STATE OF ALABAMA

COUNTY OF BALDWIN

STATE OF ALABAMA,
BALDWIN COUNTY
I certify that this instrument was filed on
SEP 26 1983
and that no tax was collected. Recorded in
Book 44
Page 1151-1244
Judge of Probate
Index $

DECLARATION OF CONDOMINIUM

OF BAY VILLAGE, A CONDOMINIUM

This is a declaration of condominium made by Bay Village Partnership, an Alabama General Partnership (hereinafter sometimes referred to as "Developer"), for itself, its successors, grantees and assigns.

WITNESSETH:

WHEREAS, Developer is the owner, in fee simple, of that certain real property located in the County of Baldwin, State of Alabama, which is more particularly described on that certain document, which is attached hereto, made a part hereof and identified as Exhibit "A".

WHEREAS, Developer proposes to establish a condominium which shall be known as "Bay Village, a Condominium", which shall consist of 26 units, together with the access, parking and appurtenant facilities hereinafter described; and

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

WHEREAS, it is the intent of the Developer that should all or a portion of the property described in Exhibit "B" hereto be submitted to the terms of this declaration by

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amendment or amendments hereto, as hereinafter provided, such property shall be operated and administered as condominium property under the terms and conditions of this declaration; and

WHEREAS, Developer proposes to establish by this declaration a plan for the individual ownership of certain areas or spaces and certain personal property, which areas or spaces and personal property are hereinafter defined and referred to as the "private elements" or "unit" and, in addition thereto, for the co-ownership by the owners as owners in common, of all of the remaining real and personal property, which is hereinafter referred to as the "common elements".

NOW, THEREFORE, the Developer hereby makes the following declaration of condominium as to the divisions, covenants, restrictions, limitations, conditions and uses to which the above described real property and improvements thereon may be put, hereby specifying that said declaration shall constitute covenants to run with the land and shall be binding upon Developer, its successors and assigns, and upon all subsequent owners of all or any part of said real property and its improvements, together with their heirs, successors or assigns:

1. <u>CONDOMINIUM OWNERSHIP ACT</u>: The purpose of this Declaration of Condominium is to submit the above described property and the improvements constructed thereon or to be constructed thereon to the condominium form of ownership and use in the manner provided for in the <u>Code of Alabama, 1975</u>, Sections 35-8-1 through 35-8-22 (hereinafter referred to as "Condominium Ownership Act").

2. <u>NAME</u>: The name by which this condominium shall be known and identified is "Bay Village, a Condominium".

3. <u>LEGAL DESCRIPTION</u>: The real property located in the County of Baldwin, State of Alabama and more particularly described in Exhibit "A" hereto is hereby submitted to condominium ownership.

4. <u>DEFINITIONS</u>: The terms used in this Declaration of Condominium and the By-Laws of the Association shall have the meaning stated in the Condominium Ownership Act as said Act is written as of the date hereof and as follows:

a. <u>ASSOCIATION</u>: Association shall mean and refer to Bay Village Homeowners' Association, Inc. and its successors and as the association of unit owners referred to in the Condominium Ownership Act.

b. <u>UNIT OWNER</u>: Unit owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple interest to any unit which is a part of the properties and shall exclude those having such interest merely as security for the performance of an obligation.

c. <u>PROPERTIES</u>: Properties shall mean and refer to the hereinabove described real property which now constitutes the condominium known as Bay Village, a Condominium and such additions thereto as may be hereafter brought within the jurisdiction of the Association as additional condominium property in accordance with the provisions hereof.

d. <u>COMMON ELEMENTS</u>: Common elements shall mean and refer to the common areas and facilities as defined in the Condominium Ownership Act and in paragraph 8 of this Declaration of Condominium, including but not limited to, all parts of the condominium property not included within the unit boundaries as described in paragraph 6 hereof and shall include the utility spaces and the tangible personal property required for maintenance and operation of the condominium as well as the items stated in the Condominium Ownership Act.

e. <u>COMMON EXPENSES</u>: Common expenses shall mean and include those as defined in the Condominium Ownership Act and in paragraph 10 of this Declaration of Condominium, together with the expenses for which unit owners are liable to the Association, whether actual or estimated, including but not limited to, all expenses connected with the maintenance and repair of any future recreational facilities.

f. <u>UTILITY SERVICES</u>: Utility services shall include, but not be limited to, electric power, natural gas, water, garbage service and sewage disposal.

g. <u>DECLARATION</u>: Declaration shall mean and refer to this Declaration of Condominium and any amendments thereto which may be hereafter made and any Declaration of Condominium or supplemental Declaration of Condominium covering any real property which may be hereafter brought within the jurisdiction of the Association.

h. <u>UNIT</u>: Unit shall mean and refer to any individual condominium unit in Bay Village Condominium, the location of which is shown in Exhibit C hereto and as described in paragraph 6 hereof, with the exception of the common elements.

i. <u>DEVELOPER</u>: Developer shall mean and refer to Bay Village Partnership, an Alabama General Partnership, its successors and assigns.

j. <u>CONDOMINIUM DOCUMENTS</u>: Condominium documents shall mean and include this Declaration of Condominium, the By-Laws of the Association, Articles of Incorporation of the Association and any rules and regulations adopted by the Association relating to this condominium.

k. <u>FUTURE PHASES</u>: Future Phases shall mean and refer to those certain parcels or tracts of real estate described in Exhibit "B" hereto, which may subsequently be added to and made a part of the condominium properties.

5. <u>DEVELOPMENT PLANS</u>:

a. <u>PHASE I PLANS</u>: The improvements in Phase I to be located on the properties will be constructed by the Developer substantially in accordance with the plans, drawings and specifications therefor prepared for the Developer, which plans are attached hereto, made a part hereof and identified as Exhibit C (consisting of 9 pages). Page 1 of Exhibit C shows the Phase I buildings and units which buildings are numbered 1, 2 and 3, and which units are numbered 101 through 126. Pages 2 through 9 of said Exhibit C show the size, building plan, detail and layout of the standard units, which, together with the unit designations on Page 1 of Exhibit C and the graphic and narrative descriptions herein contained, are in sufficient detail to identify the common elements and private elements comprising the units to be built and bears the verified certificate of a registered architect or licensed professional engineer that said drawings show the dimensions of the units as built.

b. AMENDMENTS: This Declaration may be amended by the filing of such additional plans as may be required to sufficiently identify and describe the improvements of the condominium, including such recreational facilities as may be included therein, if any, in order to show the completion of improvements. Such identification and description and completion may be shown by a verified certificate of a registered architect or licensed professional engineer certifying that the completed improvements have been constructed substantially as herein represented or, if not so constructed, then designating the changes made and certifying that the plans theretofore filed are being filed simultaneously with such certificate, fully and accurately depicting the layout, location, numbers and dimensions of the private elements and common elements comprising the improvements as built. Such plans and certificate, or both, when signed and acknowledged by such registered architect or licensed professional engineer and by the Developer, shall constitute an amendment to this Declaration which shall not require the approval of the Association, members, lessees or mortgagees of units of the condominium, whether or not their approval is elsewhere required herein for an amendment to this Declaration, which said amendment shall be effective when the same is duly filed of record in the office of Judge of Probate of Baldwin County, Alabama.

c. EASEMENTS: Easements are reserved through the condominium property as may be required for utility services in order to adequately serve the condominium; however, such easements to a unit shall be only in accordance with the plans and specifications shown in Exhibit C hereto or as the buildings are actually constructed, unless otherwise approved in writing by the unit owner. Each unit owner shall have an easement in common with the owners of all of the units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other units and serving such unit owner's unit. Each unit shall be subject to an easement in favor of the unit owners of all of the units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other units and located in such unit. The Association shall have the right to grant permits, licenses and easements over the common areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the condominium. The Association shall have the right of access to each unit to inspect the same, remove violations of any of the provisions of any applicable condominium documents therefrom and to maintain, repair and/or replace the common elements contained therein or elsewhere in any building.

d. INCREMENTAL DEVELOPMENT PERMITTED: The Developer, at its sole discretion, may develop the condominium on an incremental basis by filing an incremental certificate of amendment to this Declaration at the time of or at any time prior to the recordation of the first conveyance of a unit in the condominium.

e. BUILDINGS AND PRINCIPAL MATERIALS: The buildings to be constructed upon the real property include and will be limited to the buildings described in Exhibit "C" hereto. The condominium will also include access areas, storage areas and parking spaces. Each unit will be equipped with a dishwasher, range, oven and garbage disposal. Each unit shall be supplied with water, gas (at option of Developer), electricity, sewer lines, central air conditioning and heating systems and a hot water heater.

6. <u>INDIVIDUAL UNITS</u>: The description and location of particular units and appurtenances thereto a[illegible] be determined with the aid of Exhibit "C" hereto and as set forth immediately below:

a. <u>UNITS NUMBERED</u>: Each individual unit is assigned a number as is indicated on Exhibit "C" hereto.

b. <u>UNIT BOUNDARIES</u>: Each unit shall include that part of the building containing such unit which lies within the boundaries of such unit, which boundaries shall be determined in the following manner:

(1) <u>HORIZONTAL BOUNDARIES</u>: The upper and lower boundaries of each unit shall be:

(a) <u>Upper Boundary</u>: The plane of the undersurfaces of the roof rafters; and

(b) <u>Lower Boundary</u>: The lower surface of the lower floor slab.

(2) <u>VERTICAL BOUNDARIES</u>: The vertical boundaries of each unit shall be the plane of the outside surfaces of the studs which are the component parts of the exterior walls of the building and shall be the plane of the inside surfaces of the studs which are the component parts of the interior walls separating one unit from other units.

c. <u>CHANGES</u>: The Developer reserves the right to change the interior design and arrangement of all units owned by the Developer. The Developer further reserves the right to alter the boundaries between units and any such alterations shall be reflected by an amendment of this Declaration which may be executed by Developer alone in accordance with the provisions of paragraph 5b hereof; however, except as provided in paragraph 27 hereof, no such alteration of boundaries shall increase or decrease the number of units, alter the percentage or percentages of undivided interest of any such unit or units so altered without compliance with paragraph 26 of this Declaration.

d. <u>PRIVATE ELEMENTS</u>: The private elements of each unit shall consist of the following:

(1) The air space in the area of the building lying within the unit boundaries; and

(2) The surfacing materials and studs located inside the interior of exterior walls and the surfacing materials on the interior of interior walls separating one unit from another unit; and

(3) The structural components and surfacing materials of all interior walls located within the boundaries of the unit; and

(4) The structural components and surfacing materials of the floors and ceilings of the unit, including the surfacing materials on the slab, if any, and including the slab; and

(5) All bathtubs, toilets, sinks, ranges, refrigerators, garbage disposals, dishwashers, hot water heaters, air conditioning units (including the air conditioning wiring and piping located

outside the confines of the unit, if any), heating units (including heating, wiring and piping located outside the confines of the unit, if any), all hardware and all interior and exterior lighting fixtures, provided that said exterior lighting fixtures meter to an individual unit; and

(6) All windows, doors, window screens, all interior trim and finishing materials;

(7) The structural components and surfacing materials of all stairways in the unit; and

(8) The outside storage areas and foyers.

e. BALCONIES: All portions of the balconies of each unit shall constitute a private element and the maintenance and upkeep thereof shall be done by the unit owner.

7. LIMITED COMMON ELEMENTS: There are no limited common elements in this condominium.

8. COMMON ELEMENTS:

a. COMMON ELEMENTS DEFINED: Any right, title or interest in a unit shall automatically carry with it as an appurtenance and without the necessity of specific reference thereto, its respective undivided ownership share of the common elements and the right to use such common elements in conjunction with the owners of the other units. The common elements of the condominium will include the common areas and facilities located substantially as shown upon the plans, drawings and specifications attached as Exhibit "C" hereto or any amendments thereto as provided for herein and including the following:

(1) All of the real property described in paragraph 3 hereof; and

(2) All improvements located on the real property described in paragraph 3 hereof which are not included within the unit boundaries of the respective units; and

(3) Any utility areas and installations and all utility services which are available to more than one unit or to the common elements; and

(4) All parking areas not located within unit boundaries (even though assigned to the exclusive use of the unit), driveways and other means of ingress and egress; and

(5) All electrical apparatus, wiring, plumbing pipes and/or apparatus, and other ducts, conduits, cables, wire or pipe within the common elements and up to the exterior surface of each unit wall, but excluding the air conditioning, wiring and piping affixed to the individual air conditioning or heating units, if any, located outside the confines of a unit; and

(6) All tangible personal property required for the maintenance and operation of the condominium and for the common use and enjoyment of the unit owners; and

(7) Fences, gates or railing bordering, if any, or transversing the real property described in paragraph 3 hereof; and

(8) All pilings, columns, beams and supports of the buildings (excluding the ceiling rafters, surface of exterior walls and component parts of interior load bearing walls) and such component parts of walls separating units, roofs, floors and ceilings that are not described herein as private elements; and

(9) Lawn areas, landscaping, underground irrigation system, if any, walkways, sidewalks, woodwalks, piers, if any, curbs and steps; and

(10) All area, outdoor and exterior lights not metered to individual units and supports therefor and all entrance and related signs; and

(11) The entire underground storm drainage system; and

(12) The entire underground sewage system and sewage lift station; and

(13) All paving, lighting and other improvements located on the property or adjacent to the property described in paragraph 3 hereof which the Association has a right to use by virtue of any easement or license now or hereafter granted to the Developer or the Association; and

(14) All other parts of the condominium existing for the common use or necessary to the existence, maintenance and safety of the condominium; and

(15) All other items listed as such in the Condominium Ownership Act and located on the property described in paragraph 3 hereof.

b. EQUAL USE OF COMMON ELEMENTS: The unit owners in the aggregate shall be entitled to equal and full use and enjoyment of all of the common elements except as they may be restricted by the reasonable and uniform rules and regulations duly adopted by the Board of Directors of the Association, which usage shall always be in recognition of the mutual rights and responsibilities of each of the unit owners.

9. PERCENTAGE OF OWNERSHIP AND SHARING COMMON EXPENSES AND SURPLUS: (a) There shall be twenty-six (26) units in the condominium and the undivided interest in the common elements appurtenant to each unit shall be based on the size of each unit (gross square footage) in relation to the other units and shall be as set forth on Exhibit "D", which is attached hereto and made a part hereof, the common expenses shall be charged to and the common surplus shall be distributed among the unit owners in the same fraction or percentage.

(b) Notwithstanding anything contained in this declaration to the contrary, for a period of one year from and after the first day of the calendar month next following the date of the recording of this declaration, hereinafter referred to as the "initial period", each unit owner shall pay the assessment described in paragraph 13 hereof monthly and his proportionate share of the common expenses shall be deemed to be his respective monthly assessment, notwithstanding the fact that his proportionate share of the actual common expenses during the initial period may be greater or less than his respective monthly assessment. If the total monthly assessments payable during the initial period are greater than the actual common expenses incurred during the initial period, such excess shall thereafter be used as the Association may prescribe. If, however, the total monthly assessments payable during the initial period are less than the actual common expenses incurred during the initial period, such deficiency shall be paid solely by the Developer, it being agreed that Developer hereby guarantees the payment of all common expenses for the initial period which may be in excess of the total monthly assessments payable during such initial period.

10. <u>COMMON EXPENSES</u>: The common expenses shall include the following:

a. The cost of the operation, maintenance, repair and replacement of the common elements; and

b. The cost of the management of the condominium and the administrative costs of the Association, including professional fees and expenses; and

c. The cost of water, sewage service, if any, electricity, gas and other utilities which are not metered to individual units; and

d. The cost of labor, materials and supplies used in conjunction with the common elements; and

e. The cost of repairing damages to the common elements of the condominium property in excess of insurance coverage; and

f. The salary of any maintenance employees; and

g. The cost of premiums for fire, property, liability and other insurance as provided for herein; and

h. The cost of additions, alterations or improvements or the acquisition of additional land, leasehold interest or other possessory or use rights in lands, facilities, memberships or other interests in recreational facilities purchased, or otherwise acquired as part of the common elements for the benefit of all unit owners authorized by the vote of at least 75% of the unit owners, provided that any institutional first mortgagee holding title to a unit through foreclosure or conveyance in lieu of foreclosure shall not have to participate in such of the foregoing costs as are incurred without its written consent; and

i. The cost incurred in connection with termite and pest control; and

j. The cost incurred in maintaining the storm drainage system, (including lift station) the irrigation system, if any, fences, gates, railings, if any, and signs and all costs incurred in connection with the landscaping of the common elements; and

k. All other costs and expenses that may be duly incurred by the Association through its Board of Directors from time to time in operating, protecting, maintaining, managing and conserving the condominium property and in carrying out its duties and responsibilities as provided by the Condominium Ownership Act, the Declaration or the Articles of Incorporation of Bay Village Homeowners' Association, Inc.

11. <u>RIGHTS AND DUTIES OF OWNERS, TENANTS AND OCCUPANTS OF UNITS</u>:

a. <u>UNITS SUBJECT TO DECLARATION, BY-LAWS AND RULES AND REGULATIONS</u>: All present and future unit owners, tenants and occupants of units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws of the Association and the rules and regulations adopted by the Association, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the occupancy of any unit shall constitute an agreement that the provisions of this Declaration, the By-Laws of the Association, and the rules and regulations adopted by the Association, as they may be amended from time to time, are accepted and ratified by such owner, tenant and occupant and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit, as though such provisions were cited and stipulated at length in each and every deed, conveyance or lease thereof.

b. <u>EXCLUSIVE OWNERSHIP AND SHARE OF COMMON ELEMENTS</u>: Each unit owner shall be entitled to the exclusive ownership and possession of such unit owner's unit and its private elements and to an undivided interest in the common elements in the percentages as set forth in paragraph 9 hereof. The percentage of the undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be deemed to be conveyed, encumbered or released from liens with the unit even if such interest is not expressly mentioned or described in the conveyance or other instrument. Each unit owner may use the common elements in accordance with the purposes for which the same are intended, but without hindering or encroaching upon the lawful rights of the other unit owners.

c. <u>ENFORCEMENT</u>: The failure of any unit owner to comply strictly with the provisions of this Declaration, the By-Laws of the Association and the rules and regulations adopted by the Association shall constitute sufficient grounds for an action to recover any sums due for damages resulting therefrom and obtain objunctive relief for any or all of such failures, concurrently or successively. Such actions may be maintained by the Association on its behalf or on behalf of the unit owners aggrieved. In any case of flagrant or repeated violations by a unit owner, he may be required by the Association to give sufficient surety or sureties for his future compliance with the provisions of this Declaration, the By-Laws of the Association and the rules and regulations adopted by the Association. Nothing herein contained shall prevent, in a proper case, an independent action by an aggrieved unit owner or holder of a lien on such unit for such relief.

