

STATE OF ALABAMA)
COUNTY OF BALDWIN)

BALDWIN COUNTY, ALABAMA
TIM RUSSELL PROBATE JUDGE
Filed/cert. 11/13/2013 2:16 PM
TOTAL \$ 126.00
40 Pages

1429316



AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

OF

VICTORIA PLACE, A CONDOMINIUM

RECITALS

WHEREAS, the Declaration of Condominium of Victoria Place, A Condominium, is dated April 12, 2001 and recorded in the Office of the Judge of Probate of Baldwin County, Alabama as Instrument Number 592250; and,

WHEREAS, the owners of the units of Victoria Place, A Condominium, desire to amend and restate said Declaration of Condominium of Victoria Place, A Condominium; and,

WHEREAS, the owners of the units of Victoria Place, A Condominium, do wish to amend and revise the Declaration of Condominium of Victoria Place, A Condominium, according to Article XXIII of said Declaration.

THEREFORE, the Declaration of Condominium of Victoria Place, A Condominium, shall be amended to read in its entirety as follows:

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
OF
VICTORIA PLACE, A CONDOMINIUM
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ARTICLE I
DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings, unless the context otherwise requires:

A. "Act" means the *Alabama Uniform Condominium Act of 1991, Code of Alabama 1975, §35-8A-101, et seq.*, as the same may be amended from time to time.

B. "Association" means Victoria Place Owners' Association, Inc., an Alabama Nonprofit Corporation, its successors and assigns.

C. "Common Elements" means all portions of the Condominium other than the Units, including but not limited to the following:

i. The real estate set forth in Article IV and as shown on Exhibit A and all other real estate, if any, added to the Condominium;

ii. such of the following structural components and mechanical systems not part of a Unit as shall be components of all buildings containing or comprising any Units:

a. the foundations and footings, structural slabs, and load bearing walls, columns, beams and supports;

b. all portions of the walls, floors and ceilings not specifically included in the Units;

c. the roof, mechanical equipment, and storage areas (excluding any storage areas specifically included in the Units), ramps, handrails, sidewalks, stairways and entrances and exits or communication ways; and

d. the compartments or installations of central services, such as, to the extent provided, central air conditioning, ventilation, heating, power, light, electricity, gas, telephone and television cable, fire protection, security, cold and hot water, plumbing, reservoirs, water tanks and pumps, storm

drains, sewer lines, flues, trash chutes, and all similar devices existing for common use, but excluding all compartments or installations of utilities and services that exist for private use in the Units;

iii. the premises and facilities, if any, used for the maintenance or repair of the Condominium Property;

iv. the playground, sidewalks, walkways, parking areas, curbs, lawn areas, landscaping, trees, and other common areas and facilities of the Condominium;

v. all easements, for the use and benefit from time to time owned or leased by the Association and held for use in common by the Owners.

The Limited Common Elements are part of the Common Elements, and references herein to the Common Elements include the Limited Common Elements unless the context otherwise requires.

D. "Common Expenses" means the expenses arising out of the operation and ownership of the Common Elements and Limited Common Areas, and under the Lease, including, but, not limited to, expenses of managing the Common Elements and Limited Common Elements; expenses of insurance; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and Limited Common Elements and any portion of a Unit maintained by the Association, all of which are hereby declared to be Common Expenses; any valid charge against the Condominium Property as a whole; and any other expenses declared to be Common Expenses by the provisions of the Act or the Condominium Documents.

E. "Condominium" means the condominium created by this Declaration, and, as the context requires, also means the Condominium Property.

F. "Condominium Documents" means this Declaration, and the Articles of Incorporation, By-Laws and Rules and Regulations of the Association, as the same may be amended from time to time.

G. "Condominium Property" or "Property" means (a) the parcel of land described in Section 4.1 hereof, together with all other real estate, if any, added to the Condominium, and all

buildings, improvements and structures erected, constructed or contained therein or thereon, and all easements, rights and appurtenances belonging thereto, and (b) the cross easements reserved in Section 4.3 hereof for the use and benefit of the Condominium Unit Owners and their invitees and licensees; and, as the context requires, all furniture, furnishings, fixtures, equipment and other personal property intended for the mutual use, benefit or enjoyment of the Owners owned or leased by the Association.

H. "Declaration" means this Declaration of Condominium, as the same may be amended from time to time.

I. "Eligible Mortgagee" means a holder of a Mortgage who has given notice to the Association that the Mortgagee is the holder of a Mortgage affecting all or any part of the condominium Property as provided herein.

J. "Limited Common Elements" means all portions of the Common Elements designated on the Plat or Plan or by this Declaration as Limited Common Elements, and any areas defined in the Act as Limited Common Areas, for the exclusive use of one or more but fewer than all of the Units, including, but not limited to, the porch or balcony appurtenant to each Unit. Should any Limited Common Element ever be determined not to be a Limited Common Element under the Act, the same shall be part of the Common Elements with an exclusive easement of use appurtenant to the Unit or Units to which it was originally assigned as a Limited Common Element.

K. "Limited Common Expenses" means the Common Expenses exclusively allocable to the Limited Common Elements as provided herein, including, but not limited to, the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation, and betterment of the Limited Common Elements; and expenses declared to be Limited Common Expenses by the Act and the Condominium Documents.

L. "Members" means the members of the Association.

M. "Mortgage" means an interest in any real estate created by 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 of real estate intended as security, or any similar security device, and any other consensual lien or title retention contract on real estate intended as security for an obligation.

N. "Owner" means the record owner or owners of a vested interest in the fee simple title to a Unit. If title to a Unit is split between estates for life or for years, and remainder, then the owner or owners of the estate having present rights to possession shall be considered the Owner. Notwithstanding any applicable theory of the Mortgage, "Owner" shall not mean or refer to any Mortgagee unless and until such Mortgagee has acquired title, whether subject to redemption or not, pursuant to foreclosure or any proceeding in lieu thereof after any Mortgagee, lien holder or purchaser at foreclosure sale acquires title by foreclosure or proceedings in lieu of foreclosure, he shall be and become the "Owner" within the meaning of this Declaration, and the debtor or debtors shall no longer be an Owner regardless of whether there is outstanding a right of redemption.

O. "Plat" or "Plan" means the plat or plan, or both, as the case may be, showing the Units, the Common Elements and the Limited Common Elements and containing the information required by Section 35-8A-202 of the Act and previously recorded in the records of the Probate Judge of Baldwin County, Alabama and made a part hereof for all purposes, as such Plat or Plan may, from time to time, be amended. The terms "Plat" and "Plan" are sometimes used interchangeably herein, and shall each have the same meaning when used in this Declaration unless the context otherwise requires.

