1303, 1304, 1305, 1306, 1402, 1403, 1404, 1405, and 1406.

(b) Type B Units - Phase One - The eight Phase One Type B units contain 1,260 square feet, more or less, of heated and cooled living area and include a master bedroom and master bath, two additional bedrooms, one additional bath, a kitchen, a great room, a washer and

dryer closet, and a veranda. The Phase One Type B units are: 1101, 1109, 1202, 1209, 1301, 1309, 1401 and 1409.

(c) Type C Units - Phase One - The four Phase One Type C units contain 1,070 square feet, more or less, of heated and cooled living area, and include two bedrooms, two baths, a foyer, a living room, a kitchen, a washer and dryer closet, and two verandas. The Phase One Type C units are: 1107, 1207, 1307 and 1407.

(d) Type D Units - Phase One - The four Phase One Type D units contain 1,170 square feet, more or less, of heated and cooled living area and include two bedroom, two baths, a kitchen, living and dining area, a washer and dryer closet and a veranda. The Phase One Type D units are: 1108, 1208, 1308 and 1408.

II - Phase Two -

1. Building Configuration - Phase Two - The twenty eight units which will comprise Navy Cove Harbor, a Condominium, Phase Two, will be/are contained in an L-shaped concrete and stucco building on pilings containing two habitable floors above the ground level, constructed as indicated on the plats and plans that will be recorded when Phase Two is completed. One leg of the "L" is oriented in the more or less North-South direction, with the other leg of the "L" being oriented in the East-West direction. Each habitable floor of the Phase Two building is/will be identical, and (will) contain(s) fourteen private individual condominium units of two different types. Each individual unit in Phase Two is identified by a unique four digit number.

2. Unit Numbers - Formula for Determining - Phase Two - The first digit of the unit number indicates the phase of the condominium (i.e. "2"). The second digit of the unit number indicates the habitable floor on which the unit is located (i.e. "1" or "2"). The third digit of each unit number is "0". The fourth digit of each unit number indicates the position of the unit on the floor, numbering from East to West to an elevator located in the corner of the "L", and then continuing from South to North away from the elevator along the other leg of the "L". The fourth digit of each unit number is thus "1" for the Easternmost unit of the East-West leg of the "L", "2" for the unit for the next unit West of the unit whose number ends in "1", and continuing in sequence westward along the East-West leg of the "L" "3", "4" and "5" for the remaining units in the East-West leg of the "L". From this point the units continue Northward in sequence along the North-South leg of the "L" "6", "7", "8", "9", "10", "11", "12", "13" and "14"; the units whose numbers end in "14" are at the Northernmost end of the "L" and overlook Mobile Bay.

3. Unit Numbers - Phase Two -

(a) First Habitable Floor - Phase Two - The fourteen units on the first habitable floor of the Phase Two building are identified as follows: 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113 and 2114. The Easternmost unit, at the Eastern end of the East-West leg of the "L" is Unit 2101. The units running Westward from Unit 2101 are identified, in order, as follows: 2102, 2103, 2104 and 2105. Unit 2106 is next to and just South of

the elevator located in the "L" and is the Southernmost unit in the North-South leg of the "L" on the first habitable floor. The units running Northward from Unit 2106 are identified, in order, as follows: 2107, 2108, 2109, 2110, 2111, 2112, 2113 and 2114. Unit 2114 overlooks Mobile Bay.

(b) Second Habitable Floor - Phase Two - The fourteen units on the second habitable floor of the Phase Two building are identified as follows: 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213 and 2214. The Easternmost unit, at the Eastern end of the East-West leg of the "L" is Unit 2201. The units running West from Unit 2201 are identified, in order, as follows: 2202, 2203, 2204 and 2205. Unit 2206 is next to and just South of the elevator located in the "L" and is the Southernmost unit in the North-South leg of the "L" on the second habitable floor. The units running North from Unit 2206 are identified, in order, as follows: 2207, 2208, 2209, 2210, 2211, 2212, 2213 and 2214. Unit 2214 overlooks Mobile Bay.

3. Unit Types and Configurations - Phase Two - The twenty eight Phase Two units are of two different types, designated as Type A (twenty six units) and Type B (two units).

(a) Type A Units - Phase Two - The twenty six Phase Two Type A units contain 1,055 square feet, more or less, of heated and cooled living area and include two bedrooms, two baths, a kitchen, a great room with dining area, a storage closet, a washer and dryer closet, and a veranda. The Phase Two Type A units are: 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112 and 2113.

(b) Type B Units - Phase Two - The two Phase Two Type B units contain 1,400 square feet, more or less, of heated and cooled living area and include an entrance foyer, a master bedroom with bath, two additional bedrooms, one additional bath, a kitchen, a great room with dining area, a washer and dryer closet, and a veranda. The Phase Two Type B units are: 2114 and 2214.

III - Provisions Concerning Units Applicable to All Phases -

1. Unit Designations in Title Instruments - § 35-8A-204 of the Act provides:

A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit that were created by the declaration or bylaws.

However, because at the time of the initial conveyance of a unit out of the declarant the permanent right to the use of a specific limited common element boat slip will be permanently assigned to that unit, in all conveyances and other instruments of title to a unit both the unit number of the unit and the number of the boat slip that is appurtenant to that unit shall be stated in the title instrument in nearby proximity to each other, e.g., "...Unit _____ and Boat Slip _____ ...". Once a specific boat slip has been associated with a specific unit in an instrument of title, that boat slip may be

disassociated from a unit only by an instrument of title which associates the slip with some other condominium unit within Navy Cove Harbor, a Condominium. In no event may title to a boat slip ever be separated from some unit within the condominium.