12. MAINTENANCE: The responsibility for the maintenance of the condominium property shall be as follows:

a. MAINTENANCE BY THE ASSOCIATION: The Association shall maintain, repair and replace at its expense all improvements which constitute the common elements, including but not limited to, all portions of a unit building which are common elements. Any incidental damage caused to a unit by the failure or defect of a portion of a common element or by any maintenance, repair or replacement thereof shall be promptly repaired at the expense of the Association.

b. REPAIRS BY THE UNIT OWNER: The unit owner shall maintain, repair, and replace at such unit owner's expense all private elements of such unit owner's unit and such shall be accomplished without disturbing the rights of the other unit owners. A unit owner may not repair, replace, paint or otherwise decorate or change the appearance of any portion of the exterior of the building in which his unit is located in any manner other than as such portion or portions of the exterior appeared as originally constructed and finished without the prior written approval of the Board of Directors of the Association. The unit owner shall promptly report to the Association any defect or need for repairs which the Association has the responsibility for remedying.

c. <u>ALTERATIONS AND IMPROVEMENTS OF UNIT BUILDINGS</u>: Except as provided in paragraph 6c hereof, neither a unit owner nor the Association shall make any alterations in a unit or unit building or remove any portion thereof or make any additions thereto or do any work of any nature whatsoever which would jeopardize the safety or soundness of such unit or unit building or impair any easement without first obtaining the approval in writing of the unit owners of all of the other units in the unit building concerned and the approval of the Board of Directors of the Association. The initial expense of any such alteration or improvement shall be borne by the party or parties seeking such alteration or improvement. When necessary, any alterations or improvements so made shall be reflected in an amendment to this Declaration which may be executed by the President of the Association, notwithstanding the procedures for amendment described in paragraph 23 of this Declaration. Such amendment shall state that it is being made pursuant to the provisions of paragraph 12c of this Declaration.

d. <u>ALTERATIONS AND IMPROVEMENTS OF COMMON ELEMENTS</u>: Except as provided in paragraph 12c above, after the completion of the improvements included in the common elements which are contemplated by this Declaration, there shall be no alterations or further improvements of the common elements without prior approval in writing of at least 75% of the votes of the unit owners; however, any alterations or improvements of the common elements bearing the approval in writing of unit owners entitled to cast at least 51% of the votes in the Association and which does not prejudice the rights of any owners not consenting, may be done if the owners who do not approve are relieved from the initial costs thereof. Where necessary, any alterations or improvements so made shall be reflected in an amendment to this Declaration which may be executed by the President of the Association, notwithstanding the procedure for amendment described in paragraph 23 of this Declaration. Such amendment shall state that it is being made pursuant to the provisions of paragraph 12d of this Declaration.

13. <u>ASSESSMENTS</u>: The making and collecting of assessments against unit owners for common expenses shall be made pursuant to the By-Laws of the Association and subject to the following provisions:

a. <u>SHARE OF COMMON EXPENSES</u>: As set out in paragraph 9 hereof, each unit owner shall be liable for a proportionate share of the common expenses and shall share in any common surplus in the same fraction.

b. <u>INTEREST, APPLICATION OF PAYMENTS</u>: Assessments, and installments thereof, paid on or before fifteen (15) days after the date when due shall not bear interest; however, all sums not paid on or before fifteen (15) days after the date when due shall bear interest at the rate of twelve (12%) percent per annum from the due date until paid. All payments upon account shall be applied first to the interest then due and the balance, if any, to the assessment payment first due.

c. <u>LIENS FOR ASSESSMENTS</u>: The Association shall have a lien upon each unit for any unpaid charge or assessment duly made by the Association for a share of the common expenses or otherwise, together with interest thereon as set out in the preceding sub-paragraph, together with all costs of the Association in establishing or enforcing such lien, including a reasonable attorney's fee. Any such lien shall be effective upon recordation in the records of the office of the Judge of Probate of Baldwin County, Alabama of a claim of lien signed and verified by an officer or agent of the Association, stating the description of the unit, the name of the record owner, the amount due and the date when such charge or assessment was due.

d. <u>ENFORCEMENT OF LIEN</u>: Such lien may be foreclosed by suit brought in the name of the Association or in the same manner as the foreclosure of a mortgage on real property without the benefit of a power of sale provision. In any suit for the foreclosure of such lien, the Association shall be entitled to payment of reasonable rentals from the owner of the unit from the date of the completion of such foreclosure proceeding and shall be entitled to the appointment of a receiver to collect the same, without notice to the owner of such unit. The Association shall also have a lien for such advances of taxes and other payments which may be advanced or paid by the Association in order to preserve and protect its lien for assessment. The Association shall further be entitled to interest at the rate of twelve (12%) percent per annum on any such advances made for such purposes. The lien for such advances shall be effective upon the recordation of a claim of lien in the form described in this paragraph and such lien may be foreclosed as described in this paragraph or brought in conjunction with any suit to foreclose a lien for an unpaid assessment.

e. PRIORITY OF ASSOCIATION'S LIEN: The lien granted to the Association shall be prior to all other liens, except (i) tax liens on the unit; (ii) any mortgage lien of record; and (iii) any other lien recorded prior to the time of recording of the claim of the Association's lien. If the holder of a first lien or other purchaser of a unit obtains title to the unit as a result of the foreclosure or enforcement of a prior lien, such acquirer of title, his successors and assigns, shall not be liable for the payment of such foreclosed unit owner's share of common expenses or other assessments by the Association pertaining to such unit or chargeable to the former unit owner which became due prior to the acquisition to title of such unit as a result of such foreclosure or enforcement. Such unpaid share of common expenses or other assessments shall be deemed to be common expenses collected from all of the remaining unit owners, excluding such acquirer, his successors and assigns.

f. NO EXEMPTION FROM ASSESSMENT: No owner of a unit may exempt himself from liability for contribution toward the common expenses by waiver of the use and enjoyment of any of the common elements or by the abandonment of his unit.

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

a. NAME: The name of the Association shall be Bay Village Homeowners' Association, Inc.

b. POWERS: The powers and duties of the Association shall include those set forth in the Condominium Ownership Act, this Declaration, the Articles of Incorporation of such Association, the By-Laws of such Association and the corporate laws of the State of Alabama and shall also include the power to purchase any unit or units of Bay Village Condominiums.

c. MEMBERS: The members of the Association shall consist of all of the unit owners. Any change of membership in the Association shall be established by the recording in the records of the office of the Judge of Probate of Baldwin County, Alabama of a deed or other instrument establishing fee simple title to a unit and the delivery to the Association of a photocopy or the original of such recorded instrument which shows the recording references thereof and the Probate Court recordation stamp. Upon receipt by the Association of such photocopy or original, the grantee designated in such instrument shall thereby become a member of the Association and the membership of the prior unit owner shall be thereby terminated.

d. VOTING RIGHTS: Each unit owner shall have a vote equal to the undivided interest in the common elements attributable to the unit owned that is set out in paragraph 9 hereof. The vote for a unit shall be cast by the unit owner thereof, the owner of a possessory interest in such unit other than a leasehold interest, in the case of a corporate unit owner, by an officer or employee thereof or, in the case of a partnership unit owner, by a partner or employee thereof. It is expressly understood that a lessee of a unit shall have no vote and shall not be entitled to cast the vote of the unit owner of the leased unit. Owners of more than one unit shall be entitled to vote for each unit owned; however, if the Association is the owner of a unit, it shall not have any voting rights for such unit or units owned.

e. DESIGNATION OF VOTING REPRESENTATIVE: In the event that a unit is owned by one person, his right to vote shall be established by the record title to his unit. If a unit is owned by more than one person, the person entitled to cast the vote for the unit shall be designated by a certificate signed by all of the record owners of such unit and filed with the Secretary-Treasurer of the Association. If a unit is owned by a corporation, partnership or limited partnership, the officer, partner, employee or individual entitled to cast a vote for the unit shall be designated by a certificate of appointment signed by the President or Vice-President and attested by the Secretary or Assistant Secretary (in the case of a corporation) or by a General Partner (in the case of a partnership or limited partnership), which certificate shall be filed with the Secretary-Treasurer of the Association. If such a certificate is not on file with the Secretary-Treasurer of the Association for a unit owned by more than one person or by a corporation, partnership or limited partnership, the vote of the unit concerned shall not be considered in determining the requirement for a quorum nor for any purpose requiring the approval of the person entitled to cast the vote for the unit. Such certificate shall be valid until revoked in writing or until a change in the ownership of the unit concerned is effected. A certificate designating the person entitled to cast the vote of a unit may be revoked in writing by any unit owner thereof at any time.

f. APPROVAL OR DISAPPROVAL BY UNIT OWNERS: Whenever the approval or disapproval of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such approval or disapproval shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of all record owners is specifically required by this Declaration.

g. RESTRAINT UPON ASSIGNMENTS, SHARES AND ASSETS: The share of a unit owner in the surplus funds and in the assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the unit.

h. BOARD OF DIRECTORS: The affairs of the Association shall be conducted by a Board of not less than three (3) nor more than nine (9) Directors, whose number and selection shall be designated in the manner provided by the By-Laws.

i. INDEMNIFICATION: All directors and officers of the Association shall be indemnified by the Association against all expenses and liabilities or any settlement thereof, including attorney's fees reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which he may be a party or to which he may become involved by reason of his being or having been a director or officer of the Association, regardless of whether or not he is a director or officer at the time such expenses are incurred, except in such cases wherein a director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. In the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

j. LIMITATION OF LIABILITY: Notwithstanding the Association's responsibility to maintain and repair the common elements of the condominium property, the Association shall not be liable for injury or damage caused by a latent condition of the common elements nor for any injury or damage caused by the private elements of any of the unit owners.

k. BY-LAWS: A copy of the initial By-Laws of the Association is attached hereto, made a part hereof and identified as Exhibit E.

l. AGENT TO RECEIVE PROCESS: The name and address of the person to receive service of process for the Association shall be Charles C. Vaughan, 3632-B Dauphin Street, Mobile, Alabama, 36608.

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

a. AUTHORITY TO PURCHASE: All insurance policies upon the condominium property shall be purchased by the Association in the name of the Association as Trustee for each of the unit owners in the percentages of ownership set forth in paragraph 9 of this Declaration and their respective mortgagees as their respective interest may appear, and provision shall be made for the issuance of certificates of mortgagee loss payee endorsements to the mortgagees of unit owners. Such policies shall be deposited with the Association. Unit owners may obtain additional insurance coverage at their own expense upon their own personal property and for such other coverage, including personal liability, as they may desire.

b. <u>TYPES OF COVERAGE</u>:

(1) <u>CASUALTY</u>: All buildings and improvements upon the land and all personal property comprising the condominium property shall be insured with a single insurance agent, if possible, in an amount sufficient to avoid application of a co-insurance clause for not more than the maximun insurable replacement value, excluding foundation and excavation costs, as determined annually by the Board of Directors. Such coverage shall afford protection against (i) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; (ii) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land described in paragraph 3 hereof, including but not limited to, vandalism, malicious mischief and windstorm; and (iii) flood coverage;

(2) <u>PUBLIC LIABILITY</u>: Public liability coverage in such amount and in such form as shall be required by the Board of Directors of the Association to protect the Association and the owners of all units. Such policy shall contain a

"severability of interest" endorsement which shall preclude the insurer from denying the claim of a condominium unit owner because of any negligent act or acts of the Association or other unit owners; and

(3) <u>WORKMEN'S COMPENSATION</u>: Workmen's compensation coverage, if required, to meet the requirements of the laws of the State of Alabama for any employees of the Association shall be obtained; and

(4) <u>OTHER INSURANCE</u>: Other insurance coverage, other than title insurance, shall be obtained as the Board of Directors of the Association, in its sole discretion, may determine from time to time to be in the best interest of the Association or as the unit owners of all of the units may request or as commercial institution lenders may reasonably require so long as such lender is the holder of a mortgage or vendor's lien on any unit.

c. <u>PARTICULAR ENDORSEMENTS AND PROVISIONS</u>:

(1) All liability insurance maintained by the Association shall contain cross liability endorsements to cover liability of all unit owners as a group to each single unit owner; and

(2) All policies shall provide that the liability of the insurer thereunder shall not be affected by and that the insurer shall not claim any right of setoff, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any unit owner; and

(3) No policy shall contain a 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 holding under any of them; and

(4) All policies shall provide that such policy may not be cancelled (whether or not requested by the Association) without requiring the insurer to give at least thirty (30) days' prior written notice thereof to the Association, all of the fee simple title unit owners and every other person holding an interest in any unit who shall have requested such notice of the insurer; and

(5) All policies shall contain a waiver by the insurer of any right of subrogation to any right of the Association against either the unit owner or the lessee of any of the units; and

(6) All policies shall contain a standard mortgagee clause which shall (i) provide that any reference to a mortgagee in such a policy shall mean and include all holders of mortgages on any unit, whether or not named in such policy; (ii) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Association, unit owners or any persons holding under any of them; and (iii) waive any provision invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or

vacancy, or any requirement that the mortgagee pay any premium thereon and any contribution clause.

d. INSURANCE COSTS SHALL BE A COMMON EXPENSE: All insurance coverage authorized to be purchased by this document shall be purchased by the Association for itself and for the benefit of the unit owners of all of the units in the condominium. The costs of obtaining such insurance coverage is to be a common expense together with any other fees and expenses incurred which may be necessary or incidental to carrying out the provisions hereof.

e. INSURANCE TRUSTEE; SHARES OF PROCEEDS: All insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and their respective mortgagees, as their interest may appear, and shall provide that all proceeds covering casualty losses shall be paid to the Association, as Trustee, for each of the unit owners and their respective mortgagees in the percentages established by the Declaration, which said Association, for the purposes of these provisions, is herein referred to as the "Insurance Trustee". The duty of the Insurance Trustee shall be to receive such proceeds as they are paid and hold the same, in trust, for the purposes elsewhere stated herein and for the benefit of the unit owners and their respective mortgagees, as follows:

(1) COMMON ELEMENTS: Proceeds on account of damage to the common elements shall be held for the benefit of all of the unit owners, with each undivided share for each unit owner being the same as his percentage of the undivided interest of the unit owner in the common elements; and

(2) UNITS: Proceeds on account of damage to units shall be held for the unit owners of damaged units in porportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Association; and

(3) MORTGAGEE: In the event that a mortgagee endorsement has been issued for a unit, the share of the unit owner shall be held, in trust, for the mortgagee and the unit owner, as their respective interest may appear.

f. DISTRIBUTION OF PROCEEDS: If the damage for which the proceeds are paid can be repaired, reconstructed or replaced, the proceeds shall be used to defray the cost thereof as elsewhere herein provided. Any proceeds remaining after defraying such cost shall be distributed:

(1) to the Association for the common elements; and

(2) to the beneficial unit owners subject to the provisions of subparagraph 15h hereof for private elements.

g. ASSOCIATION AS AGENT: The Association is hereby declared to be and is hereby appointed the authorized agent for all owners of all units for the purpose of negotiating and agreeing to a settlement as to the value and extent of any loss which may be covered under any policy of insurance purchased by the Association or for the purpose of instituting suit on a policy and is granted full right and authority to execute a release of liability arising out of any occurrence covered by any policy or policies of insurance resulting in loss of or damage to insured property.

h. PAYMENT TO MORTGAGEE: Where any insurance proceeds are paid to the Insurance Trustee for any casualty loss, the holder or holders of any mortgage or mortgages encumbering a unit shall not have the right to determine or participate in the determination of repair, reconstruction or replacement of any loss or damage and shall not have the right to apply insurance proceeds to the reduction of any mortgage or mortgages unless such insurance proceeds represent a distribution to the unit owner or unit owners of any unit or units and their respective mortgagees after such insurance proceeds have been first applied to the repair, replacement or reconstruction of any loss or damage or unless such casualty insurance proceeds are authorized to be distributed to the unit owner or unit owners of any unit or units and their respective mortgagee or mortgagees by reason of loss of or damage to personal property constituting a part of the common elements for which a determination has been made not to repair, replace or reconstruct such personal property.

i. PAYMENT OF INSURANCE PROCEEDS FOR PERSONAL PROPERTY: In the event of the loss of or damage to personal property constituting a portion of the common elements and in the further event that the Board of Directors determines not to repair, replace or reconstruct such personal property as may be lost or damaged, then the insurance proceeds shall be paid to all of the unit owners of all units and their respective mortgagee or mortgagees, as their respective interests may appear, in the manner and proportions hereinbefore provided for the distribution of excess insurance proceeds.