If additional real estate is added to the Condominium at any time, such real estate shall not be part of the Condominium until this Declaration, including the Plat or Plan, has been amended in the manner provided herein to add such real estate as a subsequent phase to the Condominium, and such amendment has been recorded in the Probate Court of Baldwin County.

P. "Rules and Regulations" means the Rules and Regulations relating to the conduct of the Members and their invitees, which shall be adopted by the Association from time to time.

Q. "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy by an Owner, the boundaries of which are described on the Plat, together with the undivided interest in the Common Elements and Limited Common Elements allocated to such Unit as herein provided.

1.2 Other Terms Used in the Act. Unless the context otherwise requires, terms used in this Declaration and not otherwise defined herein shall have the meanings given to them under the Act.

ARTICLE II
NAME

2.1 Name of Condominium. The name of the Condominium is Victoria Place, A Condominium.

2.2 Name of Association. The name of the Association is Victoria Place Condominium Owners' Association, Inc.

ARTICLE III
LOCATION

3.1 Location. The Condominium is situated entirely in Baldwin County, Alabama.

ARTICLE IV
DESCRIPTION OF REAL ESTATE

4.1 Real Estate Included in the Condominium. The real estate included in the Condominium consists of the parcel of land as listed in Exhibit A to this Amended and Restated Declaration of Condominium of Victoria Place, A Condominium, which is located at 2651 South Juniper Street, Foley, Alabama and the buildings, structures and improvements thereon, together with all and singular the rights, members, privileges and appurtenances thereunto belonging, or in anywise appertaining.

Each Unit contains either two or three bedrooms, two bathrooms, a living area, and a kitchen. Some units include garages, while others do not. The amenities included in the Condominium are the buildings containing the Units and the playground, parking areas, open spaces, landscaping and other common areas and facilities shown on the Plat.

The buildings containing the Units in the Condominium will be one or two story buildings. At the present time, the condominiums consist of 15 buildings, containing 79 units.

4.2 Recorded Easements, Exceptions and Reservations. The Condominium Property is subject to and is hereby dedicated to Condominium use subject to the following recorded easements, exceptions and reservations:

- A. reservation of 7/8th interest in and to all oil, gas, and other minerals and rights in connection therewith as contained in Deed Book 32, page 839;
- B. that portion of the above described property which lies within road right-of-way;
- C. any difference between the record distance and/or bearings and the actual distance and/or bearings along all property lines;
- D. fifteen (15) feet permanent and irrevocable non-exclusive access easement along the North property line;
- E. a permanent easement for ingress, egress and for the installation, repair and maintenance of utilities, including but not limited to, sewer, water, power and the like over, on, across and under the Common Elements.
- F. matters shown on the survey dated January 22, 1997 by Volkert & Associates, Inc.;
- G. any and all easements, rights-of-way, rights, reservations, restrictions, covenants, conditions, and matters and things set forth herein;
- H. liens for work done or materials furnished at the request of the Purchaser and not included in the Purchase Price of the Unit; and
- I. the standard pre-printed exceptions in the title policy.

All recording references herein are to the records in the Office of the Judge of Probate of Baldwin County, Alabama.

4.3 Creation of Condominium. Declarant, by recording this Amended and Restated Declaration of Condominium subjects to the provisions of the Act the parcel of land set forth in Exhibit A and the building, structures and improvements thereon, together with all and singular the rights, members, privileges and appurtenances thereunto belonging, or in anywise appertaining, subject to the easements, exceptions and reservations set forth in this Declaration, for the purpose

of the Condominium and establishing certain further reservations, restrictions, uses, limitations, covenants, conditions, affirmative obligations, easements, rights-of-way, liens, matters and things as provided herein for the mutual benefit of the Owners and their Mortgagees pursuant to a plan for the improvement of the Property and the dedication thereof to condominium ownership, all of which shall run with the land and shall be binding on all Persons at any time having or acquiring any right, title or interest in the Property or any part thereof. Pursuant to the Act portions of the Property (the Units) are designated for separate ownership and the remainder of the Property (the Common Elements) is designated for common ownership solely by the Owners of the Units.

ARTICLE V
MAXIMUM NUMBER OF UNITS

5.1 *Number.* The maximum number of residential units that may be created in the condominium is one hundred thirty two (132) Units.

ARTICLE VI
PLAN AND DESCRIPTION OF UNITS

6.1 *Identification of Units.* The Plat contains a description of the boundaries of each Unit created by this Declaration and identifies each Unit by a number so that no Unit bears the same designation as any other Unit, and a description of the Common Elements, all in sufficient detail to identify the Common Elements (including the Limited Common Elements) and each Unit and their relative locations and approximate dimensions.

Each Unit is identified in a diagrammatic floor plan of the floor on which it is situated as shown on the Plat, and consists of the volumes or cubicles of space that lie between the lower, upper and lateral or perimeter boundaries of the Unit.

A. The upper and lower boundaries of each Unit extend to their planer intersections with the perimeter boundaries, as follows:

- i. the upper boundary is the plane of the lower unfinished surface of the ceiling; and
- ii. the lower boundary is the plane of the upper surface of the concrete slab which serves as the Unit's floor.

B. The perimeter boundaries of each Unit are the vertical planes of the exterior surfaces of the exterior windows, glass doors and entry doors, and the unfinished interior surfaces of the exterior walls and party walls extended to their planer intersection with each other and with the upper and lower boundaries of the Unit.

All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, interior paint, finished flooring, carpeting, and any other materials constituting the finished interior surfaces thereof are part of the Unit, and all other portions of the walls, floors, or ceilings are part of the Common Elements. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to the Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Subject to the provisions of the preceding sentence, all spaces, interior partitions, and other improvements within the boundaries of a Unit are a part of the Unit. All fixtures, appliances, kitchen cabinets, and water and sewage pipes located within the boundaries of the Unit and serving only the Unit, and the mechanical systems and installations providing electrical power, gas (if provided), water, heating and air conditioning service to the Unit, including the individual air conditioning compressor even though such equipment may be located outside the boundaries of the Unit, are part of the Unit.

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.

ARTICLE VII **COMMON ELEMENTS**

7.1 *Ownership of Common Elements.* Each Owner shall own an undivided interest in the Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of the Owner's Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run with the land. The Owners of Units with Limited Common Elements that are appurtenant to such Unit or Units shall have the exclusive right to use such Limited Common Elements for all purposes incident to the use and occupancy of such Owner's Unit as herein provided without hindering or encroaching upon the lawful rights of the other Owners.