2. Unit Boundaries - The boundaries of each unit are hereby designated as the unit's walls, floors and ceilings. §35-8A-202(1) of the Act provides as follows:

If the wall, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

3. Plats and Plans - The plats and plans for Phase One, and the certifications thereof required by §35-8A-209 CODE OF ALABAMA 1975 are attached hereto as Exhibit "A"; the plats, plans and certifications for Phases Two and Three will be recorded when [AND IF] those phases have been completed.

4. The Common Elements - The common elements consist of all portions of the condominium other than the units, and, notwithstanding that § 35-8A-202(3) of the Act provides:

Subject to the provisions of subdivision (2)¹, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; . . .

in exercise of the power conferred by Act §35-8A-202 upon the declarant to modify the standard definition of common elements which is set forth in the Act, declarant hereby declares the interior partitions and fixtures within units to be a part of the common elements, subject, however, to the unit Owner's control over the same as set forth in the next subparagraph. The share in the common elements allocated to a unit may not be separated from the unit, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.

5. Amenities - The amenities include but are not limited to the following: Phase One and Phase Two shall each have its own swimming pool. The Phase One building has one elevator

¹ § 35-8A-202(2) - If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially without the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

and the Phase Two building has two elevators. Other common elements amenities include parking areas, landscaping and the docks or piers which serve the boat slips.

6. Alteration of Units - §35-8A-211 of the Act provides:

Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to his unit that do not impair the structural integrity, or mechanical systems, or lessen the support of the condominium;

(2) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association;

(3) After acquiring an adjoining unit, or any adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subdivision is not an alteration of the boundaries.

In addition to the powers enumerated in the statute, unit owners are also empowered hereby to alter, change, remove and modify any non-load-bearing partitions within original units, so long as that action does not compromise the structural integrity or support of any other unit or the common elements or the condominium. However, in order to maintain the esthetic, architectural and structural integrity of Navy Cove Harbor, a Condominium, no unit owner other than the developer, Navy Cove Harbor, LLC, may make any alterations, renovations, restorations or changes whatever in his, her or its unit, other than repainting or the replacement of wallpaper, carpet or other floor covering, light fixtures, plumbing fixtures and appliances, without the express written permission of a majority of the directors of Navy Cove Harbor, a Condominium, Owners' Association, Inc.

7. Horizontal Boundaries - The horizontal boundaries of part of a unit located outside of the building have the same elevation as the horizontal boundaries of the part of the unit inside the building, and need not be depicted on the plats and plans.

8. Relocation of Boundaries Between Adjoining Units - If the unit owners of two adjoining units so desire, they may alter the boundaries between their units by complying with the provisions of § 35-8A-212 of the Act.

9. Settling and Reconstruction - As provided by § 35-8A-214 of the Act, the existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds

expressed in the deed or plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats or plans or in the deed and those of the building.

10. Provision Against Subdivision of Units - Units of Navy Cove Harbor, a Condominium, may not be subdivided.

ARTICLE SIX

Limited Common Elements

1. Specific Limited Common Elements - As required by § 35-8A-209(b)(10) of the Act, each Phase One unit's limited common elements other than parking spaces and the statutory limited common elements set forth below, if any, are depicted on the plats and plans for Phase One recorded simultaneously herewith; any limited common elements in Phases Two and Three [IF PHASES TWO AND THREE ARE BUILT] will be depicted on the plats and plans for those phases when [AND IF] those phases are built.

2. Statutory Limited Common Elements - Two sections of the Act define certain items to be limited common elements, as follows:

§ 35-8A-202(2) - If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially without the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

§35-8A-202(4) - Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

3. Allocation of Statutory Limited Common Elements - The condominium has those limited common elements that are described in §§ 35-8A-202(2) and (4) of the Act, the provisions of which are set forth above, in the immediately preceding paragraph.

4. Allocation of Boat Slip Limited Common Elements - At the time of the initial conveyance of a unit out of the declarant the permanent right to the use of a specific limited common element boat slip will be permanently assigned to that unit. Thereafter, in all instruments affecting title to the unit reference should be made both to the unit number and to the boat slip that is appurtenant to it. Once a specific boat slip has been associated with a specific unit in an instrument

of title, that boat slip may be disassociated from a unit only by an instrument of title which associates the slip with some other condominium unit within Navy Cove Harbor, a Condominium. In no event may title to a boat slip ever be separated from some unit within the condominium.

5. Maintenance of Limited Common Elements - Paragraph 1 of the Commissioners' Commentary to § 35-8A-208 of the Act reads, in part, as follows:

1. Like all other common elements, limited common elements are owned in common by all unit owners. The use of a limited common element, however, is reserved to less than all of the units owners. Unless the declaration provides otherwise, the association is responsible for the upkeep of a limited common element and the cost of such upkeep is assessed against all the units.

The boat slips will be separately metered for electricity, which shall be billed to the owner of the unit to which the slip is assigned. Otherwise, this declaration makes no alteration of the operation of the statutory scheme; therefore, all other costs of the upkeep of common elements shall be equally assessed against all the units.

6. Reallocation of Limited Common Elements - As permitted by § 35-8A-208(b) of the Act, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide it to the Association, which shall record it at the expense of the unit owners signing it.

7. Redesignation of Common Elements as Limited - A common element not previously allocated as a limited common element may be so allocated only if Article Seven of this declaration is amended in accordance with the provisions herein and of the Act to describe the property to be so redesignated.

ARTICLE SEVEN

Addition of Limited Common Elements

1. Addition of Limited Common Elements - Other than as may be necessitated by §§ 35-8A-202(2) and (4), set forth above in the immediately preceding subparagraph, the declarant does not contemplate the allocation of any real estate as limited common elements subsequent to the recording of this declaration, except with respect to boat slips that may be associated with the Phase Three units, [IF PHASE THREE IS BUILT].