16. <u>RECONSTRUCTION OR REPAIR AFTER CASUALTY</u>: In the event of the damage or destruction of all or a part of the condominium property, unless it be determined by the written assent of not less than 67 percent of the unit owners and not less than 67 percent of all record holders of liens on the units not to repair, replace or reconstruct such damaged or destroyed property, the following provisions shall apply:

a. <u>RECONSTRUCTION OR REPAIR</u>: If any part of the condominium property shall be damaged by casualty, including all portions of the common elements and private elements, it shall be reconstructed, replaced or repaired. Any such reconstruction, replacement or repair must be performed substantially in accordance with the plans and specifications for the original buildings or as the building or buildings were last constructed or remodeled or according to plans which shall be approved by the Board of Directors of the Association, which such approval shall not be unreasonably withheld.

b. <u>RESPONSIBILITY FOR REPAIRS</u>: If the damage is only to those parts of the unit for which the responsibility for maintenance and repair is that of the unit owner, then the unit owner shall be responsible for the reconstruction and repair of the damage. In all other instances, the responsibility for reconstruction, replacement and repair after casualties shall be that of the Association.

c. <u>ESTIMATES OF COSTS</u>: The Association shall, immediately after a casualty causing damage to property for which the Association has responsibility of maintenance and repair, obtain a reliable and detailed estimate of the cost to reconstruct, repair or replace in order to restore the damage property to a condition at least as good as it was before the casualty.

d. <u>ASSESSMENTS</u>: If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction, replacement or repair by the Association, assessments, hereinafter referred to as casualty assessments, shall be made against the unit owners who own the damaged property or in the event of damage to common elements, against all unit owners in sufficient amounts to provide funds to pay such estimated costs. If at any time during the reconstruction, replacement or repair or upon completion of such reconstruction, replacement or repair, the funds for the payment of the costs thereof are insufficient, casualty assessments shall be made against the unit owners who own the damaged property or in the event of damage to common elements, against all unit owners in sufficient amounts to provide funds for the payment of such costs. Such casualty assessments against unit owners for the reconstruction, replacement or repair of damages to units shall be in proportion to the cost of the reconstruction, replacement or repair of their respective units. Such casualty assessments for the reconstruction, replacement or repair of damaged common elements shall be in proportion to the unit owner's share in the common elements.

e. <u>CONSTRUCTION FUNDS</u>: Funds for the payment of costs of reconstruction, replacement or repair after a casualty for which the Association is responsible shall consist of the proceeds of insurance and funds collected by the Association from casualty assessments. The proceeds of insurance collected on account of a casualty and the sums deposited with the Association from collection of casualty assessments against unit owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the following manner:

(1) UNIT OWNER: The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the unit owner shall be paid by the Insurance Trustee to the unit owner or, if there is a mortgagee endorsement, then to the unit owner and the mortgagee jointly who shall use such proceeds for the reconstruction, replacement or repair of the unit.

(2) ASSOCIATION -- LESSER DAMAGE: If the amount of the estimated cost of reconstruction, replacement or repair which is the responsibility of the Association is less than the total of the annual assessments for recurring common expenses to be paid during the year in which the casualty occurs, then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors of the Association; however, upon request to the Insurance Trustee by a mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such funds shall be disbursed in the manner hereafter provided for the reconstruction, replacement or repair of major damage.

(3) ASSOCIATION -- MAJOR DAMAGE: If the amount of the estimated cost of reconstruction, replacement or repair which is the responsibility of the Association is more than the total of the annual assessments for recurring common expenses

to be paid during the year in which the casualty occurs, then the construction funds shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon the approval of a registered architect qualified to practice in Alabama employed by the Association to supervise the work.

(4) <u>SURPLUS</u>: It shall be presumed that the first monies disbursed in payment of the cost for reconstruction, replacement or repair shall be from insurance proceeds and, if there is a balance in the construction fund after payment of all costs of reconstruction, replacement or repair for which the fund was established, such balance shall be distributed to the beneficial unit owners of the fund in the manner elsewhere provided for in this Declaration.

17. <u>RESTRICTION UPON USE</u>:

a. <u>IN GENERAL</u>: No unit owner, tenant or other occupant of a condominium unit shall:

(1) use the unit for other than single family residence purposes; or

(2) paint or otherwise change the appearance of any exterior wall, door, window, terrace, balcony or any exterior surface; plant any planting outside of a unit; enclose any terrace or balcony with screen, glass or other material; erect any exterior lights or signs; place any signs in windows; erect or attach any structures or fixtures to any portion of the common elements; nor make any structural additions or alterations

(except within the unit) to any unit or to any portion of the common elements; nor any of the foregoing without the prior written consent of the Board of Directors of the Association. An owner may fasten light fixtures, shelving, pictures, mirrors, objects d'art, curtain rods and similar household items to the interior wall of a unit provided they may be removed without substantial damage to the wall structures; and

(3) permit loud and objectional noises or obnoxious odors to emanate from the unit, from boats or from vehicles which may constitute a nuisance to the occupants of other units; and

(4) make any use of a unit which violates any laws, ordinances or regulations of any governmental body or governmental agency; and

(5) fail to conform to and abide by the By-Laws and the rules and regulations of the Association with regard to the use of the units and the common elements which may be adopted from time to time by the Board of Directors of the Association. The Board of Directors or its designated agent shall have the right to enter any condominium unit at any reasonable time after notice thereof to determine compliance with the Condominium Ownership Act, this Declaration, By-Laws or rules and regulations of the Association; and

(6) erect, construct or maintain any wire, radio, television or other type antennas, garbage or refuse receptacle, other equipment or other structures on the exterior of the building or on or in any of the common elements except with the

written consent of the Board of Directors of the Association; and

(7) permit or suffer anything to be done, constructed or kept in his condominium unit or in the common elements which will increase insurance rates on any unit or on the common elements;

(8) commit or permit any nuisance or illegal act in his unit or in or on the common elements; and

(9) divide or subdivide a unit into a smaller unit or units than as such unit is shown in Exhibit "C" hereto; however, an entire unit may be combined with an entire adjacent unit and occupied as one unit if both units are owned by the same unit owner; and

(10) obstruct any common way of ingress or egress to any other unit or units or the common elements; and

(11) place or allow anything to remain in or on the common elements which would be unsightly or hazardous; and

(12) allow any rubbish, refuse, garbage or trash to accumulate in places other than in receptacles provided therefor. Each unit and the common elements shall at all times be kept in a clean and sanitary condition. Garbage shall be disposed of through the kitchen garbage disposal so far as possible and the remainder, along with bottles, cans and other trash shall be placed in waterproof bags or similar containers before placed in the appropriate receptacles; and

(13) allow any fire or health hazard to exist; and

(14) make use of the common elements in such a manner as to abridge the equal rights of the other unit owners to their use and enjoyment; and

(15) lease less than an entire unit; and

(16) permit a boat or boat trailer, camper, motor home or any other recreational vehicle, apparatus or equipment to be kept or maintained in the parking spaces constituting a portion of the common elements, except in any area which shall be maintained for such purposes, if any, or permit such parking spaces to be used for the storage of such equipment without the written approval of the Board of Directors of the Association. Any boat or other equipment which does not have wheels that is kept or maintained in parking spaces provided by the Association for such purposes shall be on trailers at all times.

18. RULES AND REGULATIONS: Reasonable rules and regulations concerning the use of the condominium property may be made initially by the Developer and thereafter amended from time to time by the Board of Directors of the Association; however, such amendments thereto shall be approved by at least a majority of the votes of the Association before such amendment shall become effective. Unit owners not present at a meeting considering such regulations or amendments thereto may express their approval or disapproval in writing by delivering the same to the Secretary-Treasurer prior to a noticed meeting of the Association. Copies of such rules and regulations, and any amendments thereto, shall be furnished by the Association to

all unit owners and residents of the condominium upon request.

19. NOTICE OF LIEN OR SUIT:

a. NOTICE OF LIEN: A unit owner shall give notice to the Association of any lien filed against his unit, other than liens for taxes or special assessments, within five (5) days after the owner's receipt of notice thereof.

b. NOTICE OF SUIT: A unit owner shall give notice to the Association of any suit or other proceedings which may affect the title to his unit, such notice to be given within five (5) days after the unit owner's receipt of notice thereof.

c. NON-COMPLIANCE: The failure to comply with this subsection concerning liens will not affect the validity of any judicial sale.

20. COMPLIANCE AND DEFAULT: Each unit owner shall be governed by and shall comply with the terms of the condominium documents and the rules and regulations adopted pursuant thereto as they may be amended from time to time. A default shall entitle the Association and other unit owners to the following relief in addition to the remedies provided by the Condominium Ownership Act:

a. NEGLIGENCE: A unit owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, negligence or carelessness or by that of any member of his family or of his or their guests, employees, agents or lessees but only to the extent that such expense is not covered by the proceeds of insurance carried by the

Association. Such liability shall include any increase in fire insurance rates occasioned by the use, misuse, occupancy or abandonment of a unit.

b. <u>COSTS AND ATTORNEY'S FEES</u>: In any judicial proceeding arising as a result of an alleged default by a unit owner, the prevailing party shall be entitled to recover, in addition to any damages awarded, a reasonable attorney's fee.

c. <u>NO WAIVER OF RIGHTS</u>: The failure of the Association or of any unit owner to enforce any covenant, restriction or other provision of the Condominium Ownership Act, this Declaration, the By-Laws of the Association or the rules and regulations adopted by the Association shall not constitute a waiver of the right to do so thereafter.

21. <u>RIGHTS OF DEVELOPER</u>: Notwithstanding any other provision herein contained, the Developer shall have the following rights:

a. <u>RIGHT TO MANAGE, ETC.</u>: In view of Developer's financial commitment for the development of this condominium, Developer's obligation as the initial owner of a substantial number of units and the sharing in the common expenses as such unit owner and Developer's need to ensure the success of the condominium project, Developer hereby reserves unto itself, its successors and assigns, until the expiration of three (3) years from the date of the conveyance of the first Unit, until four months after 75% of the units in the condominium have been conveyed to unit purchasers, until the Developer elects to terminate its control of the condominium or at such earlier time as may be provided by law, whichever event shall occur first, the following: (i) the exclusive right to manage all of the affairs of the condominium and all decisions of the Association; and (ii) the exclusive right to elect the Directors of the Association (who need not be unit owners); and (iii) the exclusive right to amend the By-Laws of the Association. Developer may at any time prior to the expiration of said three (3) year period, terminate its management rights and responsibilities by relinquishing, in writing, control of the Association to the unit owners. During said three (3) year period, the Developer shall have, unless relinquished prior thereto, the sole and exclusive right to take all action and to do all things which it deems necessary on behalf of the Association. During said period the Developer shall pay all of the common expenses and, as reimbursement therefor and as compensation for its management services, Developer shall be entitled to receive and retain all of the assessments payable by the unit owners during said period and Developer shall have all of the rights of the Association to levy and enforce the payment of such assessments; however, Developer shall be responsible for all maintenance expenses on property chargeable to unsold units. During said period of control by the Developer, the Developer shall not be able to bind the Association either directly or indirectly, to contracts or leases (including a management contract) unless there is a right of termination in any such contract or lease, without cause, exercisable without penalty at any time after transfer of control, upon not more than ninety (90) days' notice to the other party. At the termination of said period of control by the Developer and the assumption of the operation of the Association by the members, Developer shall not be required to render an accounting of income and expenses incurred during said period, unless otherwise required by the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, Department of Housing and Urban Development, Federal Housing Association, Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs or may in the future perform functions similar to those currently performed by such entities and/or induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages on units within the condominium properties.

b. OTHER RIGHTS: It is recognized that, as of the date hereof, none of the units have been sold. The Developer expressly reserves all rights, necessary or desirable, relative to the common elements and the condominium property generally for the purpose of constructing and completing improvements and the individual units and effecting the sale or lease of all the condominium units. Until all units are sold in the condominium, Developer shall have the right to maintain one or more units for display to prospective purchasers and may exhibit such signs and sales paraphernalia as may be desirable to effect such sales.

c. RIGHT TO ASSIGN MORTGAGES. Any mortgage of any form taken by Developer in connection with the sale of a unit may be assigned by Developer at any time to any bank or other financial institution of its choosing.

d. DEVELOPER'S OBLIGATION TO PAY CERTAIN ASSESSMENTS: None of the provisions contained in this paragraph shall be construed in such a manner to relieve the Developer from any of the obligations as a unit owner to pay assessments as to each unit owned by it in accordance with the condominium documents.

22. <u>COVENANT AGAINST PARTITION</u>: There shall be no judicial or other partition of the properties or any part thereof. Neither Developer nor any person acquiring any interest in the properties or any part thereof shall seek any such partition unless the properties or any portion thereof have been removed from the provisions and effect of the Condominium Ownership Act as provided in said Act and in this Declaration.

23. <u>AMENDMENTS</u>: Except as elsewhere provided herein, this Declaration of Condominium, including exhibits hereto, and the By-Laws of Bay Village Homeowners' Association, may be amended only in the following manner:

a. <u>NOTICE</u>: Notice of the subject matter of a proposed amendment shall be included in the notice of any Association meeting at which a proposed amendment is to be considered and such notice shall be given in strict compliance with the By-Laws of Bay Village Homeowners' Association.

b. <u>AMENDMENT PROCEDURE</u>: The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescision signed and acknowledged by unit owners owning not less than 75% of the total ownership of the common elements, provided, however, that all lien holders of record have been notified by certified mail of such change, modification or rescision and an affidavit by the secretary of the Association certifying to such mailing is made a part of such instrument. Notwithstanding anything to the contrary contained herein, the provisions of paragraph

27 hereof may not be changed, modified or rescinded without the prior written consent of the Developer and, except as expressly provided for in paragraph 27, the percentage ownership of the common elements provided for in this Declaration shall not be amended or modified without the consent of all unit owners and all mortgagees. Additionally, if the Condominium Act, Declarations or the By-Laws require the consent or agreement of all unit owners or of all mortgagees for any actions specified or rescinding any provisions of this Declaration, with respect to such action, such amendment shall be signed by all unit owners or all of the mortgagees both as required by the Condominium Act, Declarations or such By-Laws. Developer shall have the authority, without the joinder or consent of any other party, including specifically but not by way of limitation, a unit owner or mortgagee of a unit to make any amendment of this Declaration necessary to clarify any apparently conflicting provisions hereof and/or to correct any mistakes or errors of a clerical nature resulting from typographical or similar errors.

c. EFFECTIVE DATE OF AMENDMENT: A copy of each amendment shall be certified by the President and the Secretary-Treasurer of the Association as having been duly adopted and shall be effective when recorded in the office of the Judge of Probate of Baldwin County, Alabama.

d. CAVEAT: Until such time as the relinquishment of rights and control by Developer takes place in accordance with the provisions of this Declaration, no amendment to this Declaration or to any future supplemental declaration shall be effective without the approval of the Veterans Administration, the Department of Housing and Urban Development or the Federal

National Mortgage Association if such approval is required by any of said agencies. Further, the condominium project may not be amended, merged or annexed with a future phase or successor condominium project without the prior written approval of the Veterans Administration, the Department of Housing and Urban Development or the Federal National Mortgage Association, if such approval is required by any of said agencies.

e. RESTRICTIONS: No amendment shall discriminate against any unit owner, any unit or groups of unit owners or units unless the unit owner so affected shall consent. No provisions relating to the undivided interest of each unit owner, the common elements, the sharing of common expenses, the rights of the Developer, the termination of the condominium or the voting rights of the members may be amended without the written consent of all persons adversely affected thereby. No amendment shall change a unit unless the unit owner of record of such unit and the holders of record of any liens thereon agree to such an amendment at the time of such amendment or in advance of such amendment. Until such time as Developer shall have conveyed title to all units in Bay Village Condominiums, no amendments to the Declaration of Condominium or the By-Laws of the Association shall be effective without its written consent.

24. EASEMENTS AND ENCROACHMENTS: Each unit owner shall have a non-exclusive perpetual easement for ingress and egress to and from his respective unit through the common elements and a perpetual easement for encroachments which may now exist or in the future exist by inaccuracies in construction or the settlement or movement of the buildings, which said encroachments shall be allowed to remain

undisturbed until they no longer exist. In the event that any building, the private elements of any unit, any adjoining unit or any adjoining common element is partially or totally destroyed as a result of fire or other casualty and subsequently rebuilt, any encroachments of part of the common elements upon any unit or the private elements of any unit upon any other unit or any portion of the common elements due to such rebuilding, such encroachments shall be permitted and valid easements for such encroachments and the maintenance thereof shall exist so long as such building and unit shall stand.

25. <u>BLANKET MORTGAGE</u>: It is hereby expressly provided that the entire condominium or some or all of the units in the condominium may be placed under a ingle or blanket mortgage upon execution thereof by the unit owners of the properties or the units covered therein. Any such mortgage shall contain a release provision by which any unit owner may obtain a release of his unit from the lien of such mortgage and obtain a satisfaction and discharge in recordable form upon payment to the holder of the mortgage of a sum equal to the proportionate share attributable to his unit of the then outstanding balance of the unpaid principal and accrued interest and any other charges then due and unpaid. Such proportionate share attributable to each unit shall be the proportion in which all unit owners whose units are then subject to the lien or mortgage own among themselves the common elements as provided in this Declaration or such other reasonable proportion as shall be specifically provided in the mortgage instrument. Such mortgage may contain provisions for converting such mortgage to individual mortgages on the individual units described therein.

26. MORTGAGES:

a. NOTICE TO MORTGAGEES OF DEFAULT BY UNIT OWNER: In the event of any default in the performance by unit owner of any of his duties or obligations under this Declaration, the By-Laws or the rules or regulations adopted by the Association, the Association shall, if such default is not cured within sixty (60) days, give notice of such default to the hereinafter described mortgage holders; however, if the default in question is a failure to pay any charges for assessments to the Association, such notice shall be given if such default is not cured within fifteen (15) days after demand thereof. The Association shall have no obligation to give any notices to or to take any other action required by this Declaration with respect to any mortgagees other than those from whom the association has received a copy of the mortgage or written notice which sets out the unit number of the mortgaged unit, the name of the mortgagor, the names and addresses of the mortgagee and the date of the mortgage with a written request from such mortgagee that they be given notice under the provisions of this paragraph. The Secretary-Treasurer of the Association shall keep a list of mortgagees which shall contain the information set out above.

b. INSPECTION OF ASSOCIATION BOOKS AND RECORDS: Any unit owner, holder of a mortgage constituting a lien on a unit, or insuror or guarantor of any first mortgage shall, upon reasonable notice delivered to the Association, and at reasonable times, be entitled to examine the books and records of the Association, which shall include current copies of the declaration, by-laws, rules, regulations, and financial statements.

c. <u>GENERAL PROTECTION OF MORTGAGE HOLDERS</u>: Unless at least-seventy-five (75%) of all of the mortgage liens on any unit or units (based upon one vote for each unit subject to a mortgage or mortgages so held) have given their prior written approval, the Association shall not be entitled to:

(1) By act or omission, abandon or terminate the condominium; or

(2) Partition or subdivide any condominium unit; or

(3) By act or omission, abandon, partition, subdivide, encumber, sell or transfer the common elements. The granting of easements for public utilities or for other purposes consistent with the intended use of the common elements by the unit owners or the Developer shall not be deemed to be a transfer within the meaning of this clause; or

(4) Use hazard insurance proceeds for losses on any condominium property (whether to units or any common elements) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in the case of substantial loss to the units and/or common elements of the condominium.

d. <u>PRIOR MORTGAGEE APPROVAL</u>: Prior approval of each institutional holder of a first mortgage or equivalent security interest on the units in the condominium property will be required for at least the following:

a. The abandonment or termination of the condominium properties, except for abandonment or termination provided by law, in the case of substantial destruction by fire or other casualty or in the case of the taking by condemnation or eminent domain; and

b. Any material amendment to the declaration or to the Articles of Incorporation of the Association or to the By-Laws of the Association, including but not limited, any amendment which would change the percentage interest of the unit owners in the project except as provided in paragraph 27 hereof; and

c. The effectuation of any decision by the Association to terminate professional management and assume self-management of the condominium properties.

e. MORTGAGEE'S RIGHTS: Any institutional holder, insurer or guarantor of a first mortgage or equivalent security interest on a unit shall, upon written request, identifying the name and address of the holder, insurer or guarantor and the unit number or address, be entitled to receive:

(i) an annual, audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association;

(ii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings;

(iii) written notice of any condemnation or casualty loss that affects either a material portion of the condominium or the unit receiving its mortgage;

(iv) written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owners' association; and

(v) written notice of any proposed action that requires the consent of a specified percentage of mortgage holders.

f. DAMAGE AND DESTRUCTION: In the event of substantial damage to or destruction of any unit or any part of the common elements, the institutional holder of any first mortgage on a unit shall be entitled to a timely written notice from the Association of any such damage or destruction.