The extent or amount of each Unit Owner's undivided interest in the Common Elements shall be expressed by a percentage relating to each Unit.

7.2 Limited Common Elements. The Limited Common Elements include the following:

- A. All Limited Common Elements identified as such on the Plat or Plan;
- B. All Limited Common Elements identified in Section 6.1 and elsewhere in this Declaration even though not identified as such on the Plat or Plan; and
- C. All Limited Common Elements defined in the Act.

ARTICLE VIII **EASEMENTS**

8.1 Easements and Restrictions. The Units and Common Elements shall be, and the same are hereby declared to be, subject to the exceptions, reservations, restrictions, uses, limitations, covenants, conditions, affirmative obligations, easements, rights-of-way, Mortgages, liens, matters and things set forth in the Condominium Documents governing the use of the Units and Common Elements and setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Elements, including, but not limited to, the following:

A. Easements on Plat. All easements shown on the recorded Plat and to all other easements and rights-of-way described herein.

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

C. Utility Equipment. There may be utility equipment located on the Common Elements appurtenant to some Units. An easement is hereby reserved, in favor of each Unit for the purpose of placement, maintenance, repair and replacement of said utility equipment the Association and the Owner of the appurtenant Unit; provided that no utility equipment shall be placed in any part of the Common Elements or Limited Common Elements without

the written approval of the Board of Directors.

D. Easements for Ingress and Egress. The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement of way over all parking areas, walkways, stairways, and other common areas, in favor of all Owners, the Association for the furnishing of services and facilities and all other purposes for which the same are reasonably intended for the use of the Owners, the Association, subject to all restrictions in the Condominium Documents.

E. Easement for Use of Leased or Acquired Property. Each Unit Owner shall have a nonexclusive easement for use of any property acquired by the Association for the common benefit of the Owners by purchase, lease or otherwise, for all purposes for which the same is reasonably intended, subject to all restrictions in the Condominium Documents, and, if leased, for the term and subject to all provisions of the lease.

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

G. Easement of Support. Each Unit and Common Element shall have an easement of support from every other Unit and Common Element providing such support.

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

ARTICLE IX **ALLOCATION OF INTERESTS**

9.1 Allocation of Interests in Common Elements. The extent or amount of each Unit's undivided interest in the Common Elements shall be expressed by the factor establishing the formula set forth below in Section 9.3. If two or more Units are combined, the allocated interests in the Common Elements of the Units in the combined Unit shall be reallocated to the combined Unit, and the allocated interests in the Common Elements of the remaining Units shall remain unchanged. If a Unit is subdivided into two or more Units, the allocated interest in the Common Elements formerly allocated to the subdivided Unit shall be reallocated to the new Units created thereby in any reasonable manner prescribed by the Owner of the subdivided Unit, and the allocated interests in the Common Elements of the remaining Units shall remain unchanged. Except as otherwise provided in the preceding two sentences, and except as provided in this Declaration regarding the reallocation of interests in the event of the loss or destruction of Units due to fire or other casualty or the condemnation or taking of a Unit by other governmental action, if one or more Units are added to or withdrawn from the Condominium, the denominator of such fraction after such addition or withdrawal shall be the total number of Units then in the Condominium. The allocated undivided interests in the Common Elements shall remain constant unless changed in accordance with the foregoing provisions, or by the unanimous approval of all Owners and Mortgagees.

9.2 Allocation of Votes in the Association. Each Unit, regardless of the number of bedrooms in the Unit, and except as provided herein regarding Units that have been combined or subdivided, shall be entitled to one (1) vote on each matter submitted to a vote of the Members. If two or more Units are combined, the number of votes formerly allocated to such Units shall be allocated to the combined Unit.

9.3 Allocation of Common Expense Liabilities. Except as provided in Section 9.4 in respect of assessments against Limited Common Elements, and in Section 35-8A-315 (d) of the Act in respect of assessments to pay judgments against the Association, and in Section 35-8A-315(e) of the Act in respect of assessments for any Common Expense caused by the misconduct of any Unit Owner or his invitee, all Common Expenses (including but not limited to assessments for insurance and utilities serving the Common Elements other than the Limited Common Elements). When additional units are added to the Condominium, said pro rata allocation shall be recomputed based upon the new square footage added to the Condominium.

9.4 Assessments Against Limited Common Elements. Any Common Expense assessment associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed exclusively against the Unit or Units to which that Limited Common Element is assigned, equally.

9.5 Reallocation of Common Expenses. If Common Expense Liabilities are reallocated under any of the provisions of the Declaration, the Common Expense assessments and any installment thereof not then due shall be recalculated in accordance with the reallocated Common Expenses.

9.6 No Exemption From Liability. All assessments against a Unit shall be the personal obligation to the Association of the Owner or Owners of the Unit, jointly and severally. No Unit Owner, other than the Association if it purchases a Unit at a foreclosure sale, shall be exempted from any liability for any assessment made by the Association for any reason whatsoever, including, without limitation, abandonment, nonuse or waiver of use or enjoyment of his Unit or any part of the Common Elements.

9.7 Set-Off for Rents. Since the debt is subject to an automatic lien, it is due absolutely and without contingency and is therefore subject to set-off on behalf of the Association and, therefore, the Board of Directors, in its sole discretion, and, if it believes it is necessary to obtain satisfaction of the unit owner's debt, may attach any and all rental, lease and any other use of premises payments which are derived from the occupancy of the delinquent unit owner's unit by individuals or entities other than the unit owner. The Board must serve notice on the unit owner at least five (5) days before the Board can attach said rental, lease or any other use of premises payments and make demand for said monies and direct payments to be made to the Association.

9.8 Rent Upon Foreclosure. In any suit for the foreclosure of said lien, the Association shall be entitled to rental from the owner of any unit from the date on which the payment of any assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said unit without notice to the owner of such unit. The rental required to be paid shall be equal to the rental charged on comparable types of dwelling units in Foley, Alabama. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of eighteen percent (18%) per annum on any such advances made for such purposes. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien granted to the Association.

ARTICLE X **THE ASSOCIATION**

10.1 Membership. The membership of the Association at all times shall consist exclusively of all Owners. Each Owner shall cease being a Member of the Association at the time he no longer owns a Unit. The members shall not, as such, be liable for the debts of the Association.

