

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BEACH VILLAGE RESORT

TABLE OF CONTENTS

	<u>PAGE</u>
PART ONE: INTRODUCTION TO THE COMMUNITY.....	1
Article I Creation of the Community	1
1.1. Purpose and Intent.....	1
1.2. Binding Effect.....	1
1.3. Governing Documents.....	2
Article II Concepts and Definitions	3
 PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS ...	 7
Article III Use and Conduct.....	7
3.1. Restrictions on Use, Occupancy, and Alienation	7
3.2. Framework for Regulation.....	9
3.3. Owners' Acknowledgment and Notice to Purchasers.....	9
3.4. Rule Making Authority.....	9
3.5. Protection of Owners and Others.....	10
Article IV Architecture and Landscaping.....	11
4.1. General and Environmental Protections	11
4.2. Architectural Review.....	13
4.3. Guidelines and Procedures.....	14
4.4. No Waiver of Future Approvals.....	16
4.5. Variances.....	17
4.6. Limitation of Liability.....	17
4.7. Certificate of Compliance.....	17
4.8. Enforcement.....	18
Article V Maintenance and Repair	19
5.1. Maintenance of Lots.....	19
5.2. Responsibility.....	19
 PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION	 19
Article VI The Association and its Members	19
6.1. Function of Association.....	19
6.2. Membership.....	20
6.3. Voting.....	20
Article VII Association Powers and Responsibilities	21
7.1. Acceptance and Control of Association Property.....	21
7.2. Maintenance of Common Maintenance Areas.....	21
7.3. Insurance.....	23



7.4.	Compliance and Enforcement.	26
7.5.	Implied Rights; Association Authority.	28
7.6.	Indemnification of Officers, Directors, and Others.	28
7.7.	Provision of Services, Activities, and Programs.	29
7.8.	Relationships with Other Properties.	29
7.9.	Facilities and Services Closed to the Public..	29
7.10.	Use of Technology.	30
7.11.	Compliance with the Development Order.	30
Article VIII	Association Finances.	30
8.1.	Budgeting and Allocating Common Expenses.	30
8.2.	Budgeting for Reserves.	31
8.3.	Special Assessments.	32
8.4.	Benefitted Assessments.	32
8.5.	Commencement of Assessment Obligation; Time of Payment.	33
8.6.	Obligation for Assessments	33
8.7.	Lien for Assessments.	34
8.8.	Limitation on Assessment Increases..	35
8.9.	Exempt Property.	36
8.10.	Use and Consumption Fees.	36
PART FOUR: PROPERTY RIGHTS WITHIN THE COMMUNITY		36
Article IX	Easements	36
9.1.	Easements in Common Area.	36
9.2.	Easements of Encroachment.	38
9.3.	Easements for Utilities, Etc.	38
9.4.	Easements to Serve Additional Property.	39
9.5.	Easements for Maintenance, Emergency, and Enforcement.	39
9.6.	Easements for Lake and Pond Maintenance and Flood Water.	40
9.7.	Easements for Cross-Drainage.	40
9.8.	Rights to Stormwater Runoff, Effluent, and Water Reclamation.	40
9.9.	Cabanas	41
9.10.	Easement to Beach and Gulf of Mexico	41
Article X	Party Walls and Other Shared Structures	41
10.1.	General Rules of Law to Apply.	41
10.2.	Maintenance; Damage and Destruction.	41
PART FIVE: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY		42
Article XI	Dispute Resolution	42
11.1.	Agreement to Encourage Resolution of Disputes Without Litigation.	42
11.2.	Dispute Resolution Procedures.	43
11.3.	Initiation of Litigation by Association.	45
Article XII	Mortgagee Provisions	45
12.1.	Notices of Action.	45

