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This instrument was
prepared by:

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Adrian T. Johns, Judge of Probate

STATE OF ALABAMA
BALDWIN COUNTY

# DECLARATION OF CONDOMINIUM OF SANIBEl, A CONDOMINIUM

## ARTICLE ONE
## Preamble and Definitions

1. Preamble - Sanibel Development, LLC, declarant herein, is the owner, in fee simple, of the real property described in Article Three of this Declaration, subject to the encumbrances and other matters affecting title as set forth in said Article Three. The said declarant, 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 Sanibel, a Condominium.

1021254

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

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 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 - Sanibel, a Condominium, is and shall be located solely in Baldwin County, Alabama. Its address is 1524 West Beach Boulevard, Gulf Shores, Alabama 36542.

## ARTICLE THREE
## The Real Estate

(a) The Real Property - The real property upon which Sanibel, a Condominium, is and shall be situated is described as follows:

Lots 3, 4,31, 32 and 33, Block 2, Lagoon Estates, Gulf Shores, Alabama, as shown on a map recorded in Map Book 4, page 130, in the Office of the Judge of Probate, Baldwin County, Alabama.

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

(b) Permanent Encumbrances of Record - Matters permanently affecting title to the Property, such as restrictive covenants, permanent easements, reservations of minerals, and the like, that are recorded in the Probate Office of Baldwin County, Alabama, are as follows: (Note: The following enumeration does not include zoning and other governmental regulations that are applicable in general to similar properties in the same general area):

1. Ad valorem taxes for the current tax year, which are a lien but not due and payable until October 1 following the end of the current tax year; also for all subsequent years; also subject to any future adjustments made by either the Tax Assessor's Office or the Board of Equalization.

2. Reservations, restrictions, rights of way, easements, building setback lines and drainage and utility line easements as noted on plat.

3. Any and all zoning, subdivision, or other governmental regulations pertaining to the use of said property.

4. Conditions, restrictions, and limitations appearing on the plat of said subdivision, recorded in Map Book 4, at page 130, and as amended by Instrument recorded in Miscellaneous Book 13, page 400.

5. Building setback lines as set out on plat recorded in Map Book 4, page 130.

6. Reservation of ½ oil, gas and other minerals, and all rights in connection therewith as contained in Deed of Meyer Development

Company, Inc., dated November 25, 1957, and recorded in the Probate Office of Baldwin County, Alabama, in Deed Book 260, page 218.

7. Reservation of ½ oil, gas and other minerals, and all rights in connection therewith as contained in Deed from Grace E. Haddow and Joseph P. Haddow to William H. Campbell and Martha N. Campbell, recorded in the Probate Office of Baldwin County, Alabama, in Deed Book 320, page 201 and Deed Book 320, page 303. (Lot 32).

8. Reservation of oil, gas and minerals by prior grantor recorded in Deed Book 342, page 502.

9. Vacation of Lagoon Drive in subdivision according to Instrument in Miscellaneous Book 14, page 429.

10. Amendment by the Planning Commission of the City of Gulf Shores of the Subdivision Regulations of the City of Gulf Shores filed May 27, 1997, in Miscellaneous Book 93, page 1379, as amended by Instrument recorded at Instrument 493242, as further amended by Instrument recorded at 534263; Instrument 534264; Instrument 534265; Instrument 534266; Instrument 534267; Instrument 535644; and Instrument 545891.

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).

ALL RECORDING REFERENCES REFER TO THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA, UNLESS OTHERWISE INDICATED.

(c) Temporary Encumbrances - Prior to commencement of construction of the actual building the declarant may obtain the funds necessary to construct the building and other improvements by means of one or more construction loans that may be secured by a first mortgage on the condominium lands. Individual units, together with their related percentages of the common elements, will be released from the operation of any 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 Sanibel, a Condominium, is one hundred and eight (108).

## ARTICLE FIVE
## Units and Common Elements

(a)Building Configuration - The one hundred and eight units that will comprise Sanibel, a Condominium, are contained in a single seventeen story building, constructed as indicated on the plats and plans on file in the declarant's office and which have been or will be recorded simultaneously with the recording of this declaration. Each individual unit is identified by a unique number.