10.2 Meetings. A meeting of the Members shall be called for and held as provided in the By-Laws.

10.3 Voting by Owners. If a Unit is owned by more than one Person, the Owners of the Unit, collectively, shall be considered a single Member, and may designate among themselves by proxy the one of their number entitled to vote for all of them. If only one of the multiple Owners of a Unit is present at a meeting of the Association, he shall be entitled to cast the votes for that Unit. If more than one of the multiple Owners are present, the votes for that Unit may be cast only in accordance with a written agreement of a majority in interest of the multiple Owners, unless the Bylaws expressly provide otherwise. There shall be a majority agreement if any one of the multiple Owners of the Unit casts the votes for that Unit without protest being made promptly to the Person presiding over the meeting by any of the other Owners of the Unit.

An Owner may not revoke a proxy given pursuant to this Section except by written notice of revocation filed with the Secretary prior to a meeting or actual notice of revocation to the Person presiding over a meeting of the Association. A proxy shall be void if it is not dated or purports to

be revocable without notice. A proxy shall terminate one year after its date, unless it specifies a shorter term.

10.4 Obligations of Owners. Each Owner shall, by acceptance of title to his Unit, be conclusively presumed to have agreed to abide by the Condominium Documents, and all amendments thereto heretofore or hereafter adopted, and to pay, when due, all assessments due by him to the Association, together with interest thereon from the due date at the interest rate, not to exceed the maximum legal rate, set by the Board of Directors as hereinafter provided.

10.5 Surplus Funds. No part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of the Common Elements, and other than by a rebate of excess membership assessments) to the benefit of any Member or private individual.

10.6 Financial Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with §35-8A-409 of the Act. All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents and such records shall be made available in Baldwin County, Alabama.

10.7 Dealings with Association. With respect to a third party dealing with the Association, the existence of the Association's powers and the proper exercise thereof by the Association may be assumed without inquiry, unless such Person has actual knowledge that the Association is exceeding or improperly exercising its powers. A third party shall not be bound to assure the proper application of any funds paid or assets delivered to the Association.

10.8 Board Members and Officers. Board Members and Officers shall be elected and/or appointed and shall have terms and powers as provided in the By-Laws and in the Act. In particular, Board Members and Officers shall have the powers enumerated in §35-8A-302 of the Act.

ARTICLE XI

MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY

11.1 The Association's Obligation to Repair. The Association shall be responsible for the maintenance, repair and replacement of the following:

- A. the Common Elements and Limited Common Elements;

- B. incidental damage caused to a Unit by any work done by the Association; and

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

11.2 *Each Owner's Obligation to Repair.*

A. Except for those portions of the Condominium that the Association is required to maintain and repair, each Owner shall, at such Owner's expense, maintain his Unit in good tenantable condition and repair.

B. Each Owner agrees as follows:

- i. to perform all maintenance, repairs and replacements that are his obligations under Subparagraph A of this Section 11.2;

- ii. to pay all utilities serving and all taxes levied against his Unit and the Limited Common Elements assigned to his Unit;

- iii. not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, including, but not limited to, enclosing any part of the balcony or other Limited Common Elements appurtenant to his Unit, altering in any way the exterior doors, windows, or the exterior faces of the exterior doors or windows, or the exterior fixtures, affixing outside shutters to windows or painting or repainting any part of the exterior of his Unit; and

- iv. to promptly report to the Board of Directors any defects or needed repairs for which the Association is responsible.

ARTICLE XII ASSESSMENTS

12.1 Creation of Lien and Personal Obligations for Assessment. Each Owner by acceptance of a deed to his Unit, whether or not so expressed in any such deed or other conveyance, hereby covenants and agrees to pay to the Association all assessments fixed, established and collected from time to time as herein provided. All such assessments, together with such interest thereon and costs of collection, including reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made. The priority of the lien shall be as provided in §35-8A-316 of the Act. The Association's lien may be foreclosed in the manner of a mortgage with a power of sale. The Association shall have the power to bid at the unit at foreclosure sale and to acquire, hold, lease, mortgage or convey the sum. An action to recover a money judgment for unpaid assessments may be also maintained without the waiving the lien securing the same. Each such assessment, together with interest and the costs of collection, shall also be the personal obligation of any Person who is an Owner of such Unit at the time the assessment falls due. In the event there is more than one Owner of any Unit each and every such Owner shall be jointly and severally personally liable for the entire assessment due for such Unit with interest and costs.

12.2 Purpose of Assessment. The assessments levied by the Association shall be used for the purposes of promoting the common recreation, health, safety, general welfare and convenience of the Members, and in payment for the improvement and maintenance of the Common Elements, for services and facilities devoted to these purposes and related to the use and enjoyment of the Condominium, including, but not limited to, the payment of taxes and insurance on the Common Elements and for repair, maintenance, upkeep, replacement and additions to the Common Elements and for the cost of labor, shipment, materials, management and supervision thereof, and payment of the annual rentals due under the Lease.

12.3 Reserve Funds. Assessments levied by the Board of Directors shall include an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common Elements that must be replaced or repaired on a periodic basis, and may be payable in regular installments rather than by special assessments.

12.4 Assessments. Assessments shall be charged and administered as provided in the By-Laws.

12.5 Interest, Late Fees and Costs. If any assessment is not paid within thirty (30) days after the date when due, it shall bear 18% interest per annum and shall accrue a late fee as determined by the Board of Directors. In addition, the Association may bring an action at law against any owner personally obligated to pay the same or the Association may foreclose the lien against the property in the manner of a mortgage with a power of sale. The Association may pursue either or both remedies, separately and simultaneously, as it may determine without waiver of any remedy and without preclusion of any remedy not pursued. There shall also be added to the amount of such assessment the costs incurred in any action pursued to collect such assessment regardless of whether litigation is involved, including reasonable attorneys fees. In the event a judgment is obtained or a foreclosure action is instituted, it shall include interest on the assessment, late fees, a reasonable attorney's fee and the costs of the action. If there be more than one Owner personally liable for any such assessment, such liability shall be joint and several, and the Association, in its sole discretion, may elect to proceed against one, any or all of such Owners for recovery of the entire sum due with or without proceeding against any other such Owner, but without prejudice to its right to proceed against such others.

ARTICLE XIII **INSURANCE**

13.1 Specified Insurance. Insurance, other than title insurance, that shall be carried on the Property and the Property of the Unit Owners shall be governed by the provisions of this Article. Insurance coverage maintained by the Association pursuant to these provisions is hereafter referred to as "Specified Insurance". Anything to the contrary notwithstanding, all insurance coverage shall be consistent with local and state and federal insurance laws.,

13.2 Location of Policies. The Association shall retain the original of all insurance policies for Specified Insurance in a place of safekeeping such as a safe or a safety deposit box and shall provide copies of such policies to Institutional Mortgages requesting such copies.