ARTICLE EIGHT
Special Declarant Rights Reserved by Declarant

1. Rights Reserved by Declarant - The declarant hereby reserves certain of the "Special Declarant Rights" enumerated in §35-8A-103(24) of the Act, other than additional "Development Rights", as follows:

a. The declarant may complete the improvements indicated on the plats and plans filed herewith, and in all respects to complete the condominium, as described and defined herein and in §35-8A-209 of the Act.

b. Declarant reserves the right to exercise any development right described in § 35-8A-103(11) of the Act, in the manner prescribed in §35-8A-210 of the Act as set forth in Article Nine, Section 1, below.

c. The declarant may maintain sales offices, management offices, signs advertising the condominium and models, all as permitted by § 35-8A-215 of the Act. Specifically, until the last unit is sold declarant may maintain an office in the association office located on the second floor of the Phase Two building, and may also maintain an office in at least one unit as a sales and management office; further, declarant may maintain at least seven units as models, to wit, one each of the seven different floor plans that comprise the units, which office and models, if any, shall be designated on a supplemental exhibit hereto. Declarant reserves the right to relocate both the office and the models by unilaterally amending any such exhibit at any time prior to the conveyance by the declarant of the last unit to be conveyed. The conveyance by the declarant of any unit then listed on such an exhibit, as most recently amended, to anyone other than declarant or an affiliate of declarant shall operate to automatically remove the designation of that unit as an office or a model, whether or not the exhibit is expressly amended to reflect such removal.

d. Declarant hereby reserves the use of easements through all of the common elements for the purpose of completing the condominium or making improvements thereto.

e. Declarant reserves the right to make the condominium subject to a master association according to the provisions of §35-8A-220 of the Act. This is not to be taken as an indication that declarant is developing other condominiums with which declarant expects to merge this condominium. Rather, declarant perceives that at some time in the future the unit owners, through the Association, may find it expedient to arrange for the management of the condominium by a master association of otherwise unrelated condominiums, and by this subparagraph declarant intends only to permit such management, if and to the extent that the unit owners at some time in the future so elect.

f. Declarant may control the unit owners' association for the maximum period provided by the Act, in the manner provided by the Act, and to that end declarant reserves the right to appoint or remove any officer of the association or any master association or any board member during the period which extends from the execution and recording of this declaration through and

including the earliest of: (a) 60 days after conveyance of 75% of the units to unit owners other than declarant, or (b) two years after all declarants have ceased to offer units for sale in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before the termination of the control period as defined above, but in that event declarant may require, for the duration of the period of declarant control, that specified actions of the unit owners' association or its board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they may become effective.

g. The declarant shall be subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the declarant's exercise of rights reserved herein.

ARTICLE NINE

Development Rights

1. Development Rights - Declarant does reserve all of the development rights set forth in §35-8A-103(11) of the Act. Specifically, Declarant reserves development rights as follows:

a. The declarant reserves the right, within ten years from the date the declaration is recorded, to add real estate to the condominium, but declarant may not be required to add real estate to the condominium. The real estate the declarant reserves the right to add to the condominium, if declarant so chooses, is located in Baldwin County, Alabama, and is more particularly described as follows:

Commence at the Southeast corner of Lot 1, Resubdivision "A", Gulf Beach, as recorded in the Probate Judge's Office, Baldwin County, Alabama, in Map Book 1, page 142; run thence North 87° 00' East 100.14 feet to the Point of Beginning; Continue thence North 87° 00' East 443.40 feet; run thence North 00° 12' 24" East, 379.72 feet; run thence South 87° 02' 37" West, 444.47 feet; run thence South 00° 02' 34" East, 380.00 feet, to the Point of Beginning, containing 3.9 acres, more or less, lying in Grant Sections 1 and 2, Township 9 South, Range 1 East, Baldwin County, Alabama.

The lands described above are the lands on which Phase Three would be located, if declarant elects to build Phase Three.; however, Phase Three NEED NOT BE BUILT and the proposed Phase Three lands NEED NOT BE ADDED.

b. The declarant reserves the right within ten years from the date the declaration is recorded to create additional units, common elements and/or limited common elements within the condominium, but declarant may not be required to add additional units, common

elements or limited common elements to the condominium. The additional units which the declarant reserves the right to add to the condominium, if declarant so chooses, are the twenty eight (28) additional units which will comprise Phase Two if Phase Two is built (BUT PHASE TWO NEED NOT BE BUILT) and the [estimated] twenty three (23) additional units which would comprise Phase Three if Phase Three is built (BUT PHASE THREE NEED NOT BE BUILT). The lands on which Phase Two will be built if the declarant elects to build Phase Two are included in the description of the lands of the condominium set forth in Article Three, above.

c. The declarant reserves the right within ten years from the date the declaration is recorded to subdivide units or convert units into common elements, in such manner as declarant may, in declarant's sole and unreviewable discretion, elect; however, the exercise of this right will not be exercised in a manner which would increase the number of units beyond the maximum number of units declared herein.

d. The declarant reserves rights to withdraw real estate from the condominium, as follows:

(i) The declarant may at any time elect to withdraw all of the real estate from the condominium, subject only to the limitation that this right may not be exercised after the conveyance of the first Phase One unit out of the declarant.

(ii) If the declarant elects not to build Phase Two, and PHASE TWO NEED NOT BE BUILT, then within ten years from the date the declaration is recorded the declarant may but shall not be required to withdraw the following lands from the condominium:

Lot 4, according to a plat of Resubdivision "A" of Gulf Beach, located in part of Sections 1 and 2, Township 9 South, Range 1 East; said plat recorded in Map Book 1, page 142, Probate Records, Baldwin County, Alabama.