27. ADDITIONS OF FUTURE PHASES: Developer has identified in Exhibit "B" hereto certain other parcels of real property, hereinafter referred to as "future phases", which parcels have been identified by phase numbers on said exhibit. Developer may construct on one or more of said parcels on or before five (5) years from the date of recordation of this declaration, a maximum of 135 additional residential units. By this declaration, Developer does not submit future phases to the provisions of this Declaration; however, if and when Developer should construct any such additional units, Developer shall have the right to add the same to the properties and submit the same to the provisions of this Declaration upon the following terms and conditions:

a. Any such additions shall be made by and become effective upon Developer filing in the Probate records of Baldwin County, Alabama, a supplemental declaration of condominium hereinafter referred to as "supplemental declaration". No other formality or instrument shall be required. Such a supplemental declaration shall not require the joinder or consent of the Board of Directors of the Association, the Association, any unit owner or any other third parties; however, the supplemental declaration shall require the joinder or approval of the Veterans Administration of the United States of America, the Department of Housing and Urban Development or the Federal National Mortgage Association if such joinder or approval is required by any of said agencies; and

b. Future phases may be added to the condominium properties at different times and in any order and in such locations on the parcels as may be determined by the Developer. Any improvements which may be erected in future phases will be compatible with the existing improvements in terms of architectural style, quality of construction, principal materials employed in construction and size; and

c. If Developer adds one or more future phases, as the case may be, then the percentage of ownership in the common elements allocated to each respective unit shall change and each respective unit owner's percentage sharing of the common expenses and common surplus will change as each successive phase is added. The percentage ownership in the common elements and the percentage sharing of common expenses will continue to be based on the size of each unit in relation to the other units and will be as shown on a revised Exhibit "D" to such supplemental declaration which shall be filed with the supplemental declaration at the time that each successive phase is added. Each respective unit owner's voting rights will continue to be equal to the undivided interest in the common elements attributable to such owner's unit; and

d. All covenants in the condominium declaration affecting use, occupancy and alienation of units will apply to units created within additional parcels of property which may be later added to the condominium property; and

e. Any supplemental declaration may contain such further provisions as Developer deems necessary to the properties and to effectively add a future phase to the properties; and

f. Notwithstanding anything contained herein to the contrary, Developer does not hereby commit itself to submit the property described in Exhibit "B", either in whole or in part, to the condominium form of ownership and use under the terms of this declaration and, unless submitted to the terms of this declaration under the terms of this paragraph, Developer shall have the right to develop any portion of said property in any manner and to any extent that Developer sees fit or to decline to develop said property entirely. The provisions of this paragraph should also apply to any assignee of Developer of the real property described in Exhibit "B" hereto.

28. SALES AND OTHER TRANSFERS:

a. No unit owner, other than Developer on a first time sale of a unit, shall sell, assign, convey or otherwise transfer his unit or any interest therein unless, at least ten (10) days prior to any such sale, assignment, conveyance or transfer, he gives written notice to the Board of the name and address of each proposed purchaser, assignee or transferee. The purpose of this paragraph is to make certain that any proposed purchaser, assignee or transferee is made aware of the provisions of this declaration as well as any delinquent assessments, if any, attributable to the applicable unit prior to the consummation of any such sale, assignment or transfer.

b. In the event of a resale of a unit by a unit owner, the unit owner shall furnish to a purchaser, before execution of any contract to purchase a unit or otherwise before conveyance, a copy of the Declaration, a copy of the Articles of Incorporation creating the Association, the By-Laws and a certificate containing the following:

1. A statement setting forth the amount of the current common expense assessment; and

2. A statement of any capital expenditures approved by the Association for the current and next two succeeding fiscal years; and

3. A statement of the amount of any reserves, capital expenditures and any of the proportions of those reserves designated by Association for any specific projects; and

4. The most recent balance sheet and income and expense statement of the Association, if any; and

5. The current operating budget of the Association, if any; and

6. A statement of any unsatisfied judgments against the Association and the status of any pending suits to which the Association is a party; and

7. A statement describing any insurance coverage provided by the Association.

c. The Association, within ten (10) days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable a unit owner to comply with the provisions of this paragraph. The unit owner providing a certificate pursuant to this section shall not be liable to the purchaser for any erroneous information provided by the Association and included in the certificate. Further, a unit owner is not liable to a purchaser for the failure or delay of the Association to provide the certificate in a timely manner; however, the contract to purchase shall be voidable by the purchaser until a certificate has been provided and for five (5) days thereafter or until conveyance, whichever event shall occur first.

29. <u>LEASES</u>: With the exception of a lender in possession of a condominium unit following a default in a first mortgage, foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no unit owner shall be permitted to lease his unit for transient or hotel purposes and no owner may lease less than the entire unit. No unit may be leased or rented for a period of less than ninety (90) days. Any lease agreement must be approved by the Association and shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the By-Laws of the Association and that any failure by the lessee to comply with the provisions of such documents shall be a default under the terms of the lease.

30. <u>MANAGEMENT AGREEMENT</u>: Any management agreement for the project may be terminated by the Association for cause upon thirty (30) days written notice thereof by a vote of not less than a majority of the individual unit owners, other than the Developer, within a one year period immediately following the date on which the individual unit owners, other than the Developer, assumed or acquired control of the Association and shall further be terminable without cause by a vote of not less than the majority of the individual unit owners other than the Developer, within a thirty (30) day period immediately following the date on which the individual unit owners, other than the Developer, assumed or acquired control of the Association upon not less than ninety (90) days written notice to the management agent. The term of any such agreement may not exceed one year; however, such agreement may be renewable by the parties for successive one year periods.

31. <u>FIDELITY COVERAGE</u>: The Association shall maintain adequate fidelity coverage to protect against dishonest acts by its officers, directors and employees who are responsible for handling Association funds. Such coverage shall name the Association as obligee, be written in an amount of at least 150% of the estimated operating budget, obtain waivers of any defense based upon exclusion of employees who serve without compensation and shall not be cancelled or substantially modified without at least ten days written notice to all mortgagees of record on a condominium unit. The premium for such insurance shall be a common expense.

32. <u>WORKING CAPITAL FUND</u>: The Developer shall, for the initial months of the operation of the condominium, establish and maintain a working capital fund as required by the Federal National Mortgage Association.

33. SPECIAL AMENDMENTS: Developer hereby reserves and is granted the right and the power to record a special amendment to this Declaration at any time and from time to time which amends this Declaration (a) to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, Department of Housing and Urban Development, Federal Housing Association, Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs or may in the future perform functions similar to those currently performed by such entities and/or (b) induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages on units within the condominium properties. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a special amendment on behalf of each unit owner. Each title, mortgage or other evidence of obligation or other instrument affecting a unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of any consent to the reservation of the power of the Developer to make, execute and record such special amendments. No special amendment made by Developer shall affect or impair the lien of any mortgage upon a unit or any warranties made by an owner in order to induce any of the above agencies or entities, to make, purchase, insure or guarantee such mortgage on such owner's unit.

34. TERMINATION: The condominium may be terminated in the manner provided by the Condominium Ownership Act and any amendments thereto and by this Declaration; however, in the event of such a termination, each unit shall be subject to the payment of its percentage of the common expenses as heretofore defined.

35. SEVERABILITY: If any provisions of this Declaration, Articles of Incorporation of the Association or the By-Laws of the Association or any section, paragraph, clause, phrase or word therein or the application thereof in any circumstances is held to be invalid or unenforceable by a Court of competent jurisdiction, the validity or enforceability of the remainder of such instruments shall not be affected thereby.

36. GENDER: Throughout this document, unless otherwise provided herein, the use of the masculine gender shall also be deemed to include the feminine and the neuter; the singular, the plural, and vice versa.

IN WITNESS WHEREOF, the said Bay Village Partnership, an Alabama General Partnership, has caused this Declaration to be executed by its General Partners on this the 13th day of September, 1983.

BAY VILLAGE PARTNERSHIP

By (SEAL)
CHARLES C. VAUGHAN,
Its General Partner

By (SEAL)
MERLIN C. STICKELBER,
Its General Partner

Twin City Federal Savings & Loan, an entity having a lien interest in the real property described on Exhibit A hereto, does hereby join in the execution of this declaration as required by Section 35-8-7 of the Code of Alabama, 1975, as amended.

ATTEST:

TWIN CITY FEDERAL SAVINGS & LOAN

By

Its chairman, CEO

STATE OF ALABAMA,
COUNTY OF MOBILE .

I, the undersigned Notary Public in and for said State and County, hereby certify that CHARLES C. VAUGHAN, whose name as General Partner of Bay Village Partnership, an Alabama General Partnership, 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 the instrument, he, as such General Partner and with full authority, executed the same voluntarily for and as the act of said Partnership.

Given under my hand and seal this the 13th day of September, 1983.

NOTARY PUBLIC

STATE OF ALABAMA,
COUNTY OF MOBILE .

I, the undersigned Notary Public in and for said State and County, hereby certify that MERLIN C. STICKELBER, whose name as General Partner of Bay Village Partnership, an Alabama General Partnership, 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 the instrument, he, as such General Partner and with full authority, executed the same voluntarily for and as the act of said Partnership.

Given under my hand and seal this the 13th day of September, 1983.

NOTARY PUBLIC

STATE OF LOUISIANA,
PARISH OF OUACHITA .

I, the undersigned Notary Public in and for said State and County, hereby certify that Billy R. Lewis, whose name as Chairman of the Board & Chief Executive Officer of TWIN CITY FEDERAL SAVINGS AND LOAN, a Corporation, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and seal this the 14th day of September, 1983.

NOTARY PUBLIC

NOTARY PUBLIC

EXHIBIT A

Commencing at a point on the Western right-of-way of U.S. Highway 98 (4-lane), where it is intersected by the North line of Lot 2, Louis D'Olive Estate Division, Township 5 South, Range 2 East, Baldwin County, Alabama, run South 89 degrees 55'-42" West, along said North line of Lot 2, 805.98 feet; thence run North 00 degrees 56'-45" East, 378.28 feet to the Point of Beginning of the property herein described; thence continue North 00 degrees 56'-45" East, 195.00 feet; thence run North 10 degrees 56'-06" West, 301.29 feet; thence run North 81 degrees 54'-23" West, 175.1 feet; thence run South 28 degrees 07'-22" West, 174 feet; thence run South 66 degrees 54'-02" West, 85.31 feet; thence run South 63 degrees 19'-47" East, 163.00 feet; thence run South 35 degrees 58' East, 70.44 feet; thence run South 00 degrees 56'-45" West, 195.00 feet; thence run South 89 degrees 03'-15" East, 204.00 feet to the Point of Beginning and containing 2.92 acres, more or less.

<u>EXHIBIT B</u>

PHASE II

Commencing at a point on the Western right of way of U. S. Highway 98, (4-Lane), where it is intersected by the North line of Lot 2, Louis D'Olive Estate Division, Township 5 South, Range 2 East, Baldwin County, Alabama, run South 89°-55'-42" West, along said North line of Lot 2, 1010.01 feet, thence run North 00°-56'-45" East, 256.91 feet, to the point of beginning of the property herein described, thence continue North 00°-56'-45" East, 320.00 feet, thence run North 35°-58' West, 70.44 feet, thence run North 63°-19'-47" West, 163.00 feet, thence run South 66°-54'-02" West, 84.69 feet, thence run South 61°-22'-02" West, 166.35 feet, thence run South 28°-37'-58" East, 379.98 feet, thence run South 89°-03'-15" East, 223.61 feet to the point of beginning and containing 3.012 acres, more or less.

PHASE III

Commencing at a point on the Western right of way of U. S. Highway 98, (4-Lane), where it is intersected by the North line of Lot 2, Louis D'Olive Estate Division, Township 5 South, Range 2 East, Baldwin County, Alabama, run South 89°-55'-42" West, along said North line of Lot 2, 805.98 feet to the point of beginning of the property herein described, thence continue South 89°-55'-42" West, 937.91 feet to a point on the Eastern margin of Mobile Bay, thence run North 10°-52'-32" West, along said Eastern margin of Mobile Bay, 523.11 feet, thence run North 89°-55'-42" East, 295.23 feet, thence run North 57°-56'-02" East, 98.26 feet, thence run North 61°-22'-02" East, 60.00 feet, thence run South 28°-37'-58" East, 379.98 feet, thence run South 89°-03'-15" East, 223.61 feet, thence run North 00°-56'-45" East, 125.00 feet, thence run South 89°-03'-15" East, 204.00 feet, thence run South 00°-56'-45" West, 378.28 feet to the point of beginning and containing 9.518 acres, more or less.

STATE OF ALABAMA
COUNTY OF BALDWIN

I, RICHARD J. WILLIAMS, A REGISTERED LAND SURVEYOR IN THE STATE OF ALABAMA, HEREBY
A TRUE AND CORRECT PLAT OF THE FOLLOWING DESCRIBED PROPERTY, TO WIT:

LEGAL DESCRIPTION

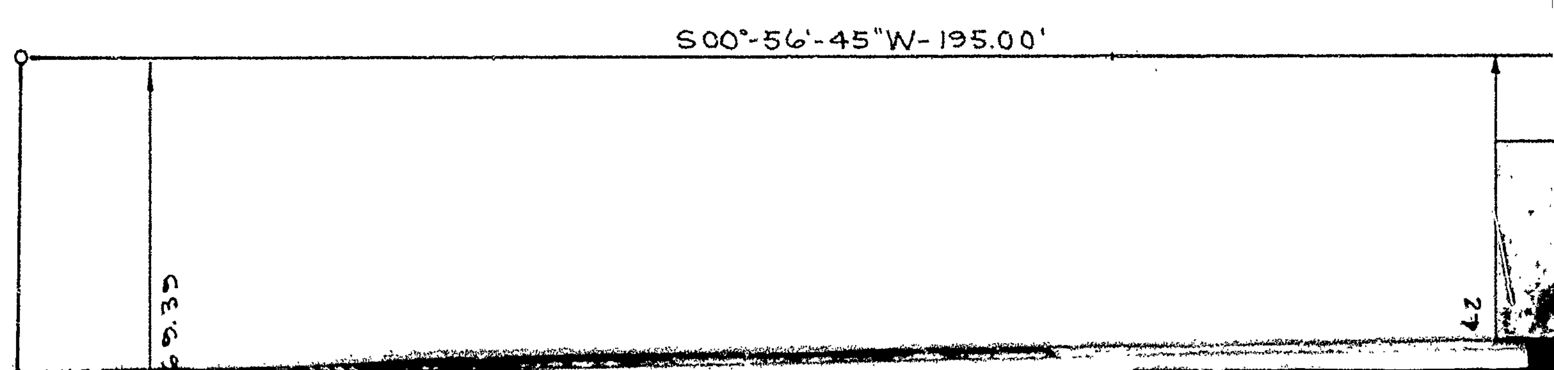
COMMENCING AT A POINT ON THE WESTERN RIGHT-OF-WAY OF U.S. HIGHWAY 98 (4-LANE), WHEF
NORTH LINE OF LOT 2, LOUIS D' OLIVE ESTATE DIVISION, TOWNSHIP 5 SOUTH, RANGE 2 EAST, B
SOUTH 89°-55'-42" WEST, ALONG SAID NORTH LINE OF LOT 2, 805.98 FEET; THENCE RUN NORT
TO THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED, THENCE CONTINUE N
THENCE RUN NORTH 10°-56'-06" WEST, 301.29 FEET, THENCE RUN NORTH 81°-54'-23" WEST, 17
SOUTH 28°-07'-22" WEST, 174 FEET; THENCE RUN SOUTH 66°-54'-02" WEST, 85.31 FEET, T
163.00 FEET; THENCE RUN SOUTH 35°-58' EAST, 70.44 FEET; THENCE RUN SOUTH 00°-56
RUN SOUTH 89°-03'-15" EAST, 204.00 FEET TO THE POINT OF BEGINNING AND CONTAINING

I FURTHER CERTIFY THAT THE BUILDINGS NOW ERECTED ON SAID LOT ARE WITHIN THE B
NO ENCROACHMENTS BY ADJOINING PROPERTY, EXCEPT AS SHOWN; THERE ARE NO RIGHT
DRIVEWAYS OVER OR ACROSS SAID LAND VISIBLE ON THE SURFACE, EXCEPT AS SHOWN; TH
PHONE WIRES (EXCLUDING WIRES WHICH SERVE THE PREMISES ONLY) OR STRUCTURES OR
POLES, ANCHORS AND GUY WIRES ON OR OVER SAID PREMISES, EXCEPT AS SHOWN;

ACCORDING TO MY SURVEY THIS, THE 6th DAY OF JUNE, 1983.