13.3 Notice of Change in Insurance Coverage. No cancellation or substantial change in the specified insurance provisions, including changes in the amount of coverage, the risks covered, the ratio to value of coverage, or endorsements or other changes in the coverage provisions, may be effected by the Association without at least ten (10) days' written notice to the Association or insurance trustee and each Mortgage Holder named in the mortgage clause, and each holder of a first mortgage on an individual Unit.

13.4 Qualification of Insurance Company. Each company issuing Specified insurance must be specifically authorized by the Laws of the State of Alabama to transact such business as is necessary to provide the Specified Insurance.

13.5 Provisions. Insurance coverage as specified and required under this Article shall, in substance and effect:

A. Provide that the policy will be primary, even if Unit Owner has other insurance that covers the same loss, and further provide that the liability of the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any Unit Owner.

B. Contain no provision relieving the insurer from liability for a loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Association, or because of any breach of warranty or condition or any other act or neglect by the Association or any Unit Owner or any other persons.

C. Provide that such policy may not be canceled or substantially modified (whether or not requested by the Association) except by the insurer giving at least ten (10) days' prior written notice thereof to the Association, the fee owner, each holder of a first mortgage on an individual Unit, and every other person in interest who shall have requested such notice of the insurer.

D. Provide that each Unit Owner is an insured person under the policy with respect to liability arising out of the interest of said Unit Owner in the Common Elements or Membership in the Association.

E. Provide that no act or omission by any Unit Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

F. Contain a waiver by the insurer of any right of subrogation to any right of the Association, or either against the Unit Owner or Member of his or her household or lessee of any Unit; and

G. Contain a standard mortgage clause which shall:

i. Provide that any reference to a Mortgagee in such policy shall mean and include all holders of mortgages of any Unit, whether or not named therein; and

ii. Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Association or Unit Owners or any persons under any of them; and

iii. Waive any provisions invalidating such Mortgagee clause by reason of the failure of the Mortgagee to notify that insurer of any hazardous use of vacancy, any requirement that the Mortgagee pay any premium thereon, and any contribution clause.

H. Any insurance trust agreement will be recognized.

13.7 Named Insured. The named insured on all policies of Specified Insurance shall be the Association, for the use and benefit of the individual Owners. Any "loss payable" clause shall show the Association or other insurance trustee as a trustee for each Unit Owner and the holder of each Unit's Mortgage.

13.8 Property Damage Insurance. The Board of Directors shall secure and maintain in effect a "master" or "blanket" type policy of Property damage insurance providing coverage in an amount not less than the full replacement value of the Common Elements and Limited Common Elements (except land, foundation, excavation or other items usually excluded from coverage) and including coverage for all improvements, fixtures and personal Property included in the Common Elements and Limited Common Elements. The policy shall cover all of the Common Elements and Limited Common Elements that are normally included in coverage, including but not Limited to, fixtures and Building service equipment and common personal Property and supplies owned by the Association. If required by any mortgage holder or purchaser of any mortgage, the policy shall also cover fixtures, equipment and other personal Property inside individual Units, whether or not the Property is part of the Common Elements. The policy shall include an "Agreed Amount Endorsement" or its equivalent, if available, or an "Inflation Guard Endorsement," if available. If the enforcement of any Building, zoning or land-use law will result in loss or damage, increase costs of repairs or reconstruction, or additional demolition and removal costs, the Association shall require

a Building Ordinance or Law Endorsement which must provide for such contingent liability. Such coverage for Property damage insurance shall afford protection against:

- A. Loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement; and
- B. Risks as are covered by an all-risk endorsement; and
- C. Other risks as from time to time shall be customarily covered with respect to Condominium Buildings similar in construction, location and use as the Buildings.

13.9 Public Liability Insurance. The Association shall secure and maintain a comprehensive commercial general liability insurance policy, including medical payments insurance, covering all Common Elements, public ways and any other areas that are under the supervision of the Association. The insurance shall also cover commercial spaces that are owned by the Association, even if they are leased to others. The policy should provide coverage for death, bodily injury and property damage arising out of or in connection with the operation, maintenance or use of the Common Elements and, further, any legal liability that results from lawsuits related to employment contracts in which the Association is a party. Such policy shall provide coverage, in an amount to be determined by the Board of Directors, for bodily injury, including death and property damage for any single occurrence. In no event shall the coverage be in an amount less than One Million Dollars (\$1,000,000) for any single occurrence. If the policy does not include "severability of interest" in its terms, the policy shall contain a specific endorsement to preclude the insurer's denial of a Unit Owner's claim because of negligent acts of the Association or of other Unit Owners. The coverage shall also include protection against water damage liability and, if applicable, elevator collision, garage keep's liability and such other risks as shall customarily be covered with respect to condominium buildings similar in construction, location and use.

13.10 Flood Insurance. If any part of the Project shall be deemed to be in a special flood hazard area, as defined by the Federal Emergency Management Agency, the Association shall maintain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a Common Expense. The policy shall cover the Buildings and any other Property within the designated hazard area. The amount of insurance should be at least equal to the lesser of: (1) one hundred percent (100%) of the current replacement cost of all Buildings and other insurable Property located in the flood hazard area; or (2) the maximum coverage available for the Property under the

National Flood Insurance Program. The policy shall be in a form which meets the criterion set forth in the most current guidelines issued on the subject by the Federal Government.

13.11 Personnel Coverages. Should the Association employ personnel, all coverages required by law, including worker's compensation, shall be obtained so as to meet the requirements of the law.

13.12 Fidelity Bonds.

A. The Board of Directors shall secure and maintain in effect adequate blanket fidelity coverage to protect against loss of money through dishonest acts on the part of officers, directors, employees and all others who handle or are responsible for handling the funds held or administered by the Association, whether or not that individual receives compensation for services, including but not limited to employees or professional managers. Such fidelity bonds shall have their premiums paid as a Common Expense by the Association and shall meet the following requirements:

i. Fidelity bonds shall name the Association as an insured or obligee.

ii. The bonds shall be written in an amount equal to at least One Hundred Fifty percent (150%) of the estimated annual Common Expenses, including reserves, unless a greater amount is required by a federal governmental agency insuring or purchasing mortgages encumbering Units.

iii. The bonds shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of employee or similar expression.

iv. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association or insurance trustee and each mortgage holder or servicer that services a Fannie Mae-owned or securitized mortgage in the Condominium Project.

B. Any management agent that handles funds for the Association shall also be

covered by its own fidelity bond which is equal or exceeds the coverage of that bond obtained by the Association.