This reserved right is subject only to the above limitation as to time and to the further limitation that it may not be exercised after the conveyance of the first Phase Two unit out of the declarant.

(iii) If the declarant elects not to build Phase Three, and PHASE THREE NEED NOT BE BUILT, then within ten years from the date the declaration is recorded, if the declarant has submitted the Phase Three lands to the condominium form of ownership, the declarant may but shall not be required to withdraw from the condominium the Phase Three lands, being the same lands described in Article Nine, Section 1.a., above. This reserved right is subject only to the above limitation as to time and the further limitation that it may not be exercised after the conveyance of the first Phase Three unit out of the declarant.

ARTICLE TEN
Termination of Declarant's Rights

1. Termination of Declarant's Rights - Declarant's rights hereunder as declarant will terminate as follows:

2. The right to unilaterally withdraw all of the property from the condominium form of ownership will terminate upon the conveyance of the first unit of Navy Cove Harbor, a Condominium, Phase One, to an entity which is neither a declarant nor an affiliate of a declarant. However, the declarant does retain the right to withdraw portions of the property from the condominium, even after the conveyance of the first unit, and after the period of declarant control has terminated, as permitted by the terms of this declaration and the Act.

3. Declarant's right to complete construction shall terminate upon completion of construction. Declarant's right to make improvements shall terminate upon the conveyance of the last unit to be conveyed, or upon declarant's relinquishment of those rights, in writing, whichever first occurs.

(a) Declarant's reserved rights to add additional units, common elements, limited common elements and lands to the condominium will terminate as specified in Article Nine, above.

(b) Declarant's right to maintain the association office or units as an office or as models shall terminate upon the conveyance of the last unit to be conveyed, or upon declarant's relinquishment of those rights, in writing, whichever first occurs.

(c) Declarant's reservation of easements through all of the common elements for the purpose of completing the condominium or making improvements thereto shall terminate upon completion of all of the units and other improvements.

(d) Declarant's right to subject the condominium to a master association according to the provisions of §35-8A-220 of the Act shall terminate upon the earliest of: (a) 60 days after conveyance of 75% of the units to unit owners other than declarant, or (b) two years after declarant has ceased to offer units for sale in the ordinary course of business. However, thereafter the right of the unit owners, through the unit owners' association, to make such election shall not terminate.

(e) Declarant's right to appoint and remove the officers and members of the board of the unit owners' association will terminate not later than (a) 60 days after conveyance of 75% of the units to unit owners other than declarant, or (b) two years after declarant has ceased to offer units for sale in the ordinary course of business.

ARTICLE ELEVEN
Allocated Interests

1. Allocation of Interests in the Common Elements - The units in Phases One and Two are or will (if Phase Two is built) be configured in seven different floor plans, ranging from 1055 square feet to 1400 square feet in heated and cooled living area. Upon the completion of Phase One the each Phase One unit's percentage share of the common elements will be as follows:

Phase One Type A Units	2.86% of the common elements
Phase One Type B Units	2.83% of the common elements
Phase One Type C Units	2.40% of the common elements
Phase One Type D Units	2.64% of the common elements

Upon the completion of Phase Two the percentage shares of the Phase One units in the common elements will be reduced and the percentage shares of the Phase One and Phase Two units in the common elements will be as follows:

Phase One Type A Units	1.71% of the common elements
Phase One Type B Units	1.68% of the common elements
Phase One Type C Units	1.43% of the common elements
Phase One Type D Units	1.56% of the common elements
Phase Two Type A Units	1.41% of the common elements
Phase Two Type B Units	1.87% of the common elements

2. Formula Used to Allocate Common Element Interests - The formula used to allocate common elements interests among the several unit types is to divide the floor area of the unit type by the total combined floor area of all units of all unit types then completed, then rounding the result to a percentage rounded to two decimal places, and then slightly adjusting the rounded results so that the sum of all the units' common elements is unity (one).

3. Allocation of Voting Rights - In all unit owners' association matters, each unit shall be entitled to one vote. Upon the completion of Phase One there shall therefore be a total of thirty six (36) votes in the unit owners' association, allocated equally among the thirty (36) units - one vote for each unit. As later phases are added each unit added will be entitled to one vote.

4. Formula Used to Allocate Voting Rights - Although the units are slightly different in size, the difference is not regarded as significant in terms of management of the Association, and each unit has been or will be assigned one vote regardless of the size of the unit.

ARTICLE TWELVE
Restrictions on Use, Occupancy and the Like

1. Restrictions on Use - After the condominium association is turned over to the owners, the units and the common elements shall be restricted to residential use, only, and no unit or its boat slip shall be used for any commercial purpose. Unit owners may rent or lease their units, provided that the rental or lease agreement restricts the tenant to residential use, only. Boat slips may not be rented, leased or loaned separately from the unit to which they are permanently assigned, and no commercial operation whatever may operate from a boat slip. A unit (but not its boat slip) may be used for business purposes so long as such business, in the sole discretion of the Navy Cove Harbor Condominium Owners' Association, does not otherwise violate the provisions of the declaration or the bylaws of the association, does not create a disturbance and does not materially increase traffic flow or parking congestion. The association may issue rules regarding permitted business activities. Nothing herein shall be construed to permit the time sharing of any unit, which is expressly prohibited elsewhere in this declaration.

2. Restrictions on Occupancy - No unit may be occupied by a number of persons in excess of the number permitted by the applicable zoning ordinance.

3. Restrictions on Leasing - There are no restrictions on leasing of the units, other than as set forth in subparagraph 1, above.