(b) Unit Numbers and Names - No Formula for Determining - The unit numbers and names that designate the units of the condominium have been assigned in the following manner. Each unit is identified by a unique number. The first digit or first two digits of each unit number correspond to the floor of the building on which the unit is located, up through and including the twelfth floor. As no floor is designated as the thirteenth floor, for floors above the twelfth floor the first two digits of each unit number constitute a number that is one higher than the actual level on which the unit is located The units on each floor are numbered in order from West to East.

(1) The first floor of the building is for parking and maintenance and mechanical areas.

(2) There are four units on the second floor, numbered, from West to East, 201, 202, 203 and 204.

(3) There are seven units on the third floor, numbered, from West to East, 301, 302, 303, 304, 305, 306 and 307.

(4) There are seven units on the fourth floor, numbered, from West to East, 401, 402, 403, 404, 405, 406 and 407.

(5) There are seven units on the fifth floor, numbered, from West to East, 501, 502, 503, 504, 505, 506 and 507.

(6) There are seven units on the sixth floor, numbered, from West to East, 601, 602, 603, 604, 605, 606 and 607.

(7) There are seven units on the seventh floor, numbered, from West to East, 701, 702, 703, 704, 705, 706 and 707.

(8) There are seven units on the eighth floor, numbered, from West to East, 801, 802, 803, 804, 805, 806 and 807.

(9) There are seven units on the ninth floor, numbered, from West to East, 901, 902, 903, 904, 905, 906 and 907.

(10) There are seven units on the tenth floor, numbered, from West to East, 1001, 1002, 1003, 1004, 1005, 1006 and 1007.

(11) There are seven units on the eleventh floor, numbered, from West to East, 1101, 1102, 1103, 1104, 1105, 1106 and 1107.

(12) There are seven units on the twelfth floor, numbered, from West to East, 1201, 1202, 1203, 1204, 1205, 1206 and 1207.

(13) There are seven units on the thirteenth floor, numbered, from West to East, 1401, 1402, 1403, 1404, 1405, 1406 and 1407.

(14) There are seven units on the fourteenth floor, numbered, from West to East, 1501, 1502, 1503, 1504, 1505, 1506 and 1507.

(15) There are seven units on the fifteenth floor, numbered, from West to East, 1601, 1602, 1603, 1604, 1605, 1606 and 1607.

(16) There are seven units on the sixteenth floor, numbered, from West to East, 1701, 1702, 1703, 1704, 1705, 1706 and 1707.

(17) There are six units on the seventeenth floor, numbered, from West to East, 1801, 1802, 1803, 1804, 1805 and 1806.

Further reference to the unit numbers and names will be found in paragraph 3 of Article Three of this declaration and to the plats that are recorded either simultaneously herewith, or thereafter.

(c) Unit Types and Configurations - The one hundred and eight units that comprise Sanibel, a Condominium, are of four different types, designated on the plans as Type A, Type B, Type C and Type D. There are seventy four type "A" units, thirty one type "B" units, two Type "C" units and one Type "D" unit.

(1) Type "A" units have approximately 1,236 square feet, and contain a living area, dining area, balcony, kitchen, two master bedrooms with adjoining baths, a half bath in the hallway, closets, an owner's closet in the hallway, and a utility closet with stacked washer and dryer. The

following units are Type "A" units: 302, 303, 304, 305, 306, 402, 403, 404, 405, 406, 502, 503, 504, 505,506, 602, 603, 604, 605, 606, 702, 703, 704, 705, 706, 802, 803, 804, 805, 806, 902, 903, 904, 905, 906, 1002, 1003,1004, 1005, 1006, 1102, 1103, 1104, 1105, 1106, 1202,1203, 1204, 1205, 1206, 1402, 1403, 1404, 1405, 1406, 1502, 1503, 1504, 1505, 1506. 1602, 1603, 1604, 1605, 1606, 1702, 1703, 1704, 1705, 1706, 1802, 1803, 1804 and 1805.

(2) Type "B" units have approximately 1,536 square feet, and contain a living area, dining area, balcony, kitchen, one master bedroom with adjoining bath, two other bedrooms with adjoining baths, a half bath in the hallway, closets, an owner's closet in the hallway, and a utility closet with washer and dryer. The following units are Type "B" units: 201, 204, 301, 307, 401, 407, 501, 507, 601, 607, 701, 707, 801, 807, 901, 907, 1001, 1007, 1101, 1107, 1201, 1207, 1401, 1407, 1501, 1507, 1601, 1607, 1701, 1707 and 1806.