13.13 Other Coverages. The Association shall obtain all other insurance required by the Act. The Board shall secure other boiler and machinery insurance, directors' and officers' liability insurance and plate glass insurance as the Board deems necessary and shall also have authority to obtain such other insurance as the Board deems desirable, in such amounts, from such sources and in such forms as the Board deems desirable. The premiums for such insurance shall be a Common Expense.

13.14 Individual Responsibilities of Owner. A Unit Owner shall be liable for any claim, damage or judgment entered as a result of the use or operation of his or her Unit caused by the conduct of said Unit Owner. Each Unit Owner shall be responsible for obtaining insurance on the contents of his or her own Unit and the contents of any Limited Common Elements serving his or her Unit, as well as additions and improvements thereto, decorations, furnishings and personal property therein, and personal property stored elsewhere on the property. Each Unit Owner shall provide a copy of their insurance coverage policy to be furnished to the Property Manager.

13.15 Premiums. Premiums for insurance maintained by the Association shall be paid by the Association as a Common Expense. Should the Association fail to pay such premiums when due, or should the Association fail to comply with other insurance requirements of the Mortgage Holder, the Mortgage Holder shall have the right, at the option of the Mortgage Holder, to order insurance policies and to advance such sums as are required to maintain or procure such insurance. To the extent of any money so advanced, the Mortgage Holder shall be subrogated to the assessment and lien rights of the Association as against the individual Unit Owners for the payment of such item of Common Expense.

13.16 Association as Agent. All insurance policies purchased by the Association shall provide that all proceeds covering property losses shall be paid to the Association, for the benefit of the Association and the Unit Owners and their mortgagees as their interest may appear and as contemplated in this Declaration. The Association is hereby irrevocably appointed agent with full power of substitution, for each Unit Owner and of any other insured interest in the Property. The Association shall have power to adjust all claims arising under insurance policies purchased by the Association; to bring suit thereon in its name and/or in the name of other insured; to deliver releases on payment of claims; to compromise and settle such claims; and otherwise to exercise all of the

rights, powers and privileges of the Association and each Unit Owner or any other holder of an insured interest in the Property under such insurance policies.

13.17 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial Owners in the following manner:

A. Reconstruction or Repair. First, if the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, with remittances to Unit Owners and Mortgages being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by any such Mortgagee.

B. Failure to Reconstruct or Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, with remittances to Unit Owners and their Mortgagee being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by any such Mortgagee.

13.18 Individual Insurance. Nothing contained in this Declaration shall be construed to prevent a Unit Owner from obtaining insurance for his or her own benefit.

ARTICLE XIV **CONDEMNATION OR OTHER TAKING BY GOVERNMENTAL ACTION**

14.1 Taking of Units. If a Unit is acquired by condemnation, eminent domain or taken by other governmental action (each hereinafter referred to as a "taking"), or if part of a Unit is acquired by a taking leaving the Unit Owner with a remnant that may not practically or lawfully be used for residential purposes, upon acquisition, unless the decree otherwise provides, that Unit's allocated interests under Article IX shall automatically be reallocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking, and the Association shall properly prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken as described in this Section shall thereafter become a Common Element.

14.2 Partial Taking. Except as provided in Section 14.1, if part of a Unit is acquired by

a taking, upon acquisition, unless the decree otherwise provides, (i) that Unit's allocated interests shall be reduced in proportion to the reduction in the size of the Unit, and (ii) the portion of the allocated interests divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to the respective allocated interests of those Units before the taking, except that the partially acquired Unit shall participate in the reallocation on the basis of its reduced allocated interests. For the purposes hereof, the size of a Unit shall be determined by its area (including the area of any Common Elements within the boundaries of the Unit).

14.3 Effect of Taking. In the event that one or more Units are taken in part and the Condominium is not terminated, the taking shall have the following effects:

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

- i. The Unit shall be made tenantable.
- ii. The balance of the award, if any, shall be distributed to the Owner of the Unit and the Mortgagee of the Unit, as their respective interests may appear.
- iii. If there is a balance of the award distributed to the Owner and the Mortgagee, the share of the Common Elements or Limited Common Elements, if any, appurtenant to the taken Unit shall be equitably reduced. This shall be done by reducing such share by the proportion which the balance of the award so distributed bears to the market value of the Unit immediately prior to the taking, and then re-computing the shares of all Owners in the Common Elements and the Limited Common Elements as percentages of the total of their shares as reduced by the taking.
- iv. If the taking destroys or reduces the size of a Unit so that it may not be made tenantable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

1. The market value of such Unit immediately prior to the taking shall be paid to the Owner of the Unit and to Mortgagees of the Unit, as their respective interests may appear.

2. The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the Owners, in the manner approved by the Board of Directors.

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

4. If the amount of the award for a taking is not sufficient to pay the market value of the taken Unit to the Unit Owner and the Mortgagees of the Unit, as their interests may appear, and to restore the remaining portion of the Unit in condition for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by a special assessment against all of the Owners who will continue as Owners of the Units after the changes in the Condominium effected by the taking. Such assessment shall be made in proportion to the respective shares of such Owners in the Common Elements after the changes effected by the taking.

B. If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner and the Mortgagee(s) and the Association within thirty (30) days after notice by any such party that agreement cannot be reached, such value shall be determined by three (3) independent qualified appraisers with one (1) appraiser to be selected by the Association, one (1) appraiser to be selected by the Owner and Mortgagee(s), jointly, and the third (3rd) appraiser to be selected by the two (2) appraisers so appointed, and the fair market value of the Unit shall be deemed to be the average of the two (2) appraisals of the fair market value of the Unit made by said appraisers having the least difference in amount. If such process results in two (2) different market values, one higher than the other, the higher market value as so determined shall be deemed to be the fair market value of the Unit

The cost of such appraisal shall be assessed against all Owners in proportion to the shares of the Owners in the Common Elements as they existed prior to the changes effected by the taking.

C. Changes in the Units, in the Common Elements and/or Limited Common Elements, in the ownership of the Common Elements and/or Limited Common Elements and in the shares of liability for Common Expenses and/or Limited Common Expenses that are affected by a taking, shall be evidenced by an amendment of this Declaration approved by the Board of Directors in accordance with this Declaration and the Association's By-Laws.

ARTICLE XV **TERMINATION**

15.1 *Termination by Agreement.* Except in the case of the taking of all of the Units specified in §35-8A-107 of the Act, the Condominium may be terminated (as provided in the Act) only by agreement of Owners to which at least eighty percent (80%) of the votes in the Association are allocated. The termination agreement shall be executed and recorded in the Probate Court as provided in the Act.