12.2.	No Priority.	46
12.3.	Notice to Association.	46
12.4.	Failure of Mortgagee to Respond.....	46
Article XIII	Disclosures and Waivers.	46
13.1	Changes in Plan.	46
13.2.	No Liability For Third Party Acts.	46
13.3.	Water Management.....	47
13.4.	Liability for Association Operations.	47
13.5.	Assumption of Risk and Indemnification.	48
PART SIX:	CHANGES IN THE COMMUNITY.....	48
Article XIV	Changes in Ownership of Lots	48
Article XV	Changes in Common Area	48
15.1.	Condemnation.	48
15.2.	Partition.	49
Article XVI	Amendment of Declaration	49
16.1.	By Declarant	49
16.2.	By the Members	50
16.3.	Validity and Effective Date	50
16.4.	Exhibits	51
22 nd	State Bank Consent and Subordination	53
EXHIBIT "A"	Land Initially Submitted	54
EXHIBIT "B"	Land Subject to Annexation.....	55
EXHIBIT "C"	Initial Use Restrictions.....	56
EXHIBIT "D"	By-Laws	By-Laws Page 1

- TABLE OF EXHIBITS -

Exhibit	Subject Matter	Page First Mentioned
"A"	Land Initially Submitted	1
"B"	Land Subject to Annexation	3
"C"	Initial Use Restrictions	7
"D"	By-Laws of Beach Village Resort Home Owner's Association, Inc.	4

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BEACH VILLAGE RESORT

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 1 day of October, 20 20, by Beach Village Resort, LLP, an Alabama limited liability partnership.

PART ONE: INTRODUCTION TO THE COMMUNITY

Beach Village Resort, LLP has created this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance, and preservation of Beach Village Resort as a planned community (PUD). The general purpose of this development is to provide a neighborhood of small yet luxurious cottages near the beach for families and individuals (summer family vacations, "snowbirds," athletic events, etc.). These people, and the Owners of developed lots either as a primary or second residence, can come to the Gulf Coast to a luxury cottage with all the comforts of home. This development allows access to local restaurants, the beautiful beaches of the Gulf of Mexico, bike trails, as well as birding and nature areas. This project is designed to be a single family development with 67 residential lots throughout the site along with an open-aiored pavilion all centered around a large pool.

Article I Creation of the Community

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A" is recording this Declaration to establish a general plan of development for Beach Village Resort, a planned community. This Declaration provides for the Community's overall development, administration, maintenance, and preservation. An integral part of the development plan is the creation of the Beach Village Resort Home Owner's Association, Inc., an association comprised of all Beach Village Resort property owners, to own, operate, and/or maintain various common areas and community improvements, and to administer and enforce this Declaration and the other Governing Documents.

This document does not and is not intended to create a condominium under Alabama law.

1.2. Binding Effect.

This Declaration governs the property described in Exhibit "A," and any other property submitted to this Declaration in the future. This Declaration shall run with the title to such property and shall bind anyone having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns.

Declarant, the Association, and their respective legal representatives, heirs, successors, and assigns may enforce this Declaration. This Declaration shall be effective for a minimum of 25 years from the date it is Recorded. After 25 years, this Declaration shall be extended automatically for successive 10 year periods unless at least 75% of the then Owners sign a document stating that the Declaration is terminated and that document is Recorded within the year before any extension. In such case, this Declaration shall expire on the date specified in the termination document. This Section does not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

The Governing Documents create a general development plan for Beach Village Resort. The following diagram identifies and summarizes the Governing Documents, each as they may be amended:

Declaration (Recorded)	creates obligations which are binding upon the Association and all present and future owners of property in Beach Village Resort
Supplemental Declaration (If Recorded)	adds property to Beach Village Resort; may impose additional obligations or restrictions on such property
Articles of Incorporation (filed with the Department of State)	establish the Association as a non-profit corporation under Alabama law, Beach Village Resort Home Owner's Association, Inc.
By-Laws (Board adopts, Recorded, Current copy filed with Secretary of State)	govern the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.
Design Guidelines (Declarant adopts)	establish architectural standards and guidelines for improvements and modifications to Lots, including structures, landscaping, and other items on Lots
Use Restrictions (initial set attached as Exhibit "C")	govern use of property and activities within Beach Village Resort
Board Resolutions and Rules (Board adopts)	establish rules, policies, and procedures for internal governance and Association activities; regulate operation and use of Common Area

Additional restrictions or provisions which are more restrictive than the provisions of this Declaration may be imposed on any portion of Beach Village Resort, in which case, the more restrictive provisions will be controlling. However, no Person shall Record any additional covenants, conditions, or restrictions affecting any portion of Beach Village Resort without Declarant's written consent, so long as Declarant or any Declarant Affiliate owns any property described in Exhibit "A" or "B." Thereafter, Members representing at least 75% of the Association's total Class "A" votes must consent. Any instrument Recorded without the required consent is void and of no force and effect.