4. Restrictions on Alienation - There are no restrictions on alienation of the units.

5. Rules and Regulations - The unit owners' association may adopt reasonable rules and regulations for the condominium, in accordance with provisions therefor in its bylaws, the enforcement of which shall be as prescribed within said rules and regulations. It shall be the duty of each unit owner to familiarize himself or herself with the rules and regulations, and to provide copies thereof to his tenants and lessees. The posting of a set of the rules and regulations permanently within a leased or rented unit in a visible place shall be a sufficient compliance with this requirement. Unit owners shall be responsible to the unit owners' association and to the other owners for violation of the rules and regulations by their tenants and lessees. If any rule or regulation becomes the subject of litigation in any court, the losing party shall pay the attorney's fees of the prevailing party.

ARTICLE THIRTEEN
Notice of Easements and Licenses

1. Permanent Encumbrances - Matters permanently affecting title to the Property, such as restrictive covenants, permanent easements, and the like, are as follows:

1. Reservations, restrictions, rights of way, easements, building setback lines and drainage and utility line easements as noted on plat.
2. Rules and regulations imposed on the property by permits issued for dredging and, bulkheads and water development.
3. Rights of the United States of America, State of Alabama, or other parties in and to the bed, shore and water of Mobile Bay.
4. Rights, if any, of the public to use as a public beach or recreation area any part of the herein described land lying between the body of water abutting said land and the natural line of vegetation, dunes, extreme high water line or other apparent boundary lines separating the publicly used area from the upland private area.
5. Reservations, restrictions, rights of way, easements, building setback lines and drainage and utility easements as noted on plat.
6. Reservation of all interest in and to all oil, gas and minerals, and rights in connection therewith as contained in deed from Gulf Beach Land and Development Company to D.P. Cammack dated November 19, 1949, and recorded in Deed Book 147, page 211.
7. Reservation of all interest in and to all oil, gas and minerals, and rights in connection therewith, as contained in deed from Amelia W. Reinhold to Melvin Troy McPherson dated October 26, 1990, and recorded in Real Property Book 405, page 980.
8. Reservation of all interest in and to all oil, gas and minerals and rights in connection therewith as contain in deed from Gulf Beach Land Development Company, Inc., to Alfard W. Snyder dated June 23, 1970, and recorded in Deed Book 411, page 98.
9. Conveyance to the Alabama State Commission of Forestry of a strip of land on the South side of the property described above for a portion of the highway and parkway referred to is the description of Parcel "A", above, as set forth in Deed Book 60, page 253.
10. Encroachment of bulkhead and breakwater, as shown on plat of survey by B. Craig Johnson, Lucido and Oliver, Inc., dated September 11, 2001, Project No. 501-017.dwg

BUT DELETING ANY COVENANT, CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION, OR DIS-

Navy Cove Harbor, a Condominium - Declaration - Page 22

CRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN TO THE EXTENT SUCH COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE 42 USC 3604(C).

The recording references are to the Office of the Judge of Probate of Baldwin County, Alabama.

ARTICLE FOURTEEN
Policy Regarding Time Sharing of Units

1. Time Sharing - No unit shall be subjected to the time-sharing form of ownership.

ARTICLE FIFTEEN
Notice Regarding Leaseholds

1. Negation of Leaseholds - All of the real estate on which the condominium is located is owned in fee simple by declarant, subject to such encumbrances as are hereinabove disclosed. The condominium is involved in no leases, and therefore the condominium is subject to no leases the expiration or termination of which may terminate the condominium or reduce its size.

ARTICLE SIXTEEN
Amendment of Declaration

1. Two Thirds Vote Required for Most Amendments - As provided in § 35-8A-217 of the Act, except for amendments that may be executed by the unit owners' association pursuant to Act Sections 35-8A-107 (in the case of portions of the condominium condemned by any government in exercise of its powers of eminent domain) 35-8A-212(a) (pertaining to the relocation of boundaries between units), or by certain unit owners pursuant to Act sections 35-8A-208(b) (pertaining to the reallocation of limited common elements among affected units by their unit owners), 35-8A-212(a) (pertaining to the relocation of boundaries between units) or 35-8A-218(b) (pertaining to termination of the condominium)² this declaration, including the plats and plans, may

² Act § 35-8A-217 contains references to other provisions of the Act affecting amendments which have no application to this condominium and which are therefore not referenced here.

be amended only by the affirmative vote or agreement of the unit owners of units to which at least two-thirds of the votes in the unit owners' association are allocated.

2. Validation of Amendments - All amendments must be executed and certified on behalf of the unit owners' association by the president or by another officer of the unit owners' association designated for that purpose, and must be recorded in the Probate Office of Baldwin County, and no action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this Article may be brought more than one year after the amendment is recorded.

3. Amendments Requiring Unanimous Consent - Except to the extent expressly permitted by the Act, no amendment in the absence of unanimous consent of the unit owners may: create or increase special declarant rights, allow units to be time-shared, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted.

4. Participation by Mortgagees - Mortgagees of units or any portion of the property must approve all amendments affecting portions of the condominium described in their mortgages, except that this requirement for approval by mortgagees may not operate or be used to (i) deny or delegate control over the general administrative affairs of the unit owners' association by the unit owners or the board, or (ii) prevent the unit owners' association or the board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to the provisions of this declaration and §35-8A-313 of the Act.

ARTICLE SEVENTEEN

Termination of Condominium

1. 80 Percent Vote Required - The condominium may be terminated by the agreement of unit owners of units to which at least 80 percent of the votes of the unit owners' association are allocated.

2. Validation of Termination Agreement - An agreement to terminate the condominium must be executed by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in the Probate Office of Baldwin County, Alabama, and shall be effective upon such recordation, and not before.