ARTICLE XVI **OCCUPANCY, USE AND LEASING RESTRICTIONS**

16.1 *Residential Use.* Each unit shall be used only as a residence. The foregoing restriction as to residents shall not however be construed in a manner as to prohibit an occupant from: (1) maintaining his personal, professional library; (2) keeping his personal business or professional records or accounts; or (3) handling telephone calls or correspondence relating to his personal business or profession.

16.2 *Use of Common Elements.* The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, invitees and licensees for access, ingress to and egress from the respective Units and for such other purposes incidental to use of the Units. However, other areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession or easement, presently in existence or entered into by the Board at some future time, affecting any part or all of said Common Elements. No Unit Owner or Occupant shall place, distribute or maintain any sign, poster or bill in any portion of the Common Elements outside his or

her Unit without the approval of the Board of Directors.

16.3 Use of Limited Common Elements. The Limited Common Elements shall be used only by the Unit Owners having an undivided interest in and to the Unit to which the Limited Common Elements is assigned, and their agents, servants, tenants, family members, invitees and licensees for such purposes incidental to the use of said Units. Such uses shall at all times be consistent with this Declaration.

16.4 Nuisances. No nuisances shall be allowed on the Condominium Property, nor any use or practice that is the source of unreasonable annoyance to residents or that interferes with the peaceful possession and proper use of the Condominium Property by its residents. All parts of the Condominium Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any hazard allowed to exist.

16.5 Lawful Use. No offensive or unlawful use shall be made of the Condominium Property, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies that require maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the Condominium Property concerned.

16.6 Leases. Units may be leased by the Unit Owners, provided, however; that such lease and the rights of any tenant thereunder is hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Units and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including eviction; and that such lease or rental agreement shall be in writing and a copy of each lease agreement provided to the Property Manager.

Each Unit Owner who has or who shall hereafter lease his or her Unit hereby irrevocably empowers and authorizes the Association or the managing agent of the Association to enforce the Rules and Regulations of the Condominium Association and to terminate the lease of and evict any tenant who fails to comply with said Rules and Regulations or who provides other sufficient cause for termination of the lease and eviction in accordance with the Laws of the State of Alabama, this Declaration, the By-Laws, Rules and Regulations of the Association or any contract for lease. The Association, the Board of Directors or its managing agent shall not become liable to any Unit Owner

or sublessor or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this paragraph.

16.7 Restrictions on Mortgaging Units. Anything construed in any of the Condominium Documents notwithstanding, there shall be no restrictions of the right of a Unit Owner to mortgage his or her Unit.

16.8 Right of Access. Each Unit Owner grants a right of access to such Owner's Unit to the Association, and to any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in an Owner's Unit and threatening other Units, Common Elements or Limited Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within an Owner's Unit, if any, or to correct any condition which violates the provisions of any Mortgage covering another Unit, or to enforce any provision of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not. The Association may retain a key to each Unit or master key to all or one or more of the Units to provide access to the Units for any such purpose or purposes. To the extent that damages inflicted on the Common Elements, Limited Common Elements or any Unit through which access is taken, the Unit Owner or the Association, if it causes the same, shall be liable for the prompt repair thereof.

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

16.10 Abatement of Violations. The violation of any Rule or Regulation or breach of the provisions of the Condominium Documents shall give the Association the right, in addition to the ability to fine an offending owner(s), or any unit owner the right, in addition to any other right or remedy elsewhere available, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting Unit Owner, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate under the Act, shall be charged to and assessed against such defaulting Owner, and the Association shall have a lien for all of the same upon the Unit of such defaulting Owner, upon all of such defaulting Owner's additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon any of such defaulting Owner's personal property in such defaulting Owner's Unit or located elsewhere on the Condominium Property.

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

ARTICLE XVII **VIOLATIONS**

17.1 Violations. The Board of Directors shall, upon written request by any Owner, or upon its own initiative, if it so elects, investigate any possible violation of these restrictions and determine by majority vote whether a violation exists. If the Board determines that no such violation exists, it shall give written notice of its determination to the complainant Unit Owner, if any, in person or by registered or certified mail, addressed to such Unit Owner at his last known address. Should the Board determine that a violation does exist, it shall give written notice of this determination in person or by registered or certified mail to the complainant Unit Owner, if any, and to the Owner of the Unit on which, or as to which, such violation exists, addressed to each at his last known address. The Owner of the Unit on which, or as to which, such violation exists shall be allowed ten (10) days

after the giving of such notice, or such longer period as the Board of Directors may deem appropriate, in which to correct such violation. Should the violation not be corrected within such period, the Board, or any Owner or Owners, shall each have the right, but not the obligation, to prosecute any proceedings at law or in equity against the person or persons found by the Board to be violating any of these restrictions and prevent him or them from so doing, recover damages for such violation, and obtain any other legal or equitable relief to which it, he, or they may be entitled under the circumstances. No such proceedings shall be commenced until and unless the Board of Directors determines that a violation exists or unless the Board fails to act for thirty (30) days after receiving a written complaint of a violation.

ARTICLE XVIII
ALTERATION OF UNITS, RELOCATION OF BOUNDARIES BETWEEN
ADJOINING UNITS, AND SUBDIVISION OF UNITS BY UNIT OWNERS

18.1 *Alteration of Units.* Subject to the provisions of the Act and other provisions of law, and provided that the Unit One shall have first obtained and provided to the Board of Directors a certificate of a registered engineer or architect acceptable to the Board that the contemplated improvement or alteration of his Unit will not impair the structural integrity, or mechanical systems, or lessen the support of any portion of the Condominium and the Board of Directors shall have first consented in writing thereto, a Unit Owner:

A. may make any improvements or alterations to his Unit that do not impair the structural integrity, or mechanical systems, or lessen the support of any portion of the Condominium; and

B. after acquiring an adjoining Unit, or an 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.

A Unit Owner may not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Condominium.

18.2 *Relocation of Boundaries Between Adjoining Units.* Subject to the provisions of the Act and other provisions of law, and provided that the Unit Owners involved shall have first

obtained and provided to the Board of Directors a certificate of a registered engineer or architect acceptable to the Board that the contemplated relocation of the boundaries between their Units will not impair the structural integrity, or mechanical systems, or lessen the support of any portion of the Condominium and the Board of Directors shall have first consented in writing thereto, a Unit Owner:

A. The boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association of the Owners of those Units. If the Owners of the adjoining Units have specified a reallocation between their Units of their allocated interests, the application must state the proposed reallocations. Unless the Board determines, within thirty days, that the reallocations are unreasonable, the Association shall prepare an amendment to the Declaration that identifies the Units involved, states the reallocations, and is executed by those Unit Owners, and contains words of conveyance between them, which shall be recorded as an amendment to the Declaration.