(3) Type "C" units have approximately 2,544 square feet, and contain a living room with balcony, dining room, kitchen, one master bedroom with adjoining bath and private balcony, two bedrooms that share a semi-private bath, a half bath in the hallway, closets, an owner's closet in the hallway, and a utility closet with washer and dryer. The following units are Type "C" units: 202 and 203.

(4) The single Type "D" unit is Unit 1801; it has approximately 2,843 square feet, and contains a living room and dining room with adjoining balcony, kitchen with dining counter, one master bedroom with walk-in closet and adjoining bath, one bedroom with adjoining private bath and private balcony, two other bedrooms with adjoining private baths, a half bath in the hallway, closets, an owner's closet in the hallway, and a laundry room with stacked washer and dryer.

(d) Unit Boundaries - The horizontal boundaries of a unit are hereby designated as the unit's floors and ceilings; it's vertical boundaries are hereby designated as the unit's walls. Notwithstanding that §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,

In exercise of the power conferred upon the declarant by §35-8A-202 of the Act to modify the standard definition of unit boundaries which is set forth in the Act, declarant hereby declares all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof to be common elements, subject, however, to the unit owner's control over the same as set forth in subparagraph 8 of this article.

(e) Plats and Plans - The plats and plans, and certifications thereof, required by §35-8A-209 CODE OF ALABAMA 1975, are recorded in the Probate Office of Baldwin County, Alabama, simultaneously herewith, at Apartment Book 25, page 34-45 also identified as Instrument Number 1021251, The Architect Certificate of Substantial Completion is attached hereto as Exhibit "A".

(f) The Common Elements - The common elements consist of all portions of the condominium other than the units. 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 upon the declarant by §35-8A-202 of the Act 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 subparagraph 8 of this article. 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. The amenities include the entire ground level, containing parking areas, swimming pool with accompanying pool deck and equipment room, elevator lobby, trash room and two stairwells, and the entire first floor of the condominium, containing exercise room, rest rooms, mechanical room, trash and storage rooms, closets, pump room, generator room, electrical, telephone and television connection room, and two stairwells.

(g) 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;

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[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.

(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 Sanibel, a Condominium, no unit owner other than the declarant may make any alterations, renovations, restorations or changes whatever in his, her or its unit, other than repainting or the replacement of lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, carpet or other floor covering, light fixtures, plumbing fixtures and appliances, without the express written permission of the board of directors of Sanibel, a Condominium, Owners' Association, Inc.

(h) 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.

(i) 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.

(j) 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.

(k) Provision Against Subdivision of Units - Units of Sanibel, a Condominium, may not be subdivided. This provision may not be amended.

## ARTICLE SIX
## Limited Common Elements

1. Specific Limited Common Elements - As required by § 35-8A-209(b)(10) of the Act, each unit's limited common elements other than parking spaces and the statutory limited common elements set forth below, if any, are or shall be depicted on the plats and plans that are to be recorded simultaneously herewith.

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 paragraphs.

4. 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 unit 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.

5. 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.

6. 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.

## 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 in the declaration of condominium and the other condominium documents.

b. 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, the declarant may maintain at least one unit as a sales and management office, and may maintain at least two other units as models, 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.

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

d. 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.

e. 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 declarant has 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.

f. 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 - The declarant reserves none of the development rights set forth in §35-8A-103(11) of the Act.

## ARTICLE TEN
## Termination of Declarant's Rights

(a) Termination of Declarant's Rights - Declarant's rights hereunder as declarant will terminate as follows:

(b) 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.

(c) Declarant's right to maintain 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.

(a) 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.

(b) 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.

(c) 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

(a) Allocation of Interests in the Common Elements - The units of Sanibel, a Condominium, shall have undivided interests in the common elements of Sanibel, a Condominium, as follows

(1) Each Type "A" unit shall have an undivided interest of .0084075341300991 (.840753413009 91%) in the common elements of Sanibel, a Condominium.

(2) Each Type "B" unit shall have an undivided interest of .0104481977539096 (1.04481977539096%) in the common elements of Sanibel, a Condominium.