RICHARD J. WILLIAMS
ALA. REG. NO. 10675

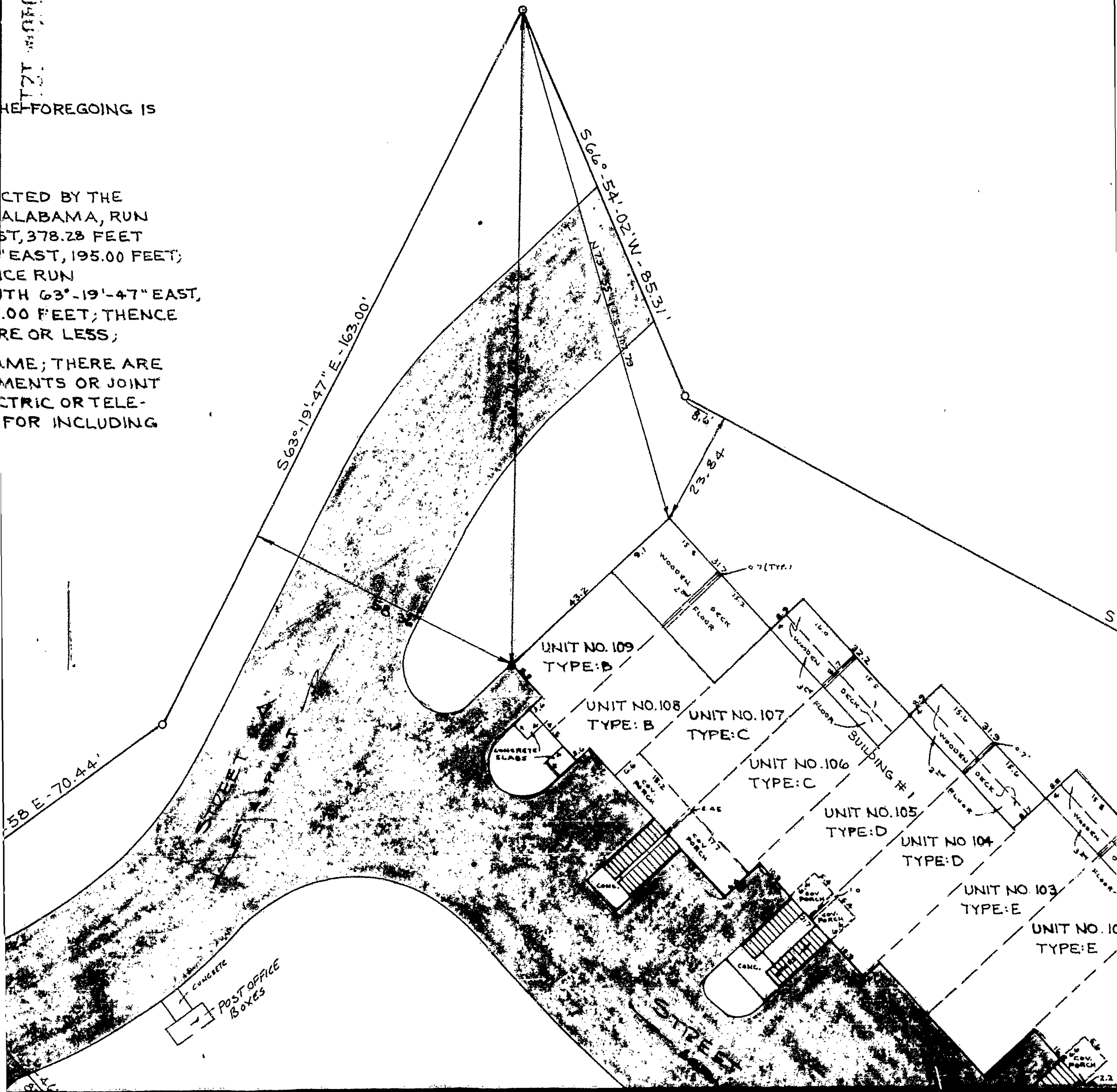
RECENT H.U.D. MAPS INDICATE THAT
PROPERTY IS LOCATED IN ZONE-V15, "
OF 100-YEAR COASTAL FLOOD WITH
CITY (WAVE ACTION); BASE FLOOD EL
TIONS AND FLOOD HAZARD FACTORS
TERMINED.



HE FOREGOING IS

CTED BY THE
ALABAMA, RUN
ST, 378.28 FEET
" EAST, 195.00 FEET;
ICE RUN
TH 63°-19'-47" EAST,
.00 FEET; THENCE
RE OR LESS;

AME; THERE ARE
MENTS OR JOINT
CTRIC OR TELE-
FOR INCLUDING



NORTH

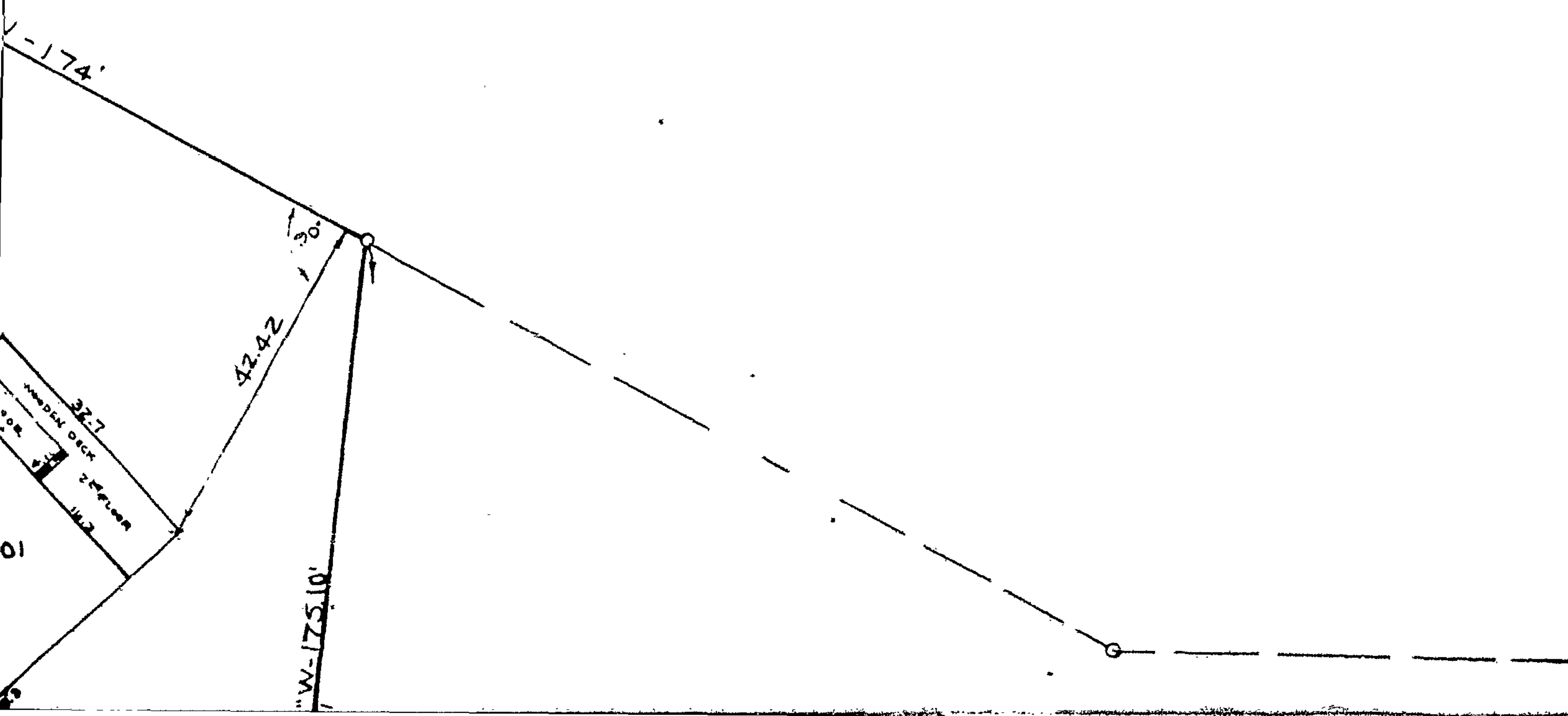
THE UNDERSIGNED, RICHARD J. WILLIAMS, HOLDING PROFESSIONAL ENGINEER REGISTRATION NO. 10178, HEREBY CERTIFIES THAT THE DRAWINGS ON WHICH THIS CERTIFICATE IS MADE, FULLY AND ACCURATELY DEPICT THE LAY-OUT, LOCATION, UNIT NUMBERS AND DIMENSIONS OF UNITS 101 THROUGH 126, INCLUSIVE OF BAY VILLAGE, A CONDOMINIUM, AS BUILT.

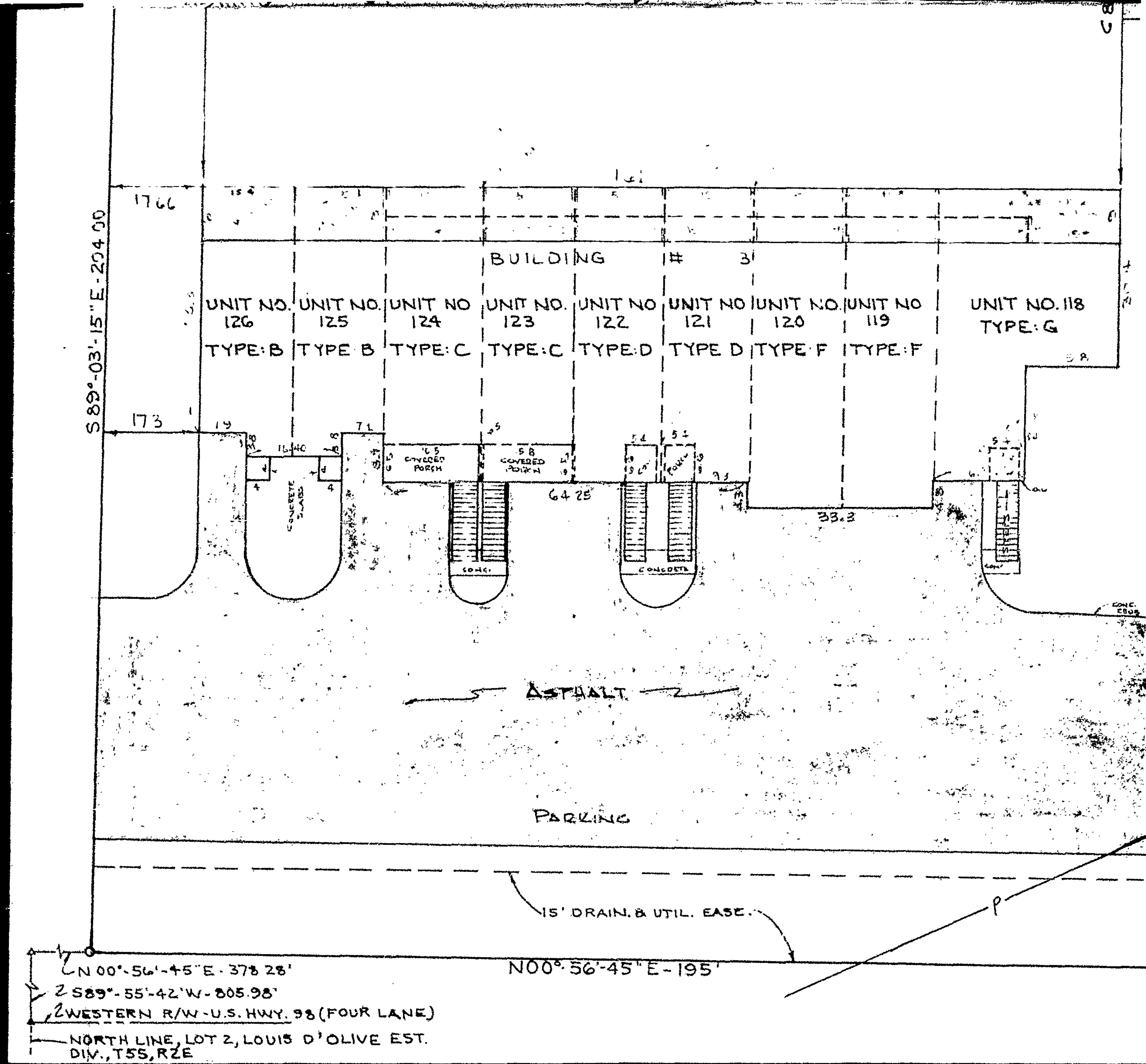
DATED THIS THE 21st DAY OF SEPTEMBER, 1983.

WILLIAM C. McCRORY
PROFESSIONAL ENGINEER
REG. NO. 10178

SUBSCRIBED AND SWORN TO BEFORE ME
THIS THE 21st DAY OF SEPTEMBER, 1983.

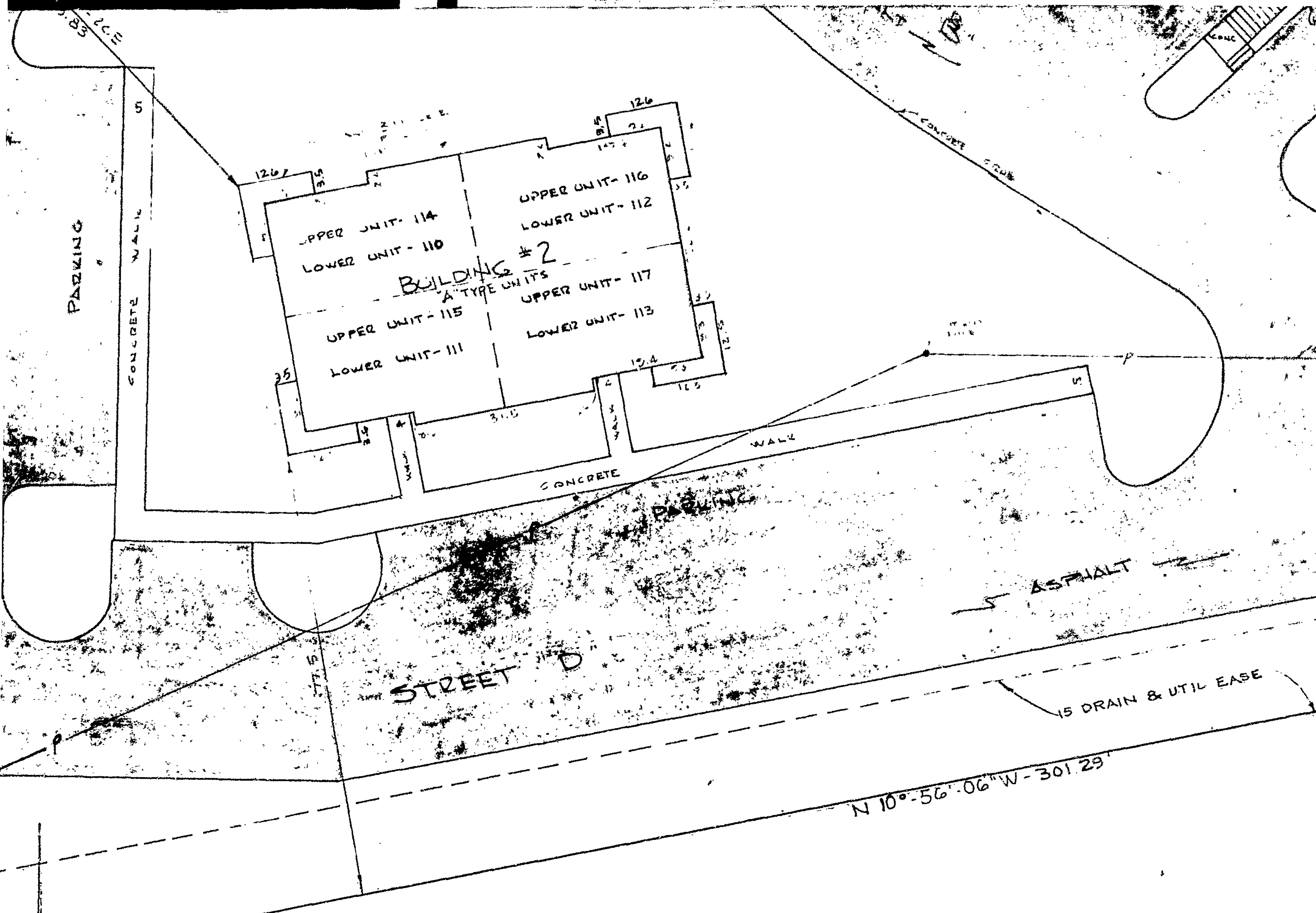
James R. Mason
My Commission Expires 1/9/84
NOTARY PUBLIC





S 89°-03'-15" E-204.00
BUILDING # 3
UNIT NO. 126 TYPE: B
UNIT NO. 125 TYPE: B
UNIT NO 124 TYPE: C
UNIT NO. 123 TYPE: C
UNIT NO 122 TYPE: D
UNIT NO 121 TYPE D
UNIT NO. 120 TYPE: F
UNIT NO 119 TYPE: F
UNIT NO. 118 TYPE: G
COVERED PORCH
CONCRETE SLABS
CONCRETE
64.25
33.3
ASPHALT
PARKING
15' DRAIN. & UTIL. EASE.
N00°-56'-45"E-195'
N 00°-56'-45" E - 378.28'
S89°-55'-42"W-805.98'
WESTERN R/W-U.S. HWY. 98 (FOUR LANE)
NORTH LINE, LOT 2, LOUIS D'OLIVE EST. DIV., T5S, R2E

McCRORY & V



NOTE:

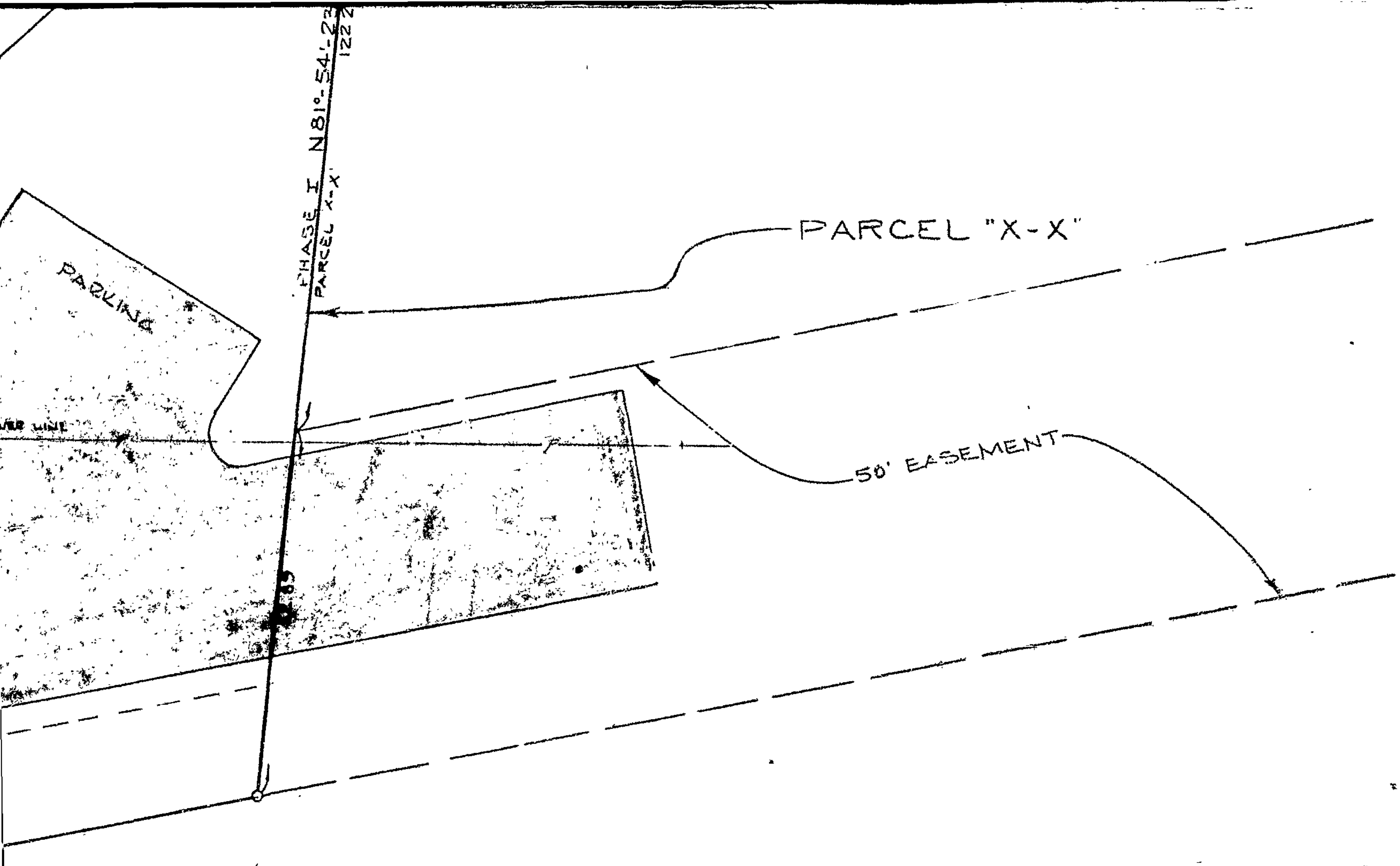
1. THIS PROPERTY IS SERVED BY PUBLIC SEWER AND WATER
2. POWER SERVICES AND TELEPHONE ARE LOCATED UNDERGROUND.

LIAMS

consulting engineers and land surveyors

BA

Scale : 1" = 2



SED AUGUST 24, 1983 - REVISED SEPTEMBER 21, 1983

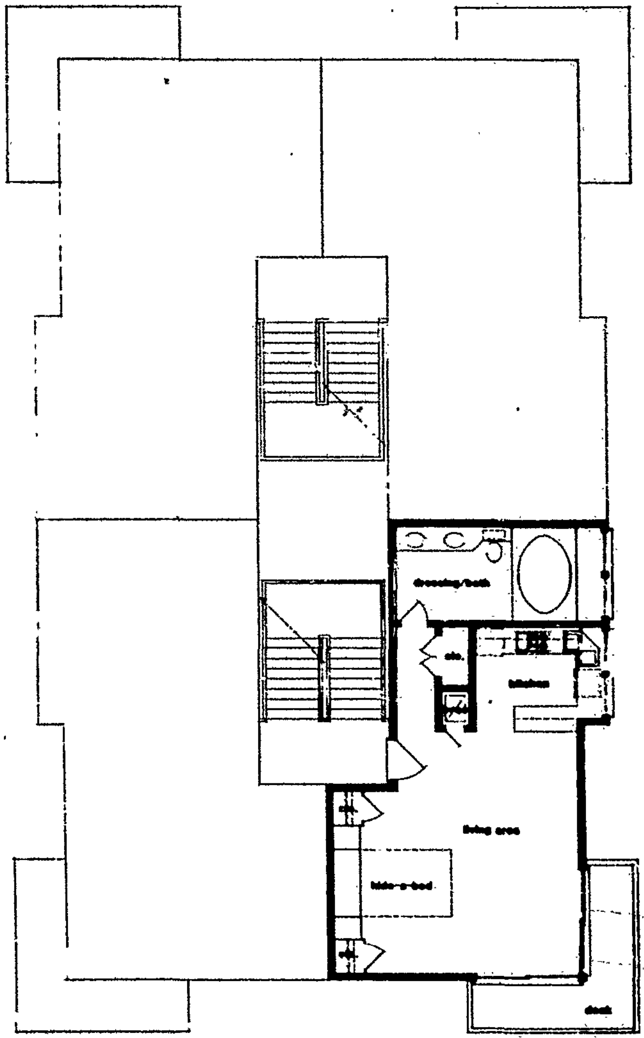
VILLAGE, A CONDOMINIUM - PHASE I

EXHIBIT " "

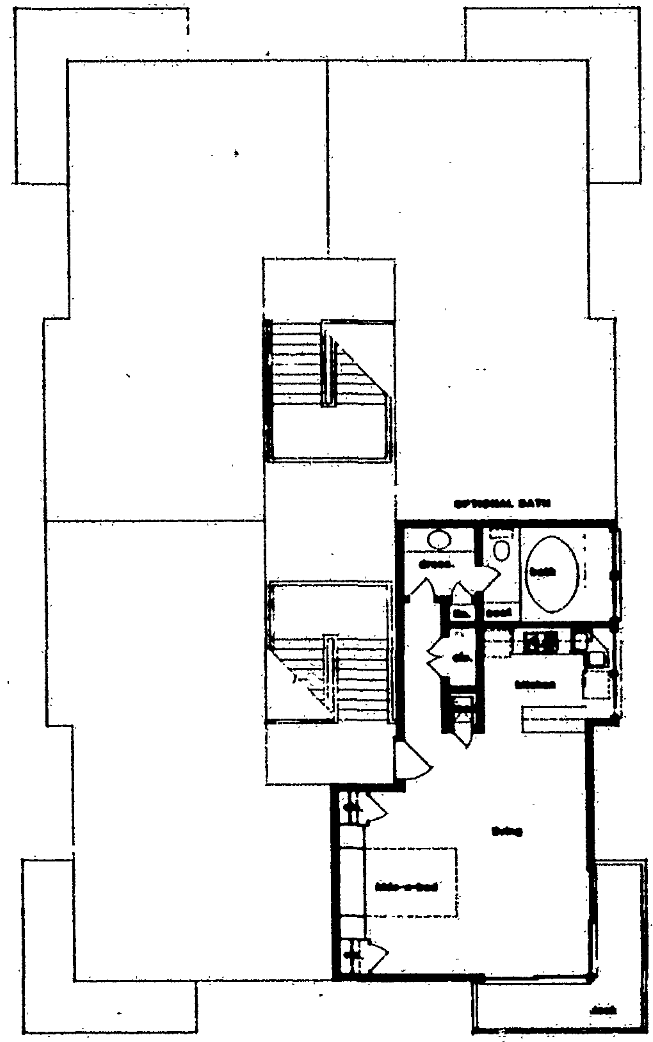
Date : 6-6-83	Drawn by : J.R.M.	Designed by: R.J.W.	Sheet 1 of 1

MISC 046 PAGE 1217

EXHIBIT C - PAGE 2



FIRST LEVEL FLOOR PLAN



UPPER FLOOR PLAN

AREAS:
LIVING : [illegible] SQ. FT.
DECK : [illegible] SQ. FT.

EFFICIENCY UNIT

SCALE: 0 5 10

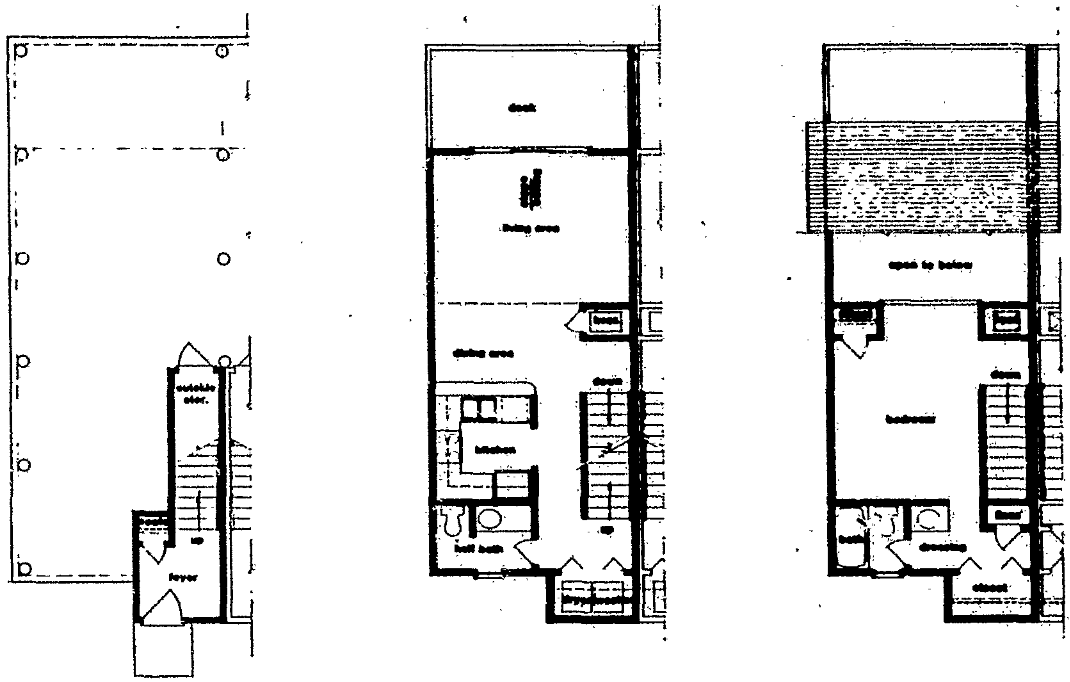
UNIT TYPE "A"

BAY VILLAGE CONDO'S.

william h. phillips, jr. A.I.A., PC mobile, ala.

MISC. 046 PG 1218

EXHIBIT C - PAGE 3



GROUND FLOOR PLAN

MAIN FLOOR PLAN

UPPER FLOOR PLAN

SCALE:

AREAS:

LIVING :	[illegible]	SQ. FT.
DECK :	[illegible]	SQ. FT.
SLAB UNDER BUILDING :	[illegible]	SQ. FT.

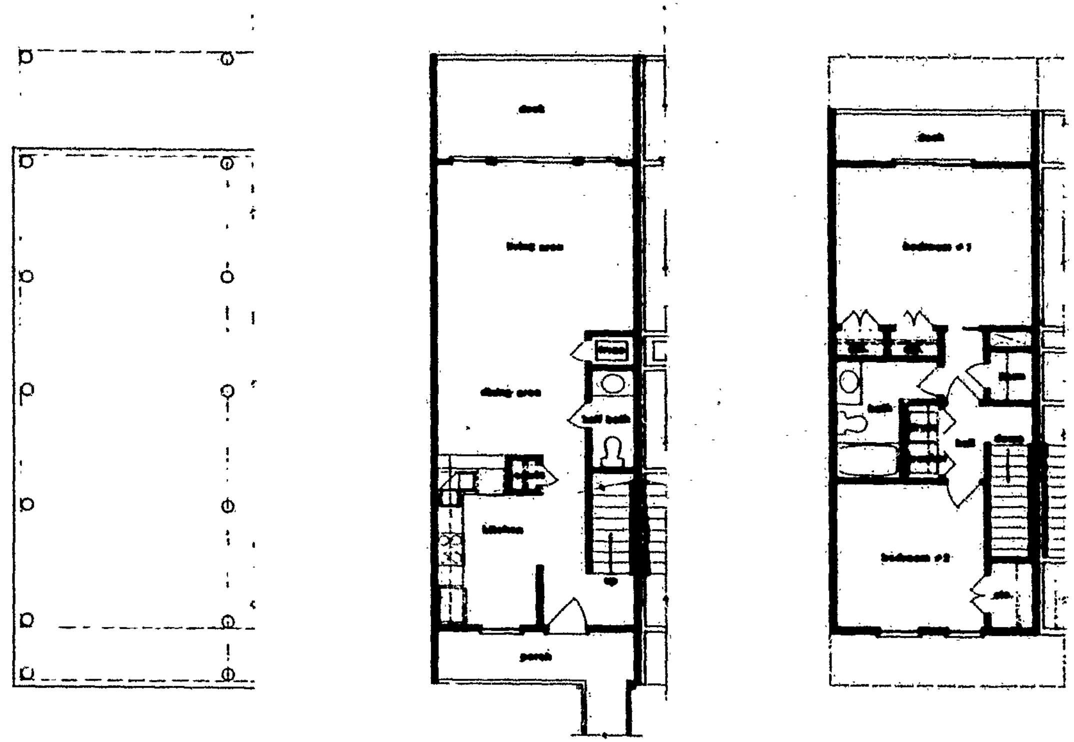
ONE BEDROOM UNIT

UNIT TYPE "B"

BAY VILLAGE CONDO'S.

william h. phillips, jr. A.I.A., P.C. mobile, ala.

EXHIBIT C - PAGE 4



GROUND FLOOR PLAN

MAIN FLOOR PLAN

UPPER FLOOR PLAN

SCALE:

AREAS:

LIVING :	[illegible]	SQ. FT.
PORCH & DECKS :	[illegible]	SQ. FT.
SLAB UNDER BUILDING :	[illegible]	SQ. FT.

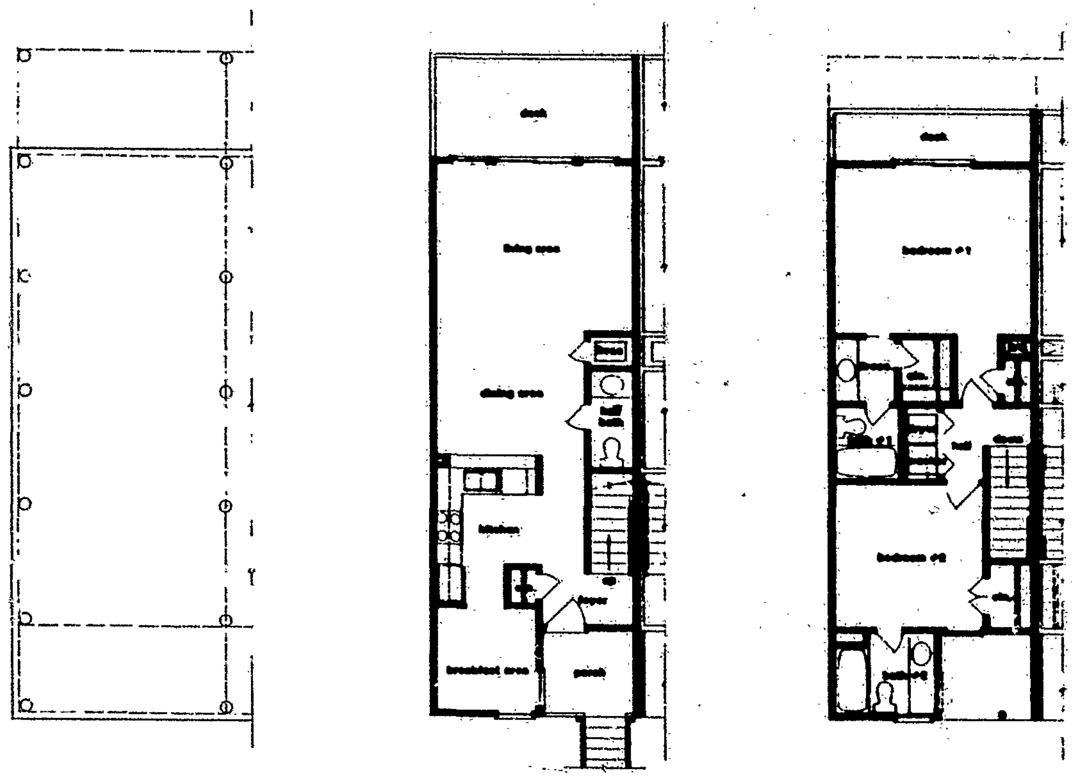
TWO BEDROOM UNIT
UNIT TYPE "C"

BAY VILLAGE CONDO'S.

william h. phillips, jr. A.I.A. PC mobile, ala.

MISC 046 PAGE 1220

EXHIBIT C - PAGE 5



GROUND FLOOR PLAN

MAIN FLOOR PLAN

UPPER FLOOR PLAN

SCALE:

AREAS:

LIVING :	[illegible]	SQ. FT.
PORCH & DECKS :	[illegible]	SQ. FT.
SLAB UNDER CARPORT :	[illegible]	SQ. FT.