If there are conflicts between Alabama Law, the Declaration, the Articles, and the By-Laws, then Alabama law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

The Governing Documents apply to all Owners and any occupants of a Lot. They also apply to tenants, guests, visitors, and invitees. All leases must require that tenants and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents; provided, the Governing Documents shall apply regardless of whether specifically set forth in the lease.

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications of the provision.

Diagrams in the Governing Documents illustrate concepts and assist the reader. The diagrams are for illustrative purposes only. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

Article II Concepts and Definitions

The terms used in the Governing Documents are given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms are defined as follows:

"Affiliate": Any Person which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, agent, co-venturer, subsidiary, personal representative, or attorney of any of the foregoing. For the purposes of this definition, the term "control" means the direct or indirect power to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract, or otherwise.

"Area of Common Responsibility" shall mean and refer to the Common Area together with the areas of the Lots which are landscaped and irrigated. Maintenance of this Area is the responsibility of the Association. In addition, the office and grounds of any property manager

employed by contract with the Association and located in the Community shall be part of the Area of Common Responsibility.

"Articles": The Articles of Incorporation or Certificate of Formation of Beach Village Resort Home Owner's Association Inc., filed with the Judge of Probate, Baldwin County, Alabama, and with the Alabama Secretary of State, as they may be amended.

"Association": Beach Village Resort Home Owner's Association, Inc., a Alabama not-for-profit corporation, its successors or assigns. This entity is a nonprofit corporation pursuant to the Alabama Homeowners' Association Act as found at *Code of Alabama*, §35-20-1 *et seq.*, as amended from time to time.

"Benefitted Assessment": Assessments charged against a particular Lot or particular Lots for Association expenses as described in Section 8.4.

"Board of Directors" or "Board": The body responsible for the general governance and administration of the Association, selected as provided in the By-Laws.

"Builder": Anyone acquiring Lots for the purpose of constructing homes for later sale to consumers, or who purchases land within the Community for further subdivision, development, and/or resale in the ordinary course of its business.

"By-Laws": The By-Laws of Beach Village Resort Home Owner's Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "D."

"Class "B" Control Period": The time period during which the Class "B" Member (the "Declarant") may appoint a majority of the Board members. The Class "B" Control Period ends when any one of the following occurs:

- (a) three months after 100% of the Lots permitted under the PUD are owned by Class "A" Members other than Builders;
- (b) December 31, 2045; or
- (c) when, in its discretion, the Class "B" Member (the "Declarant") so determines.

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise has a right to possess or use for the common use and enjoyment of the Owners.

"Common Expenses": The actual and estimated expenses the Association incurs, or expects to incur, for the general benefit of all Owners. Common Expenses include any reserves the Board finds necessary or appropriate.

"Common Maintenance Areas": The Common Area, together with any other area for which the Association has or assumes maintenance or other responsibility.

"Community" or "Beach Village Resort": The real property described in Exhibit "A."

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Community, or the minimum standards established pursuant to the Design Guidelines, Use Restrictions, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard. The Community-Wide Standard may contain objective elements, such as specific lawn or house maintenance requirements, and subjective elements, such as matters subject to the Board's or the DRB's discretion. The Community-Wide Standard may or may not be set out in writing. The Community-Wide Standard may evolve as development progresses and as Beach Village Resort changes.

"Declarant": Beach Village Resort, LLP, an Alabama limited liability partnership, or any successor or assign as developer of all or any portion of Beach Village Resort who is designated as Declarant in a Recorded instrument the immediately preceding Declarant executes. The Declarant is sometimes referred to as the Class "B" Member.

"Design Guidelines": The Community's architectural, design, and construction guidelines and review procedures adopted pursuant to Article IV.