B. The Association shall prepare and record plats or plans necessary to show the altered boundaries between the adjoining Units, and their dimensions and identifying numbers.

C. Any costs incurred utilizing the above described procedures shall be borne by the requesting Unit Owners.

18.3 Subdivision of Units. Subject to the provisions of the Act and other provisions of law, and provided that the Unit Owner shall have first obtained and provided to the Board of Directors a certificate of a registered engineer or architect acceptable to the Board that the contemplated subdivision of his Unit will not impair the structural integrity, or mechanical systems, or lessen the support of any portion of the Condominium and the Board of Directors shall have first consented in writing thereto, any Unit Owner may subdivide his Unit into two or more Units.

A. Upon the Board's approval of an application of a Unit Owner to subdivide a Unit, the Association shall prepare, execute, and record an amendment to the Declaration, including the plats and plans, subdividing that Unit.

B. The amendment to the Declaration must be executed by the Owner of the Unit to be subdivided, assign an identifying number to each Unit created, and reallocate the allocated interests formerly allocated to the subdivided Unit to the new Units in any

reasonable manner prescribed by the Owner of the subdivided Unit.

C. Any costs incurred utilizing the above described procedures shall be borne by the requesting Unit Owners.

ARTICLE XIX

RIGHTS OF ELIGIBLE MORTGAGEES

19.1 Notification of Eligible Mortgagees Required. Any Eligible Mortgagee, upon giving the Association written notice, shall have the right to be given written notification by the Association of (a) any sixty (60) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements or Limited Common Elements if such loss or taking exceeds Ten Thousand (\$10,000) Dollars; (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds Ten Thousand (\$10,000) Dollars; (d) any taking of all or a portion of the Condominium Property; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Mortgagees.

19.2 Right of Inspection. Eligible Mortgagees shall have the right to examine the Condominium Property and the books and records of the Association and to receive annual reports, other financial data, and, upon request, an annual audited statement, within ninety (90) days following the end of any fiscal year of the Association.

19.3 Request for Protection by Mortgagees. Whenever any Mortgagee desires the benefit of the provisions of this Article to be applicable to such Mortgagee, the Mortgagee shall serve written notice of such fact upon the Association, by registered or certified mail, addressed to the Association, and actually mailed to the Association's address stated herein, identifying the Unit on which it holds a Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage that may be held by the Mortgagee. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee.

ARTICLE XX AMENDMENT

20.1 Amendments by Unit Owners. Except in the case of amendments that may be executed (a) as provided in Section 22.1, and in cases of amendments that may be executed by the Association under §35-8A-107 (reflecting the reallocation of the allocated interests of a Unit acquired by eminent domain, which for the purposes of this Declaration shall apply to any taking), §35-8A-206(6) (to confirm the reallocation of allocated interests if the expiration or termination of a lease decreases the number of Units), §35-8A-208(e) (reallocating a Limited Common Element with the consent of the Unit Owners affected), §35-8A-212(a) (reallocating boundaries between adjoining Units by the Owners of those Units, approved by the Board), and §35-8A-213 (pertaining to the subdivision of Units and the reallocation of the allocated interests formerly allocated to the subdivided Unit, if permitted by the Declaration), and in cases of amendments that may be executed by certain Unit Owners under §35-8A-208(b) (reallocating a Limited Common Element with the consent of the Unit Owners affected), §35-8A-212(a) (reallocating boundaries between adjoining Units by the Owners of those Units, approved by the Board), §35-8A-213(b) (pertaining to the subdivision of Units and the reallocation of the allocated interests formerly allocated to the subdivided Unit, if permitted by the Declaration), or §35-8A-218(b) (pertaining to termination of the Condominium by agreement of the requisite number of Unit Owners), of the Act, the Declaration, including the Plat and Plans, may be amended only by the affirmative vote of the Members representing not less than sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the total allocated votes in the Association

20.2 Recording. Any amendment shall become effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama in accordance with the Act.

ARTICLE XXI MISCELLANEOUS

21.1 Headings. The captions herein are used solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

21.2 Invalidity and Severability. The provisions of this Declaration are severable so that if any provision is invalid or void under any applicable federal, state or local law or ordinance, decree, order, judgment or otherwise, the remainder shall be unaffected thereby.

21.3 Plural, Singular, Gender. As used herein, the plural includes the singular, the

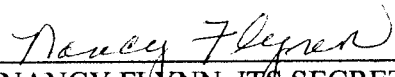
singular includes the plural, and each gender, whether masculine, feminine or neuter, includes each other gender, as the context requires.

21.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project in accordance with Alabama law. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof

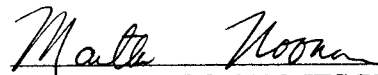
21.5 Exhibit. Exhibit "A" attached hereto is an integral part of this Declaration.

IN WITNESS WHEREOF, the Declarant has hereunto caused these presents to be executed by its duly authorized Managers hereunto appearing the day and year first above written.

VICTORIA PLACE OWNERS'
ASSOCIATION, INC.


BY: NANCY FLYNN, ITS SECRETARY

ATTESTED:


BY: MARTHA NOONAN, ITS PRESIDENT

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, a Notary Public, in and for said County in said State, hereby certify that Nancy Flynn, whose name as Secretary, of Victoria Place Owners' Association, Inc., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said non-profit corporation on the day the same bears date.

Given under my hand and seal on this the 6th day of November, 2013.

Nancy H Wood
Notary Public

My Commission Expires: My Commission Expires 12-2-2014

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, a Notary Public, in and for said County in said State, hereby certify that Martha Noonan, whose name as President, of Victoria Place Owners' Association, Inc., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said non-profit corporation on the day the same bears date.

Given under my hand and seal on this the 6th day of November, 2013.

Nancy H Wood
Notary Public

My Commission Expires: My Commission Expires 12-2-2014

This Instrument Prepared By:
Daniel H. Craven, P.C.
Post Office Drawer 4489
Gulf Shores, Alabama 36547
Voice: 251-968-8170
Fax: 251-968-4837

EXHIBIT A

To the extent that this Exhibit A does not conflict with this Amended and Restated Declaration of Condominium of Victoria Place, A Condominium, this Exhibit A adopts all previously recorded drawings, plats and plans of the condominium development as recorded in the records of the Office of the Judge of Probate, Baldwin County, Alabama.