TWO BEDROOM UNIT

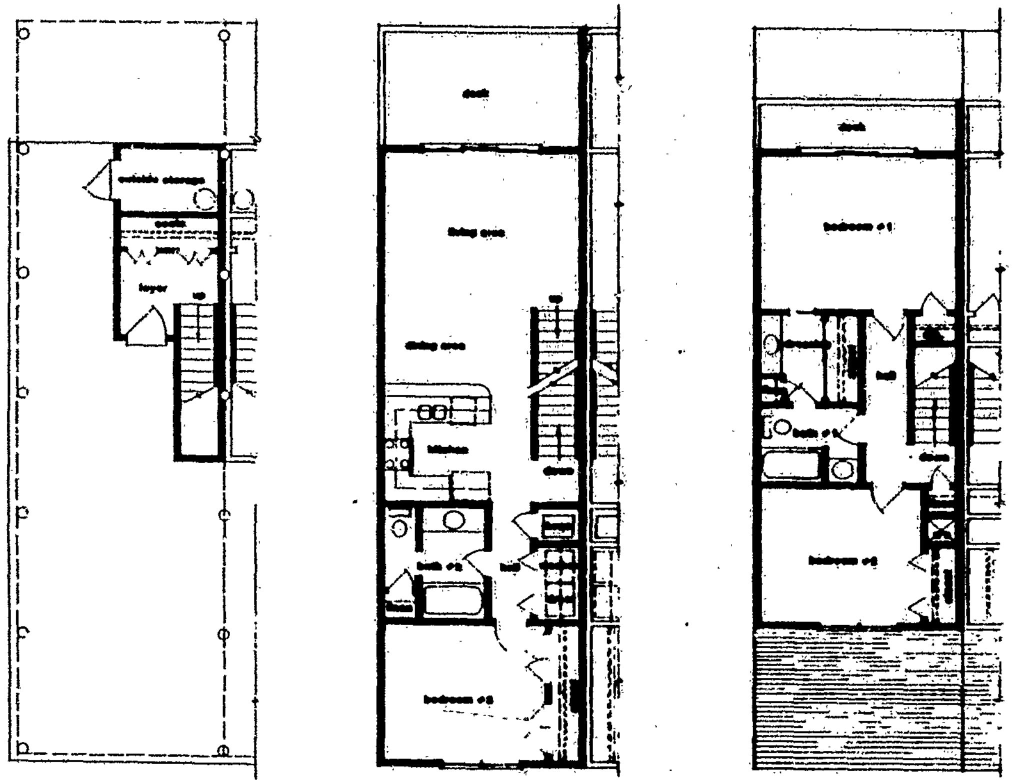
UNIT TYPE "D"

BAY VILLAGE CONDO'S.

whp william h. phillips, jr. A.I.A. PC mobile, ala.

MISC. 046 PAGE 1221

EXHIBIT C - PAGE 6



AREAS:		
LIVING :	1401	SQ. FT.
[illegible]	[illegible]	SQ. FT.
EXT. STORAGE :	[illegible]	SQ. FT.
[illegible]	[illegible]	SQ. FT.

GROUND FLOOR PLAN

MAIN FLOOR PLAN

UPPER FLOOR PLAN

SCALE

THREE BEDROOM UNIT

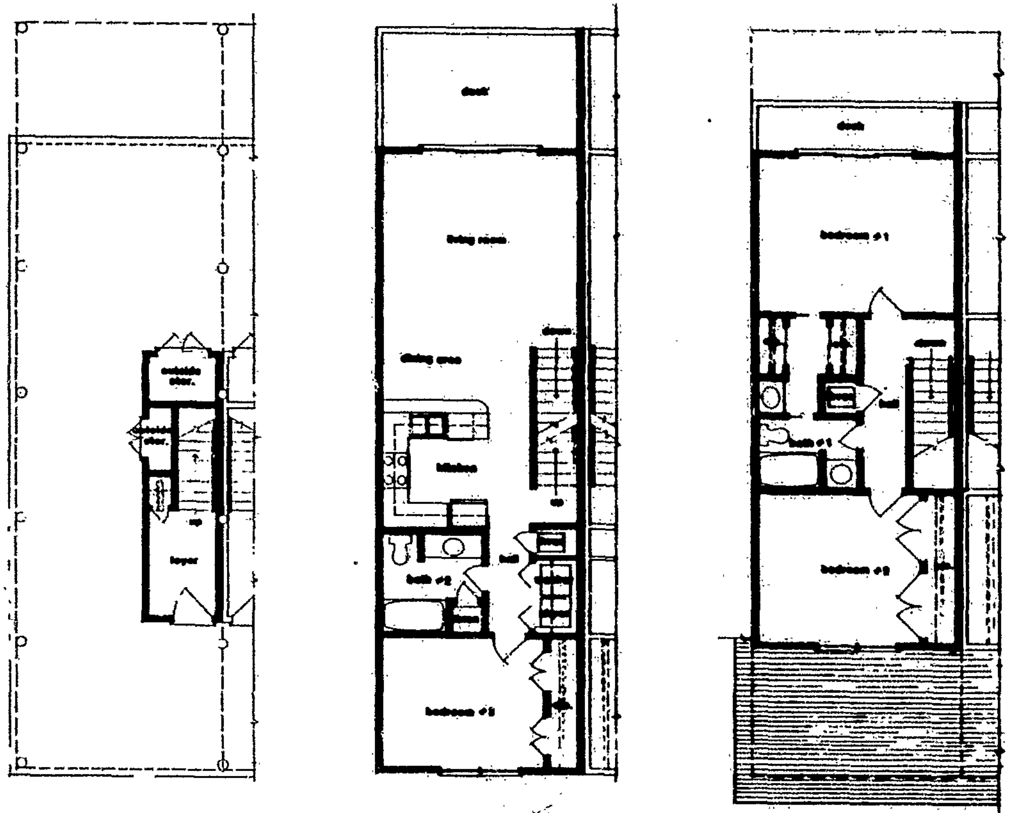
UNIT TYPE "E"

BAY VILLAGE CONDO'S.

william h. phillips, jr. A.I.A., PC mobile, ala.

MISC 046 PAGE 1222

EXHIBIT C - PAGE 7



AREAS:

LIVING :	1447	SQ. FT.
DECKS :	[illegible]	SQ. FT.
EXT. STORAGE :	[illegible]	SQ. FT.
SLAB UNDER BUILDING :	672	SQ. FT.

GROUND FLOOR PLAN

MAIN FLOOR PLAN

UPPER FLOOR PLAN

THREE BEDROOM UNIT

SCALE: 0 5 10

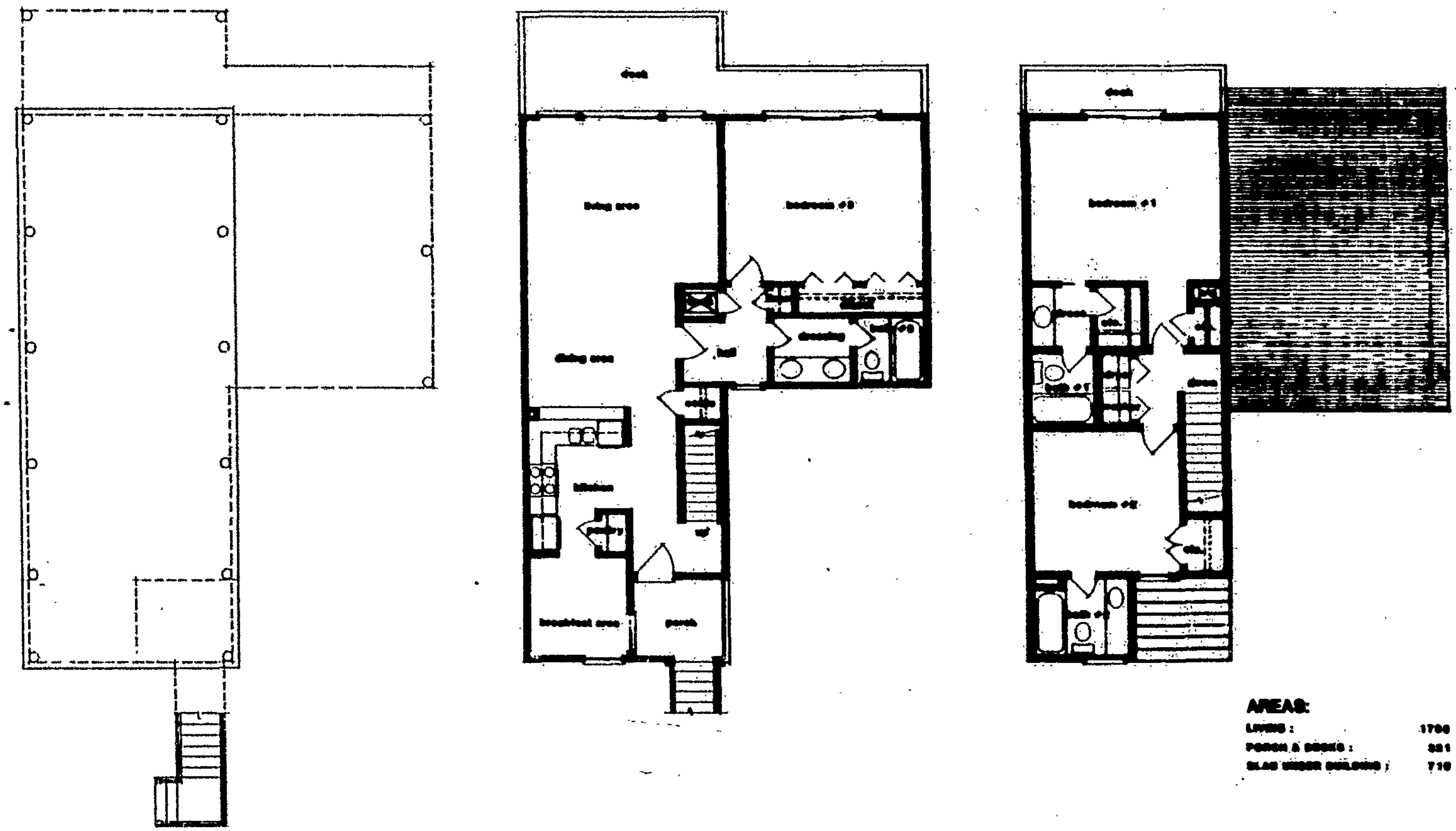
UNIT TYPE "F"

BAY VILLAGE CONDO'S.

william h. phillips, jr. A.I.A., PC mobile, ala.

MISC 045 PAGE 1223

EXHIBIT G - PAGE 8



GROUND FLOOR PLAN

MAIN FLOOR PLAN

UPPER FLOOR PLAN

AREAS:

LIVING :	1706	SQ. FT.
PORCH & DECKS :	321	SQ. FT.
SLAB UNDER BUILDING :	710	SQ. FT.

SCALE: 0 5 10

THREE BEDROOM UNIT

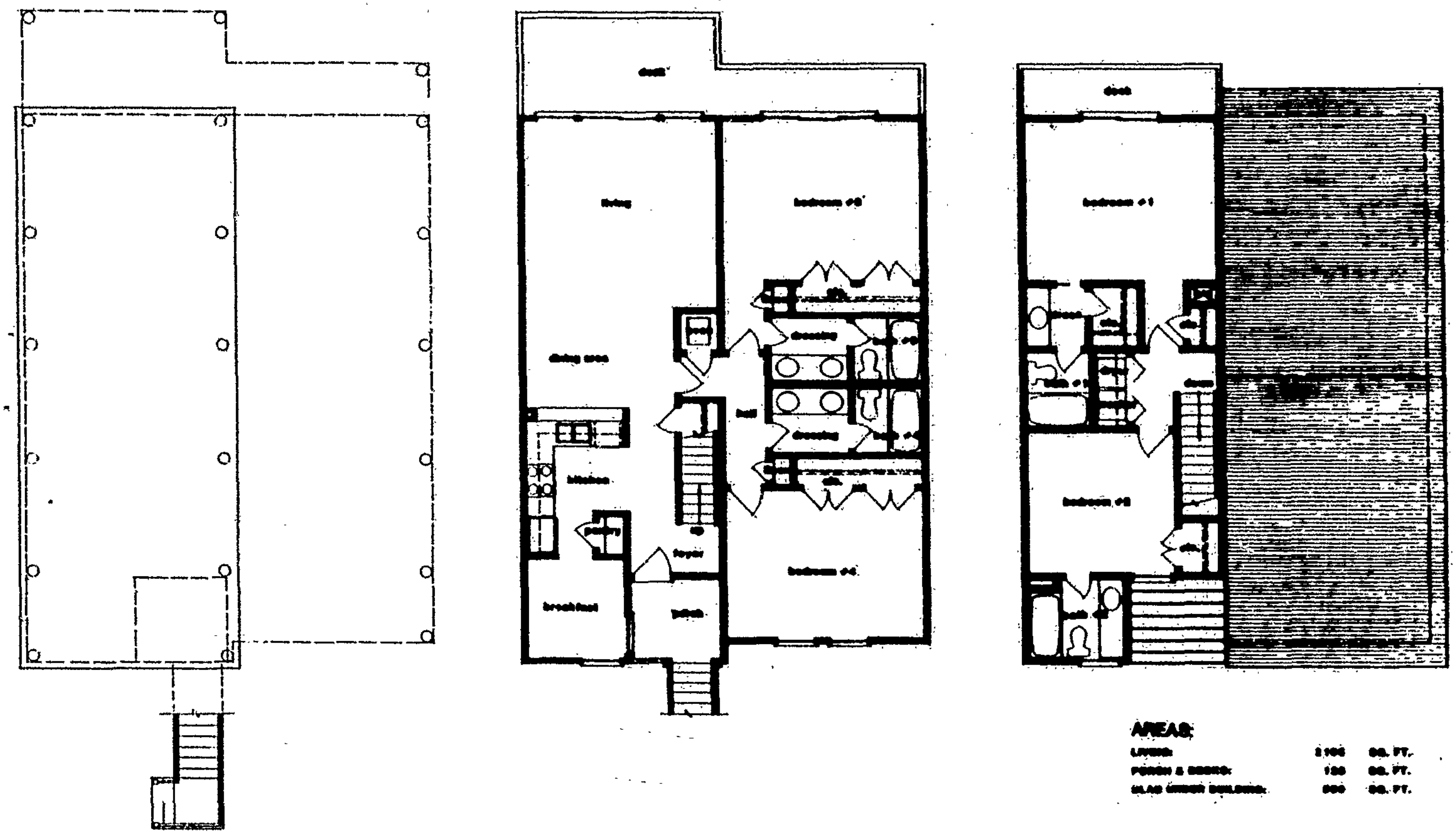
UNIT TYPE "G"

BAY VILLAGE CONDO'S.

william h. phillips, jr. A.I.A., PC mobile, ala.

MISC 040 PAGE 1224

EXHIBIT C - PAGE 9



AREAS:

LIVING:	[illegible]	SQ. FT.
PORCH & DECKS:	[illegible]	SQ. FT.
SLAB UNDER BUILDING:	[illegible]	SQ. FT.

GROUND FLOOR PLAN

MAIN FLOOR PLAN

UPPER FLOOR PLAN

SCALE: 0 5 10

FOUR BEDROOM UNIT

UNIT TYPE "H"

BAY VILLAGE CONDO'S.

william h. phillips, jr. A.I.A., PC mobile, ala.

EXHIBIT D TO DECLARATION OF CONDOMINIUM OF BAY VILLAGE, A CONDOMINIUM

UNDIVIDED INTEREST OF EACH UNIT IN COMMON ELEMENTS

UNIT NO.	UNIT TYPE	PERCENTAGE OF UNDIVIDED INTEREST
101	H	.062711902
102	E	.052293598
103	E	.052293598
104	D	.049082785
105	D	.049082785
106	C	.046859914
107	C	.046859914
108	B	.037519365
109	B	.037519365
110	A	.016188786
111	A	.016188786
112	A	.016188786
113	A	.016188786
114	A	.016188786
115	A	.016188786
116	A	.016188786
117	A	.016188786
118	G	.063363046
119	F	.052293598
120	F	.052293598
121	D	.049082785
122	D	.049082785
123	C	.046859914
124	C	.046859914
125	B	.037519365
126	B	.037519365

STATE OF ALABAMA,

COUNTY OF BALDWIN.

BY-LAWS
OF
BAY VILLAGE HOMEOWNERS' ASSOCIATION, INC.

ARTICLE ONE

INTRODUCTION

1. IDENTITY: These are the By-Laws of Bay Village Homeowners' Association, Inc., hereinafter referred to as "Association", a corporation organized not for profit pursuant to the provisions of the Code of Alabama, 1975, Section 10-3-1, et. seq., the Articles of Incorporation of which were filed in the Office of the Judge of Probate of Baldwin County, Alabama, on _______________, 1983. The Association has been organized for the purpose of administering a condominium, pursuant to the provisions of the Code of Alabama, 1975, Section 35-8-1, et. seq., hereinafter referred to as the "Condominium Ownership Act", which condominium is identified by the name "Bay Village, a Condominium".

2. BY-LAWS APPLICABILITY: The provisions of these by-laws shall govern the administration and management of the condominium by the Association.

3. PERSONAL APPLICATION: All present or future unit owners of the condominium or any future additions thereto, their employees, tenants, or any other person who might use the present facilities or any future additions thereto of the condominium in any manner whatsoever shall be subject to the provisions of these by-laws and to such rules and regulations as may be adopted by the Board of Directors of the Association. The acquisition, rental or any other occupancy of any of the individual units of the condominium

EXHIBIT E

or any future additions thereto shall constitute an acknowledgement that these by-laws and such applicable rules and regulations are accepted and ratified and shall further constitute an agreement to comply with the provisions thereof.

4. PRINCIPAL OFFICE: The principal office of the Association shall be located at 3632-B Dauphin Street, Mobile, Alabama 36608. The address of the principal office may be changed at the discretion of the Board of Directors.

ARTICLE TWO

MEMBERSHIP, MEETINGS AND VOTING

5. MEMBERS: All persons owning a vested, present interest in fee title to any of the condominium units in Bay Village, a Condominium or any addition thereto, which interest is evidenced by duly executed proper instruments recorded in the Office of the Judge of Probate, Baldwin County, Alabama, shall automatically be members of the Association. Membership in the Association shall automatically terminate upon the termination of their vested interest in the title to any of the condominium units of Bay Village, a Condominium. Such membership may be evidenced by the issuance of a membership certificate which shall be deemed to be automatically cancelled when the membership it evidences is terminated as provided for herein.

6. VOTING RIGHTS: Each unit shall have a vote equal to the undivided interest in the common elements attributable to the unit, subject to the provisions of paragraph 14 of the Declaration of Condominium.