"Design Review Board" or "DRB": The committee established to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural controls described in Article IV.

"Development Order": Ordinance No. 2018-1288 of the City of Orange Beach, Alabama, as it may be amended from time to time.

"Limited Common Area": All real and personal property, including easements, Cabana easements, which located in the Common Area, and which are allocated by this declaration, by the recorded plat, or by a deed from the developer, and reserved for the exclusive use of an Owner and appurtenant to a Lot.

"Lot": A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed. The term shall refer to the land, which is part of the Lot as well as any improvements on the Lot. The term shall not apply to the Common Area. The boundaries of each Lot shall be shown, described, or referenced on a Plat, Recorded survey, restrictive covenants, or deed.

A parcel shall be deemed to be a single Lot until such time as a Plat subdivides all or a portion of the parcel or otherwise creates, designates, or describes Lots within a parcel. After a Plat is Recorded, the parcel shall contain the number of Lots shown, created, designated, or described on the Plat.

A Lot intended for development, use, and occupancy as an attached or detached single family residence is sometimes referred to as a "Residential Lot." A Lot Declarant approves for any non-residential purpose (e.g., a Lot reserved for retail use (as defined below)) or which is shown on the Master Plan as being designated for such non-residential purposes, is sometimes referred to as a "Non-Residential Lot."

"Master Plan": The land use plan for Beach Village Resort approved by the City of Orange Beach, Baldwin County, Alabama, as it may be amended.

"Member": Each Lot Owner, as described in Section 6.2. There are two membership classes, Class "A" and Class "B."

"Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Owner": The title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (e.g., a Mortgagee). If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"Person": An individual, a corporation, a partnership, a trustee, or any other legal entity.

"Plat": Any Recorded land survey plat for all or any portion of Beach Village Resort.

"Private Amenity" or "Private Amenities": Real property and facilities, if any, located within, adjacent to, or near the Community, which Persons other than the Association own and operate for recreational, hospitality, or other related purposes.

"Record," "Recording," or "Recorded": To file, the filing of, or filed of record a legal instrument in the Office of the Judge of Probate, Baldwin County, Alabama.

"Regular Assessment": Annual assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1.

"Short-term Leasing": Any arrangement which the actual exclusive occupancy for a period of less than six (6) months of a dwelling by any Person other than the Owner or a member of the Owner's immediate family or is a related party to a legal entity not a person, for which the Owner receives any consideration or benefit, including a fee, service, or gratuity.

"Special Assessment": Assessments charged against all Owners in accordance with Section 8.3.

"Supplemental Declaration": A Recorded instrument which subjects additional property to this Declaration, identifies Common Area, and/or imposes additional restrictions and obligations on the land described.

"Surface Water or Stormwater Management System": A system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges. The term shall also include any stormwater discharge facility and irrigation system servicing the Community.

"Use Restrictions": The initial use restrictions, rules, and regulations governing the use of and activities on the Lots and the Common Areas set forth in Exhibit "C," as they may be changed in accordance with Article III or otherwise amended.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance, and architecture at Beach Village Resort are what give the Community its identity and make it a place that people want to call "home" or "resort." This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for community standards to evolve as the Community changes and grows.

Article III Use and Conduct

3.1. Restrictions on Use, Occupancy, and Alienation.

The restrictions set forth in this Section may be amended only in accordance with Article XVI.

(a) Residential and Related Uses. Residential Lots shall be used primarily for residential and related purposes, including providing vacation residences for tourists and visitors to the Alabama Gulf Coast use shall have access to the recreational amenities of the Community. No business shall be conducted in, on, or from any Residential Lot, except that an Owner or another resident of the Lot may conduct business activities on such Lot if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Community, as determined in the Board's sole discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

This Section shall not apply to restrict Declarant's activities, nor shall it restrict the activities of Persons Declarant approves with respect to the development and sale of property in the Community. This Section also shall not apply to Non-Residential Lots or to Association activities related to the provision of services or to operating and maintaining the Community, including the Community's recreational and other amenities.

Leasing a residence is not a "business" within the meaning of this subsection.