(3) Each Type "C" unit shall have an undivided interest of .0173048275299127 (1.73048275299127%) in the common elements of Sanibel, a Condominium.

(4) The Type "D" unit shall have an undivided interest of .0193386889416438 (1.93386889416438%) in the common elements of Sanibel, a Condominium.

(b)Formula Used to Allocate Common Element Interests - Each unit's share of the common elements is equal to the ratio that the number of square feet in that unit bears to the aggregate square footage of all of the units combined.

(c) Allocation of Voting Rights - In all unit owners' association matters, each Type "A" and Type ""B" unit shall be entitled to one vote, and each Type "C"and Type "D" unit shall be entitled to two votes.

4. Formula Used to Allocate Voting Rights - Type "A" units (1,236 square feet) and Type "B" units (1,536 square feet) have been assigned one vote each. Type "C" units (2,544 square feet) and the Type "D" unit (2,843 square feet) have each been assigned two votes each.

## ARTICLE TWELVE
## Restrictions on Use, Occupancy and the Like

1. Restrictions on Use - The units and the common elements shall be restricted to the personal, private residential use of their respective owners, members of their families and their gratuitous guests, and no unit shall be used for any commercial purpose, except as permitted herein. A unit may be used for business purposes so long as such business or use, in the sole discretion of the owners' association and/or the City of Gulf Shores, Alabama, does not violate applicable zoning laws or the provisions of the declaration or the bylaws of the association, does not create a nuisance or disturbance and does not involve customers or clients entering into or parking within or near the condominium property. 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 Alienation - There are no restrictions on alienation of the units.

4. 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 make copies thereof available to everyone on the premises with his or her permission. The posting of a set of the rules and regulations permanently within a 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 those occupying their units with their permission. 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. Ad valorem taxes for the current tax year, which are a lien but not due and payable until October 1 following the end of the current tax year; also for all subsequent years; also subject to any future adjustments made by either the Tax Assessor's Office or the Board of Equalization.

2. Reservations, restrictions, rights of way, easements, building setback lines and drainage and utility line easements as noted on plat.

3. Any and all zoning, subdivision, or other governmental regulations pertaining to the use of said property.

4. Conditions, restrictions, and limitations appearing on the plat of said subdivision, recorded in Map Book 4, at page 130, and as amended by Instrument recorded in Miscellaneous Book 13, page 400.

5. Building setback lines as set out on plat recorded in Map Book 4, page 130.

6. Reservation of ½ oil, gas and other minerals, and all rights in connection therewith as contained in Deed of Meyer Development Company, Inc., dated November 25, 1957, and recorded in the Probate Office of Baldwin County, Alabama, in Deed Book 260, page 218.

7. Reservation of ½ oil, gas and other minerals, and all rights in connection therewith as contained in Deed from Grace E. Haddow and Joseph P. Haddow to William H. Campbell and Martha N. Campbell, recorded in the Probate Office of Baldwin County, Alabama, in Deed Book 320, page 201 and Deed Book 320, page 303. (Lot 32).

8. Reservation of oil, gas and minerals by prior grantor recorded in Deed Book 342, page 502.

9. Vacation of Lagoon Drive in subdivision according to Instrument in Miscellaneous Book 14, page 429.

10. Amendment by the Planning Commission of the City of Gulf Shores of the Subdivision Regulations of the City of Gulf Shores filed May 27, 1997, in Miscellaneous Book 93, page 1379, as amended by Instrument recorded at Instrument 493242, as further amended by Instrument recorded at 534263; Instrument 534264; Instrument 534265; Instrument 534266; Instrument 534267; Instrument 535644; and Instrument 545891.

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).

ALL RECORDING REFERENCES REFER TO THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA, UNLESS OTHERWISE INDICATED.

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 and is hereby submitted to the condominium form of ownership, without exception, subject to such encumbrances as are herein 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 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; PROVIDED FURTHER, HOWEVER, that the provisions of Article Twelve forbidding the renting or leasing of units may not be amended except by unanimous vote of all owners, followed by acquiescence in such amendment by formal resolution adopted by the City Council of the City of Gulf Shores, Alabama, or any successor governmental entity, and in the event of such unanimous amendment, the resolution by the entity responsible for the governing of the political subdivision in which the condominium then lies must be recorded in the Probate Office of Baldwin County, Alabama, along with the evidence of such amendment that is required by law and the provisions of this declaration.