3. Provisions Regarding Sale - The termination agreement may provide that all common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

4. Power to Contract and Convey - The unit owners' association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract shall not be binding on the unit owners unless and until approved pursuant to this Article. If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the unit owners' association as trustee for all the holders of all the interests in the units. Thereafter, the unit owners' association shall have all powers necessary and appropriate to effect the sale. Until the sale has been concluded and all the proceeds thereof distributed, the unit owners' association continues in existence with all powers it had before termination.

5. Distribution of Proceeds of Sale - Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in accordance with the following rules:

The respective interests referred to in this Article are as follows:

(a) Except as provided in the next succeeding subparagraph, the respective interests of the unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners together with a copy of this Article, and becomes final unless disapproved within 30 days after distribution by the owners of units to which 25 percent of the votes in the unit owners' association are allocated. The proportion of any unit owners interest to that of all unit owners shall be determined by dividing the fair market value of that unit and its common element interest by the total fair market values of all the units similarly determined.

(b) If any unit or limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(c) As between unit owners and their individual lien holders, the distribution of proceeds shall be according to prevailing customs, practices and applicable law.

6. Title to Unsold Real Estate - If the real estate constituting the condominium is not to be sold following termination, title thereto vests in the unit owners as tenants in common in proportion to their respective interests as defined above, and liens formerly on units shift to their resulting tenancies in common.

7. Proceeds Held in Trust - Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for the unit owners and lien holders as their respective interests may appear.

8. Rights of Lien Holders - Following termination, creditors of the unit owners' association holding liens on units which were recorded before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the unit owners' association shall be treated as if they had perfected liens on the units immediately before termination.

9. Effect of Foreclosure - Foreclosure of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium.

ARTICLE EIGHTEEN

The Unit Owners' Association

1. Membership - The unit owners' association is a non-profit corporation formed simultaneously with the adoption of this declaration, and is known as Navy Cove Harbor, a Condominium, Owners' Association, Inc. Its membership shall consist exclusively of all of the unit owners or, following termination, of the condominium, of all former unit owners entitled to distributions of proceeds under this declaration or any termination agreement adopted pursuant hereto, or their heirs, successors or assigns.

2. Powers - The unit owners' association shall have the power to:

- a. Adopt and amend bylaws and rules and regulations;
- b. Adopt and amend budgets for revenues, expenditures, and reserves and impose and collect assessments for common expenses from unit owners.;
- c. Hire and discharge managing agents and other employees, agents and independent contractors;
- d. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- e. Make contracts and incur liabilities;

f. Regulate the use, maintenance, repair, replacement, and modification of common elements;

g. Cause additional improvements to be made as a part of the common elements;

h. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only if the persons entitled to cast at least 80 percent of the votes allocated to units not owned by a declarant so agree, and limited common elements may be conveyed or subjected to a security interest only if all the owners of units to which such limited common elements are allocated so agree. Such conveyances and encumbrances, or contracts therefor, shall be subject to the other strictures of § 35-8A-312 of the Act.

i. Grant easements, encroachments, leases, licenses, and concessions through or over the common elements;

j. Impose and receive any payments, fees, or charges for the use, rental or operation of the common elements, other than those limited common elements enumerated in §§ 35-8A-202(2) and (4) of the Act³, and for services provided to unit owners.

k. Impose against owners of units charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;

l. Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 35-8A-409 of the Act, or statements of unpaid assessments.

³ § 35-8A-202(2) - If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially without the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

§35-8A-202(4) - Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

m. Provide for the indemnification of its officers and board and maintain directors' and officers' liability insurance;

n. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

o. Exercise any other powers conferred by the declaration or bylaws;

p. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

q. Exercise any other powers necessary and proper for the governance and operation of the association.

3. Duties - The unit owner's association shall have the duty to:

a. Adopt budgets for the unit owners' association, but only in the following manner: Within 30 days after adoption of any proposed budget for the condominium, the board of directors of the unit owners' association shall provide a copy thereof to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than 14 days nor more than 30 days after delivery or mailing of the budget to the unit owners. Unless at that meeting two thirds of all the unit owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed as set forth above.

b. Be responsible for the maintenance, repair, and replacement of the common elements, and to this end each owner shall afford to the unit owners' association and its agents and employees, access through his unit reasonably necessary to enable the association to carry out its duties in this regard. The association shall be responsible to the unit owners for any damage to their units occasioned by the association's exercise of the rights granted by this subparagraph.

c. Hold meetings of the association at least once each year; and whenever requested by the president, by a majority of the members of the board of directors, or by unit owners having at least 20 percent of the votes of the association.

d. Give the declarant reasonable notice of and an opportunity to defend against any legal action brought against the owners' association in respect of any matter which occurred or failed to occur during the period of declarant control.

e. Maintain property insurance on the common elements and limited common elements insuring against all risks of direct physical loss commonly insured against.

The total amount of insurance after application of any deductibles shall be not less than the greater of 80 percent of the actual cash value of the insured property at the time the insurance is purchased or such greater percentage of such actual cash value as may be necessary to prevent the applicability of any co-insurance provision and at each renewal date, exclusive of land, and other items normally excluded from property policies in the same area.

f. Maintain liability insurance, including medical payments insurance, in the amount of \$1,000,000.00, or such other, larger, amount as may be directed by the board of directors of the unit owners' association, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

g. Promptly notify all unit owners in writing by hand delivered notice or by prepaid United States mail if any required property or liability insurance is not reasonably available.

h. Within ten days after a request by a unit owner, to furnish a certificate containing the information necessary to enable the unit owner to comply with the disclosure provisions of §35-8A-409 of the Act, which certificate must contain:

- (1) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;
- (2) A statement of any other fees payable by unit owners;
- (3) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;
- (4) The current operating budget of the association;
- (5) A statement of any unsatisfied judgments against the association and any pending suit in which the association is a party;
- (6) A statement describing any insurance coverage provided for the benefit of unit owners;
- (7) A statement of the remaining term of any lease hold estate affecting the condominium and the provisions governing any extensions or renewal thereof;
- (8) A statement of any restrictions in the declaration affecting the amount that may be received by a unit owner upon sale, condemna-

tion, casualty loss to the unit or condominium or on termination of the condominium.

i. Keep financial records sufficiently detailed to enable the association to comply with the requirements of the immediately preceding subparagraph.

j. Make all financial and other records reasonably available for examination within Baldwin County by any unit owner and his authorized agents.