(b) Leasing. For purposes of this Declaration, "leasing" is the regular, exclusive occupancy of a dwelling by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, or gratuity. The principal dwelling on the Residential Lot may be leased only in its entirety (e.g., separate rooms within the same dwelling may not be separately leased).

(c) Short-term Leasing. All short-term leasing, including all promotion, reservation, and house-keeping services, shall be exclusively handled by a single property manager retained by the Association for that purpose, but who shall be in privity of contract with each short-term lessor. For breach of this provision see Article 7.4., Compliance and Enforcement, for the fines and penalties which may be imposed.

All lease forms shall be in writing and shall be subject to the prior approval of the Association, which may publish one or more standard lease agreements which must be used. The Owner or property manager must give the tenant copies of the Governing Documents. In addition to these sub-sections (b) and (c), the Association may adopt reasonable Use Restrictions and rules regulating leasing and subleasing.

(d) Maximum Occupancy. No more than eight Persons may occupy the same dwelling on or in a Residential Lot on a regular and consistent basis (as the Association determines).

(e) Occupants Bound. Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents and shall be responsible for all violations and

losses they cause to the Common Maintenance Areas, notwithstanding the fact that such Persons also are responsible for complying and may be sanctioned for any violation.

(f) Subdivision of a Lot. Lots may not be subdivided or their boundary lines changed except with the Association's prior written approval; provided, Declarant may subdivide, change the boundary line of, and replat any Lot it owns. In addition, for so long as Declarant owns any portion of the Community, it may convert Lots into Common Area.

3.2. Framework for Regulation.

As part of the general plan of development, the Governing Documents establish a framework of covenants, easements, and restrictions which govern the Community. This includes the initial Use Restrictions set forth in Exhibit "C." Within that framework, the Association and the Members must be able to respond to unforeseen problems and changes affecting the Community. This Article establishes procedures for modifying and expanding the Use Restrictions to respond to such changes.

The procedures described in this Article are not intended to apply to reasonable rules and regulations relating to use and operation of the Common Area, which the Association may adopt by resolution, or other administrative rules, unless the Association chooses, in its discretion, to submit to such procedures. In addition, the Association shall have discretion, without the necessity of complying with the procedures set forth in this Article, to enact such rules and regulations as are necessary or appropriate to comply with the Development Order and any other governmental or quasi-governmental order, permit, or approval applicable to the Community.

3.3. Owners' Acknowledgment and Notice to Purchasers.

Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot is limited and affected by the Use Restrictions and Association rules, which may change from time to time. All Lot purchasers are on notice that the Association may have adopted changes to the Use Restrictions and that such changes may not be set forth in a Recorded document. Copies of the current Use Restrictions and Association rules may be obtained from the Association.

3.4. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and the Members, the Association may change (i.e., modify, cancel, limit, create exceptions to, or add to) the Use Restrictions. The Association shall send the Owners notice of any proposed change at least five business days before the Board meeting to consider the change. The Owners shall have a reasonable opportunity to be heard at such Board meeting.

The proposed change shall be approved unless disapproved by Owners representing a majority of the Association's Class "A" votes, and by the Class "B" Member, if any. The Association is not obligated to call a meeting of the Owners to consider disapproval unless it receives a petition which meets the By-Law's requirements for special meetings. If the Association receives such a petition before the change's effective date, the change shall not become effective until after a meeting is held, and then subject to the outcome of the meeting.

(b) Alternatively, the Owners, representing a majority of the Class "A" votes in the Association, at an Association meeting duly called for such purpose, may vote to change the Use Restrictions then in effect. Any such change shall require approval of the Class "B" Member, if any.

(c) Before any Use Restriction change becomes effective, the Association shall send a copy of the new or changed Use Restriction to each Owner. The change does not become effective until 30 days following distribution to the Owners. The Association shall provide to any requesting Member or Mortgagee, without cost, a copy of the Use Restrictions then in effect.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control. In the event of a conflict between the Use Restrictions and any provision within this Declaration (exclusive of the Use Restrictions), the Declaration provision shall control.