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.

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[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.

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 the terms of relevant instruments and 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 Sanibel, 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 Act[3], 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;

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[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.

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.

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, such access to and through his unit as is 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 units, 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.[4]

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;

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[4] This section follows § 35-8A-313(a)(1) of the Act, but adds the requirement that the association insure the units as well as the common elements. This addition is justified by the fact that § 35-8A-313(b) provides: "In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subdivision (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners." Article V, paragraph 5, of this declaration defines the horizontal boundaries of a unit of Sanibel, a Condominium, as it's floors and ceilings, hence the insurance maintained by the association must include the units as well as the common elements.

(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, condemnation, 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 vote allocated to that unit. If more than one of multiple owners are present, the vote 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 vote 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. The vote 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 the vote by the other owners of the unit through a duly executed proxy.[5] 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 longer or shorter term.

e. No vote 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

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

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

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

for:

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 units, the common elements and limited common elements insuring against all risks of direct physical loss commonly insured against.[6] 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 polices 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;

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[6] See Article Eighteen, paragraph 3(e), above, for greater details.

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.

6. Additional Coverage by Individual Owners - An insurance policy issued to the association does not prevent an owner or mortgagee 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 declarants must pay all actual 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 number of the unit 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 SANIBEL DEVELOPMENT, L.L.C., has caused this declaration to be executed by Scott Raley and Wm. Stephen Quantz, its Co-Managers, this the 19th day of December, 2006.

**SANIBEL DEVELOPMENT, L.L.C.**

Wm. Stephen Quantz, Co-Manager

Scott Raley, Co-Manager

STATE OF ALABAMA
BALDWIN COUNTY

Corporate Acknowledgment

I, the undersigned authority, in and for said county, in said state, hereby certify that SCOTT RALEY and WM. STEPHEN QUANTZ, whose names as Co-Managers of SANIBEL DEVELOPMENT, LLC., are signed to the above and foregoing instrument, and who are known to me, acknowledged before me on this date that, being informed of the contents of the instrument they, as such Co-Managers and with full authority, executed the same voluntarily on the day the same bears date, for and as the act of the said Sanibel Development, LLC.

Given under my hand and official seal this the 19th day of December, 2006.

Barbra C

Notary Public
My Commission Expires ________ My Commission

Exhibit "A" to Declaration of Condominium of Sanibel, A Condominium

# AIA® Document G704™ – 2000

## *Certificate of Substantial Completion*

**PROJECT:**
*(Name and address):*
Sanibel Condominiums
1524 West Beach Blvd
Gulf Shores, Alabama

**PROJECT NUMBER:** 200408/
**CONTRACT FOR:** General Construction
**CONTRACT DATE:** September 09, 2004

OWNER: ☒
ARCHITECT: ☒
CONTRACTOR: ☒
FIELD: ☐
OTHER: ☐

**TO OWNER:**
*(Name and address):*
Sanibel Development, LLC
1524 W. Beach Blvd.
Gulf Shores, AL. 36542

**TO CONTRACTOR:**
*(Name and address):*
Carothers Construction
P.O. Box 687
Water Valley, MS 38965

**PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE SHALL INCLUDE:**

All units on all floors of Sanibel Condominium, 1524 West Beach Blvd., Gulf Shores, Alabama - have been substantially completed.

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

**Warranty** **Date of Commencement**

Henry Norris & Associates, Inc. 12/20/06
**ARCHITECT** **BY** **DATE OF ISSUANCE**

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

**Cost estimate of Work that is incomplete or defective:** see attached

The Contractor will complete or correct the Work on the list of items attached hereto within Zero ( 0 ) days from the above date of Substantial Completion.

Carothers Construction John C Wood 12/20/06
**CONTRACTOR** **BY** **DATE**

The Owner accepts the Work or designated portion as substantially complete and will assume full possession at (time) on (date).

Sanibel Development, LLC 12-20-06
**OWNER** **BY** **DATE**





(2031501754)

Attachment to Certificate of Substantial Completion

<u>Sanibel Condominiums</u>
1524 West Beach Blvd.
Gulf Shores, Alabama

It is understood that all life safety items are addressed to occupy the building and unit punch list items will be performed within a reasonable time period from the date on the certificate.