4. Meetings - Meetings of the unit owners' association shall be subject to the following rules (together with such other rules as the association may from time to time adopt):

a. Not less than 10 days nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States Mail to the mailing address designated in writing by each unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove an officer or a member of the board of directors.

b. A quorum shall be deemed present throughout any meeting of the unit owners' association if persons entitled to cast 50 percent of the votes which may be cast for election of members of the board of directors are present in person or by proxy at the beginning of the meeting.

c. If only one of multiple owners of a unit is present at a meeting of the unit owner's association, he is entitled to cast all of the votes allocated to that unit. If more than one of multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

d. Votes allocated to a unit may be cast pursuant to a proxy duly executed by the unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.⁴ A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

⁴ This sentence is a verbatim reproduction of the second sentence of § 35-8A-310(b) of the Act.

e. No votes allocated to a unit owned by the unit owners' association may be cast.

5. Statutory Conflicts - The scrivener notes that there are apparent conflicts between the provisions of the Condominium Act and the provisions of the Nonprofit Corporation Act with respect to the subject of meetings. Compare §§35-8A-308 through 310 of the Condominium Act with §§10-3A-29 through 32 of the Nonprofit Corporation act. The provisions set forth above are taken from the Condominium Act, as it is perceived to be controlling in the case of condominium owner's associations on the principle that the specific controls the general and in the observation that the Condominium Act is the most recent pronouncement of the legislature on the subject.

6. Board Members - Standard of Care - Except as otherwise provided in this declaration, the bylaws, the articles of incorporation or provisions of the Act, the unit owners' association's board of directors may act on behalf of the association. The officers and members of the board of directors who are appointed by the declarant shall be required to exercise the care required of fiduciaries of the unit owners other than the declarant. The officers and members of the board of directors elected by the unit owners other than the declarant shall be required to exercise ordinary and reasonable care.

7. Limitations on Board Powers - The board of directors of the unit owners' association may not act on behalf of the association to amend the declaration, terminate the condominium, elect members of the board of directors or determine the qualifications, powers and duties, or terms of office of board members, but the board may fill vacancies in its membership for the unexpired portion of any term. A two thirds vote of all persons present in person and entitled to vote at any meeting of the unit owners at which a quorum is present may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. Nothing in this declaration or the bylaws may abrogate the provisions of this subparagraph.

8. Minimum Representation of Owners - Not later than 90 days after conveyance of 25 percent of the units which may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the unit owners' association's board of directors must be elected by unit owners other than the declarant. Not later than 90 days after conveyance of 50 percent of the units which may be created to unit owners other than a declarant, at least one member and not less than one third of the members of the unit owners' association's board of directors must be elected by unit owners other than the declarant.

9. Final Transfer of Control to Owners - Subject to the special rules regarding master associations, if applicable, not later than the termination of the period of declarant control, the unit owners shall elect a board of at least three members, at least a majority of whom must be unit owners other than declarant. The board of directors shall then elect the officers. The members of the board of directors and the officers shall take office upon election.

10. Power to Avoid Declarant's Contracts - If entered into before the board of directors elected by the unit owners pursuant to the subparagraph immediately above takes office, any management contract, employment contract, any other contract or lease between the unit owners' association and a declarant or an affiliate of a declarant, or any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the unit owners' association at any time after the board of directors elected pursuant to the immediately preceding subparagraph takes office, upon not less than 90 days notice to the other party.

ARTICLE NINETEEN
Bylaws of the Unit Owners' Association

for: 1. Minimum Requirements - The bylaws of the unit owners' association must provide

a. The number of members of the board of directors and the titles of the officers of the association;

b. Election by the board of directors of a president, treasurer, secretary and any other officers of the association the bylaws specify;

c. The qualifications, powers and duties, terms of office, and manner of electing and removing board members and officers and filling vacancies;

d. Which, if any, of its powers the board may delegate to other persons or to a managing agent;

e. Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

f. The method of amending the bylaws, but in no event shall the required percentage for amendment of the bylaws exceeds two thirds of the total association; and this subparagraph may not be amended;

g. Such other matters as may be appropriate and not in conflict with the terms and provisions of this declaration or the Act.

ARTICLE TWENTY

Insurance

1. Property Insurance - Property insurance shall be maintained on the common elements and limited common elements insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than the greater of 80 percent of the actual cash value of the insured property at the time the insurance is purchased or such greater percentage of such actual cash value as may be necessary to prevent the applicability of any co-insurance provision and at each renewal date, exclusive of land, and other items normally excluded from property policies in the same area.