7. ANNUAL MEETING: An annual meeting of the members shall be held at the principal office of the Association or at such place within Baldwin County as may be designated by

the President, at ten (10:00) a.m., o'clock, on the second Tuesday in the month of January, for the purpose of electing directors and for the transaction of such other business as may come before the meeting.

8. <u>SPECIAL MEETING</u>: Special meetings may be called by the President, Vice-President, a majority of the Board of Directors or by a written request from members entitled to cast 25% of the votes in the Association for any purpose and at any time. Notice of special meetings shall be mailed or delivered to each member by the Secretary at least five (5) days before such meeting at such member's address as shown in the Association records. Such notice shall state the purpose of such meeting and the location of such meeting. The members may waive such notice and may act by written agreement of all of the members without meetings.

9. <u>QUORUM</u>: A quorum at members' meetings shall consist of persons entitled to cast a majority of the votes of the entire membership. As used in these by-laws, the term "majority" means 51% of the votes of the members. A majority of the voting rights present may adjourn any meeting from time to time. A member shall be deemed to be present for purposes of a quorum with respect to any question or election upon which his written and signed vote shall have been received by the Secretary prior to any meeting. A simple majority of all voting rights present in person or proxy shall decide any question brought before the meeting, except when otherwise required by the Condominium Ownership Act, Declaration of Condominium of Bay Village, a Condominium, Articles of Incorporation of Bay Village Homeowners' Association, Inc., or these by-laws.

10. <u>NOTICES OF MEETING</u>: It shall be the duty of the Secretary of the Association to mail a notice of each annual or special meeting, stating the purpose thereof as well as

the time and the place where it is to be held to each owner of record at least five (5) days but not more than ten (10) days, prior to such meeting. The mailing of such notice to each member at the address shown for each such member in the Association records shall be deemed to be notice of any such meeting. Notices of all meetings shall be mailed by the Secretary to the Director of the local insuring office of the Federal Housing Administration.

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

12. PROXIES: Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the commencement of each meeting at its appointed time.

13. DEVELOPER'S LIMITATION OF MEMBERSHIP MEETING: Notwithstanding anything to the contrary contained herein, no meetings of the members of the Association may be held for a period of three (3) years from the date of the conveyance of the first unit of the condominium or until four months after the developer, Bay Village Partnership, has sold 75% of the units in the condominium, whichever event shall occur first, unless such meeting is called by the Board of Directors of Bay Village Homeowners' Association, Inc.

14. ADJOURNED MEETINGS: If any meeting of members cannot be held because of a lack of a quorum, the members

who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time that the original meeting was called.

15. ORDER OF BUSINESS: The order of business at all meetings of the members shall be as follows:

a. Roll Call
b. Proof of notice of meeting or waiver of notice
c. Reading of minutes of preceding meeting
d. Reports of officers
e. Reports of committees
f. Election of Directors or Officers, if appropriate
g. Unfinished business
h. New business
i. Adjournment

ARTICLE THREE

BOARD OF DIRECTORS

16. POWERS: The Board of Directors shall have all powers necessary to manage the affairs of the Association and to discharge its rights, duties and responsibilities as provided in the Declaration of Condominiums of Bay Village, a Condominium, Articles of Incorporation of Bay Village Howeowners' Association, Inc., and the Condominium Ownership Act.

17. NUMBER: The number of directors shall be not less than three (3) nor more than nine (9), which, from time to time, shall be determined and fixed by a vote of the majority of the members at any annual meeting of the members. Except for the initial directors named in the Articles of Incorporation of Bay Village Homeowners' Association, Inc., each director shall be a member of the Association or a person exercising the rights of an owner

who is not a natural person. All directors shall act without compensation unless otherwise provided by the resolution of the membership. Each director shall be elected at the annual meeting of the members of the Association and shall hold office until the next annual meeting of the members and/or until his successor shall have been elected and duly qualified, unless sooner removed by the membership.

18. REGULAR MEETINGS: A regular meeting of the Board of Directors shall be held immediately after and at the same place as the annual meeting of the membership. Additional regular meetings may be held as provided by resolution of the Board of Directors.

19. SPECIAL MEETINGS: Special meetings of the Board of Directors may be called by the President or a majority of the directors for any purpose and at any time or place.

20. NOTICE OF MEETINGS: Notice of all regular meetings and special meetings of the Board of Directors shall be mailed or delivered to each director at the address of such director as shown in the Association records at least five (5) days before such meeting, unless such notice is waived by any director or directors. Each such notice shall state the purpose of the meeting and the time and place of such meeting.

21. QUORUM: A quorum of the meeting of the Board of Directors shall be the number of directors necessary to cast a majority vote if the entire Board of Directors were present. If a quorum is not present for a meeting, a majority of those present may adjourn the meeting from time to time. A director shall be deemed present for the purpose of a quorum with respect to any question or election upon which his written and signed vote shall have been received

by the Secretary of the Association prior to such meeting. A majority of the votes present at a meeting in which a quorum is present shall decide any matter brought before the Board of Directors, except as may otherwise be required in the Declaration of Condominium of Bay Village, a Condominium, the Articles of Incorporation of Bay Village Howeowners' Association, Inc., or the Condominium Ownership Act or these by-laws.

22. REMOVAL: Any director may be removed by concurrence of at least two-thirds (2/3) of the members of the Association at a special meeting of the members called for that purpose and the vacancy thereby created shall be filled by the election of a new director at the same meeting.

23. VACANCIES: Except as vacancies created by the removal of directors by members, vacancies in the Board of Directors occurring between the annual meeting of members shall be filled by the remaining directors.

24. INITIAL DIRECTORS: Notwithstanding anything to the contrary contained herein, all directors shall be designated by the developer, Bay Village Partnership, and need not be owners of the units in the condominium for a period of three (3) years from the date of the recording of the Declaration of Condominium of Bay Village, a Condominium, or until said developer has sold all of the units in Bay Village, a Condominium, whichever event shall occur first.

25. UNANIMOUS CONSENT: Notwithstanding anything to the contrary contained herein, any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if, prior to such action, a written consent thereto

is signed by all members of the Board or all members of such committee, as the case may be, and such written consent is filed with the minutes of the proceedings of the Board of Directors.

26. ROLE OF PRESIDENT: The presiding officer of all directors' meetings shall be the President of Bay Village Homeowners' Association, Inc. In the absence of the President, the directors present shall designate one of their number to preside.

27. POWERS AND DUTIES OF THE BOARD OF DIRECTORS: All of the powers and duties of the Association existing under the Condominium Ownership Act, the Declaration of Condominium of Bay Village, a Condominium, the Articles of Incorporation of Bay Village Homeowners' Association, Inc. and these by-laws shall be exercised exclusively by the Board of Directors, subject only to approval by members when such is specifically required. The Board of Directors shall also be responsible for the following:

a. Care, upkeep and surveillance of the common elements of Bay Village, a Condominium;

b. Collection of monthly assessments from the members; and

c. Designation and dismissal of the personnel necessary for the maintenance and operation of the Association and the condominium and its common elements.

28. MANAGEMENT AGENT: The Board of Directors may employ for the association a management agent at a compensation established by the Board to perform such duties and services as the Board may authorize including, but not limited to, the duties listed in the preceding paragraph.

29. FIDELITY BONDS: The Board of Directors shall require that all officers, directors, trustees and employees of the Association handling or responsible for the

Association funds shall furnish adequate fidelity bonds. The amount of said bond coverage shall be based upon the best judgment of the Board of Directors but shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent at any given time during the term of each bond. In no event, however, shall the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds or as required by the Declaration of Condominium of Bay Village, a Condominium. Such fidelity bonds must contain the following provisions:

(a) fidelity bonds shall name the Association as an obligee;

(b) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;

(c) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense; and

(d) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days' prior written notice to the Association or, if a condominium project, to any insurance Trustee and each Servicer, if any, on behalf of FNMA.

ARTICLE FOUR

OFFICERS

30. DESIGNATION AND NUMBER: The executive officers of the Association shall be a President, a Vice-President and a Secretary/Treasurer, each of whom shall be elected by the Board of Directors. Such assistant officers as may be deemed necessary may be elected by the Board of Directors. No two offices may be held by the same person. Except during the period of time where Developer retains control of the Association, officers must be members of the Association or a person exercising the membership rights of the unit

owner which is not a natural person. The President must be a member of the Board of Directors. All officers shall act without compensation unless otherwise provided for by resolution of the membership.

31. ELECTION AND TERM: Each officer shall be elected annually in January of each year by the Board of Directors and shall hold office until his successor shall have been elected and duly qualified, unless sooner removed by the Board of Directors.

32. PRESIDENT: The President shall be the chief executive officer of the Association. He shall preside at all membership meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the President of an association, including but not limited to, the power to appoint committees from among the members from time to time as he may, in his sole discretion, decide is appropriate to assist in the conduct of the affairs of the Association. He shall also sign all documents and instruments on behalf of the Association.

33. VICE-PRESIDENT: The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President or Vice-President is present or able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be designated by the Board of Directors.

34. SECRETARY/TREASURER: The Secretary/Treasurer shall keep the minutes of all the meetings of the Directors and all meetings of the membership of the Association. The Secretary/Treasurer shall also be responsible for the giving

of all required notices of meetings to members and directors of the Association. Secretary/Treasurer shall keep all records of the Association and shall have custody of all property of the Association, including funds, securities and evidences of indebtedness and shall keep the financial records and books of account of the Association in accordance with accepted accounting practices and shall keep detailed, accurate records, in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements, and any other expenses incurred and shall perform all other duties incident to the office of Secretary/Treasurer. The Secretary/Treasurer shall also countersign all documents and instruments on behalf of the Association, when necessary. The records, books of account and the vouchers authorizing payments shall be available for examination by any member of the Association, at any time convenient to the Secretary/Treasurer during weekdays.

35. REMOVAL: Any officer may be removed by a two-thirds (2/3) vote of the Board of Directors called for that purpose and the vacancy thereby created shall be filled by an election by the remaining directors at the same meeting.

ARTICLE FIVE

CONTRACTS AND FINANCES

36. CONTRACTS: The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Association and such authority may be general or restricted to a specific instance.

37. LOANS: No loan shall be contracted on behalf of the Association and no evidence of indebtedness shall be

executed in its name unless authorized by a resolution of its membership.

38. CHECKS: All checks, issued in the name of the Association shall be signed by an officer or officers of the Association as the Board of Directors may, be resolution, from time to time determine.

39. DEPOSITS: All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such Savings and Loan Association, Banks, Trust Companies, or other depositories as the Board of Directors may select.

ARTICLE SIX

FISCAL MANAGEMENT

40. FISCAL YEAR: The fiscal year of the Association shall begin on the first day of January of each year, except that the first fiscal year shall begin on the day of recordation of the Articles of Incorporation, and shall end on December 31st of each year.

41. BUDGET: The Board of Directors shall adopt a budget for each calendar year which shall include estimated common expenses, including a reasonable allowance for contingencies and reserves by taking into consideration any surplus funds on hand. Copies of the budget and proposed assessments shall be transmitted to each member on or before December 1st preceding the year for which the budget is made. If the budget is subsequently amended before the assessment has been made, a copy of the amended budget shall also be furnished to each member concerned. Assessments for recurring common expenses, including but not limited to, expenses of administration, maintenance, repair or replacement of the common elements shall be made annually on

or before December 20th, preceding the calendar year for which the assessments are made. Such assessments shall be due from each member in monthly installments on the first day of each month of the year for which the assessments are made. If such annual assessment is not made by the Board of Directors as required, an installment in the amount required by the last prior assessment shall be due upon each installment date until changed by a new assessment. The total of the assessments for recurring common expenses shall not be more than 10% above the assessments for this purpose for the prior year unless approved in writing by a majority of the members of the Association. In the event that any annual assessment proves to be insufficient, it may be amended at any time during the year upon approval in writing by a majority of the members of the Association. The amount of such amended assessment together with the unpaid portion of the original assessment shall be prorated over the remaining number of months in the calendar year and such increased monthly installments shall be due on the first day of the month following the adoption by the members of such amended assessment.

42. RESERVES: The Association shall establish and maintain a reserve fund for replacement by the allocation and payment annually to such reserve fund such amounts as are established by the Board of Directors. Such funds shall be deposited in a special account in a safe and responsible depository and may be in the form of a cash deposit or invested in obligations of the United States of America or fully guaranteed as to principal by the United States of America. The reserve funds for the purpose of effecting replacements for structural elements, mechanical equipment of the common elements of the condominium and for such other purposes as may be determined by the Board of Directors.

43. SPECIAL ASSESSMENTS: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the common elements, including fixtures and personal property related thereto, provided that any such assessment shall have the written assent of at least two-thirds (2/3) of the members of the Association which shall have been obtained at a meeting of the members duly called for this purpose. After such approval in writing of the members, the assessment shall become effective and shall be due after thirty (30) days notice thereof in such manner as the Board of Directors of the Association may require.

44. ACCELERATION OF ASSESSMENT INSTALLMENTS UPON DEFAULT: If a member shall be in default in the payment of any two consecutive monthly installments of any annual assessment, the Board of Directors may accelerate the remaining installments of such annual assessment upon notice thereof to the defaulting member. Thereupon, the unpaid balance of the assessments shall be due and payable upon the date stated in the notice but not less than ten (10) days after delivery thereof to the member or not less than twenty (20) days after the mailing of such notice to said member by registered or certified mail, return receipt requested, whichever event shall occur first. The Association shall have a lien on the unit owned by such member for such accelerated amount, which lien shall be effective upon the recordation of a claim of lien in the form and in the manner provided in paragraph 13 of the Declaration of Condominium of Bay Village, a Condominium, and such lien may be foreclosed in accordance with the provisions of the Declaration and these By-Laws.

45. <u>DEFAULT</u>: Any assessments not paid by a member within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12%) percent per annum. The Association may, at its election, bring an action at law against the member obligated to pay the same or it may elect to foreclose its lien on the property for such assessment. No member may waive or otherwise avoid liability for the payment of any assessments provided for herein by the non-use of the common elements or by the abandonment of such member's unit. In any action either to foreclose its lien or to recover a money judgment in any successful action brought by or on behalf of the Association against a defaulting member, such member shall pay all costs thereof, including a reasonable attorney's fee.

46. <u>FORECLOSURE</u>: In the event of a foreclosure, the Association shall be entitled to the appointment of a receiver for the unit owner, if it so desires. In a foreclosure action or proceedings, the Association shall have the right to bid as a stranger at a foreclosure sale and to acquire, hold, mortgage and convey the same. If the Association becomes the owner of a unit by reason of foreclosure, it shall offer said unit for sale and, at the time that such sale is consummated, it shall deduct from the proceeds thereof all sums of money due it from monthly assessments and charges, all costs incurred in the bringing of the foreclosure action, including a reasonable attorney's fee, and any and all expenses incurred in the resale of the unit which shall include, but not be limited to, any advertising expenses, real estate brokerage fees and expenses incurred for any repairs to the foreclosed unit. Any surplus funds remaining after the deduction of the foregoing items of expense shall be due and payable to the former owner of the foreclosed unit.

ARTICLE SEVEN

ACCOUNTING RECORDS TO BE MAINTAINED

47. ACCOUNTING RECORDS: Accounting records shall be maintained in accordance with generally accepted accounting principles by the Secretary/Treasurer or by a bookkeeper or accountant employed for such purpose. Such accounting records shall include, but not be limited to, a record of all receipts and expenditures and an account for each unit, setting forth any shares of common expenses or other charges due, the due dates thereof, the present balance due and any interest in the common surplus. Such accounting records shall be open to inspection by members of the Association at reasonable times.

ARTICLE EIGHT

48. SEAL: The Board of Directors shall provide a corporate seal, circular in form, showing the corporation name, the year and the state of incorporation and the words "Non-Profit Corporation".

49. PARLIAMENTARY RULES: Roberts Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Condominium Ownership Act, the Declaration of Condominium of Bay Village, a Condominium, or these By-Laws.

50. AMENDMENT: These By-Laws may be amended only by following the provisions of paragraph 23 of the Declaration of Condominium of Bay Village, a Condominium, and the Articles of Incorporation of Bay Village Homeowners' Association, Inc. and any such amendment shall become effective only upon full compliance with the provisions hereof.

51. RIGHT OF ENTRY: Each member shall grant the right of entry to the Management Agent or to any other person authorized by the Board of Directors or the Association in the case of any emergency originating in or threatening such member's unit, whether such member is present at the time or not. In addition thereto, each member shall permit other members, or their representatives, when so required, to enter such member's unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or performing any structural repairs provided that the request for such entry is made in advance and that such entry is at a time convenient to the member. In the case of an emergency, such right of entry shall be immediate.

52. MORTGAGEES: Any member who mortgages his unit shall notify the Association through the Management Agent, if any, or the President of the Association in the event that there is no Management Agent, of the name and address of such member's mortgagee and the Association shall maintain a record of the holders of mortgages on units in the Condominium, which record shall include a copy of any such mortgage or shall contain the identity and address of the mortgagee, the address of the unit subject to such mortgage, the name of the unit owner and the date of the mortgage. The Association shall, at the written request of a mortgagee of a unit, report any unpaid assessments due from the member owning such unit.

53. COMPLIANCE WITH STATUTE: These By-Laws are set forth to comply with the requirements of the Code of Alabama, 1975, Section 35-8-10. In the event that any of these By-Laws conflict with the provisions of said statute or any other portion of the Condominium Ownership Act, it is hereby agreed and accepted that the provisions of said statute shall prevail and apply.

54. <u>DEFINITIONS</u>: As used in these By-Laws, all words and phrases shall have the same meanings and definitions as set forth in the Declaration of Condominium of Bay Village, a Condominium.

The foregoing were adopted as the By-Laws of Bay Village Homeowners' Association, Inc. at the first meeting of the Board of Directors on the 13th day of September, 1983.

BAY VILLAGE HOMEOWNERS'
ASSOCIATION, INC.

By ______________________
A. C. DAVIS
Its Secretary

APPROVED:

By ______________________
CHARLES C. VAUGHAN
Its President

DECLARATION OF CONDOMINIUM OF BAY VILLAGE CONDOMINIUM

INDEX TO CONDOMINIUM PROVISION