2. Liability Insurance - Liability insurance, including medical payments insurance, in the amount of \$1,000,000.00, or such other, larger, amount as may be directed by the board of directors of the unit owners' association, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

3. Required Provisions of Policies - Insurance policies carried pursuant to the above provisions must provide that:

a. Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or limited common elements or membership in the association;

b. The insurer waives its right to subrogation under the policy against any unit owner or member of his household;

c. No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and,

d. If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

4. Responsibility for Proceeds - Any loss covered by property policies carried by the association must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee shall hold any insurance proceeds in trust for unit owners and lien holders as their interests may appear. Unless the condominium is terminated or repair would be illegal, the proceeds must be disbursed first for the repair or restoration of the damaged property, and neither the unit owners nor their respective lien holders shall be entitled to

receive any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

5. Damage Not Covered - The cost of repair in excess of insurance proceeds is a common expense, as the case may be.

6. Additional Coverage by Individual Owners - An insurance policy issued to the association does not prevent an owner from obtaining insurance for his, her or its own benefit.

7. Certificates of Insurance - An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the association, and each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

8. Portions Not Repaired or Rebuilt - Insurance proceeds received by the association in respect of portions of the condominium which will not or cannot be rebuilt shall be handled in accordance with the provisions of § 35-8A-313(h) of the Act.

ARTICLE TWENTY ONE

Assessments

1. Budgets and Preassessment Expenses - The declarant must pay all common expenses until the unit owners' association makes a common expense assessment. After any assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

2. Allocation of Assessments - All common expenses must be assessed against all the units in accordance with the allocations set forth in Article Eleven of this declaration.

3. Interest on Past Due Assessments - Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.

4. Expenses Chargeable to Individual Units - If any common expense is caused by the misconduct of any unit owner or his invitee, the unit owners' association may assess that expense exclusively against his unit after notice and an opportunity to be heard.

5. Reallocation of Common Expense - If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

6. Personal Liability for Assessments - All assessments shall constitute the personal obligation of the owner to the association.

7. No Exemption for Non-User - No unit owner other than the unit owners' association shall be exempted from any liability for any assessment for any reason whatever, including, without limitation, abandonment, nonuse, or waiver of the use or enjoyment of his unit or any part of the common elements.

8. Lien for Assessments - The unit owners' association shall have a lien for any assessment levied against the unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in the same manner as a mortgage on real estate is foreclosed, but the association shall give reasonable advance notice of its proposed action to the unit owner and all lienholders of record of the unit. Fees, charges, late charges, fines and interest are enforceable as assessments. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

9. Priority of Liens - The priority of liens shall be as declared by §35-8A-316(b) of the Act. The recordation of a lien is not necessary to perfect it, but a lien for unpaid assessments is extinguished unless proceedings to enforce it are instituted within three years after the full amount of the assessment becomes due. A judgment in any action for assessments must include costs and reasonable attorney's fees actually incurred for the prevailing party.

10. Statements of Assessments - Any unit owner, mortgagee, person having executed a contract for the purchase of a condominium unit, or lender considering the loan of funds to be secured by a condominium unit shall be entitled upon request to a statement from the association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that condominium unit. Such request must be in writing, shall be delivered to the registered office of the association, and shall state an address to which the statement is to be directed. Failure on the part of the association to mail or otherwise furnish such statement regarding amounts due and payable as specified in the written request therefor within 10 business days from the receipt of such request releases the association's lien against the unit for the amount of the assessment as of that date, but does not discharge the unit owners' debt to the association. The information specified in such statement shall be binding upon the association and upon every unit owner. Payment of a fee not exceeding \$10.00 may be required as a prerequisite to the issuance of such a statement.

11. Surplus Funds - Any surplus funds of the unit owners' association remaining after payment of or provision for common expenses and prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to reduce future common

expense assessments or, if such action will not have adverse tax consequences for the association, transferred unrestricted to the association's reserve fund.

ARTICLE TWENTY TWO
Miscellaneous

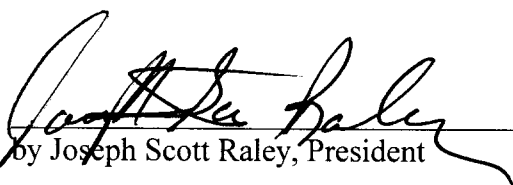
1. Severability - All provisions of this declaration and the bylaws are severable, and a judicial determination that any part thereof is not in compliance with applicable law shall not adversely affect any other part.

2. Resolution of Conflicts - In the event of conflict between this declaration and the bylaws, this declaration prevails except to the extent the declaration is inconsistent with the Act.

3. Deed Descriptions - A description of a unit which sets forth the name of this condominium, the recording data for this declaration, the identity of Baldwin County, Alabama, as the location of the condominium, and the identifying numbers of the unit and its appurtenant boat slip, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which are created by this declaration or the bylaws.

IN WITNESS WHEREOF, the declarant, Navy Cove Harbor, LLC, has caused this declaration to be executed by Joe Raley Builders, Inc., its Manager, this the 28th day of December, 2004.

NAVY COVE HARBOR, LLC
by Joe Raley Builders, Inc., its Manager

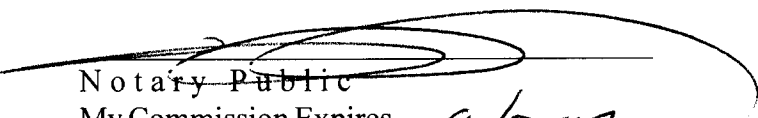
 (SEAL)
by Joseph Scott Raley, President

STATE OF ALABAMA
BALDWIN COUNTY

Corporate Acknowledgment

I, the undersigned authority, in and for said county, in said state, hereby certify that JOSEPH SCOTT RALEY, whose name as President of JOE RALEY BUILDERS, INC., is signed to the above and foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the contents of the instrument he, as such officer and with full authority, executed the same voluntarily on the day the same bears date, for and as the act of the said Joe Raley Builders, Inc., acting in its capacity as Manager of Navy Cove Harbor, LLC

Given under my hand and official seal this the 29 day of December, 2004


Notary Public

My Commission Expires 9/2007