3.5. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in Exhibit "C," the Association's actions with respect to Use Restrictions and rules must comply with the following:

(a) Similar Treatment. Similarly situated Owners must be treated similarly.

(b) Displays. Owners' rights to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to such displays.

The Association shall not regulate the content of political signs; however, it may regulate the time, place, and manner of posting such signs (including design and size criteria).

(c) Household Composition. The Association shall not interfere with any Owner's freedom to determine the composition of his/her household, except that it may enforce the occupancy limits set out in Section 3.1(d).

(d) **Activities Within Lots.** The Association shall not interfere with activities within a dwelling, except it may prohibit activities within Residential Lots not normally associated with residential property, and it may restrict or prohibit activities within any Lot that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, or that are an unreasonable source of annoyance.

(e) **Alienation.** The Association shall not prohibit the transfer of any Lot, or require the Association's or the Association's consent prior to transferring a Lot or exercise any right of first refusal. Section 3.1 governs leasing of the Lots.

(f) **Abridging Existing Rights.** The Association may not require an Owner to dispose of personal property that was in or on a Lot in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

(g) **Reasonable Rights to Develop.** The Association may not impede Declarant's right to develop Beach Village Resort.

(h) **Interference with Permitted Non-Residential Operations.** The Association may not unreasonably interfere with the permitted use or operation of any Non-Residential Lot.

(i) **Compliance with Development Order.** The Association may not enact any rule or take any action, including, without limitation, amending the Use Restrictions, which is in violation of, or which prevents actions required to comply with, the terms of the Development Order.

The limitations in subsections (a) through (f) of this Section shall not be subject to amendments to this Declaration adopted in accordance with Article XVI.

Article IV Architecture and Landscaping.

4.1. General and Environmental Protections

Except for work done by or on behalf of Declarant or any Declarant Affiliate, no structure or thing shall be placed, erected, or installed upon any Lot, and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations, or planting or removal of landscaping) shall take place within Beach Village Resort, except in compliance with this Article and the Design Guidelines.

Any Owner may remodel, paint, or redecorate the interior of any structure on his or her Lot without approval. However, modifications to the interior of screened porches, patios, and any other portions of a Lot visible from outside a structure are subject to approval.

Each dwelling shall be designed by and built in accordance with the plans and specifications of a licensed architect acceptable to Declarant, unless Declarant, in its sole discretion, or its designee otherwise approves. The landscaping for each Lot shall be designed and installed in accordance with the plans and specifications of a licensed landscape architect acceptable to Declarant, unless Declarant, in its sole discretion, or its designee otherwise approves. Dwellings shall be constructed by licensed or certified Builders acceptable to Declarant, unless Declarant, in its sole discretion, or its designee otherwise approves.

Approval under this Article and the Design Guidelines is not a substitute for any approvals or reviews required by the City of Orange Beach, the U.S. Fish and Wildlife Service, or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters. The following governmental restrictions apply at this time, but may change over the course of time:

No owner of any lot or unit shall place fill in or dredge soil from delineated wetlands on any lot, unit, or common area property for any purpose including, but not limited to purposes described in U.S. Army Corps of Engineers' Nationwide Permits. No owner of any lot or unit shall build any structure over delineated wetlands except pile-supported piers which are constructed consistent with the requirements of ADEM Administrative Code r. 335-8-2-.05 as amended from time to time.

Sod will not be allowed in the development unless permitted by the Fish and Wildlife Service. Only plant species on the plant schedule list approved from time to time by the Fish and Wildlife Service, United States Department of the Interior, utilizing native plants shall be used in landscaping.

Revised Lighting Plans

Fish and Wildlife approved light fixtures for this project at the time of this recording are:

- 1) Beacon Products, 24E2-45-AMB-T5W- (27) shielded 12-foot pole fixtures.
- 2) Progress Lighting, P5712-30- (69) wall mount downlight (1 at each front entry of each home).
- 3) Kimberly Lighting, LLC 13W amber LED lamp, 310 lumens, one lamp per fixture 1 and 2.
- 4) Liton Lighting, LRLD621BB-TAM-B25- (138) recessed can light (2 at each home) with built-in 15 Watt amber LED lamp, one per fixture.
- 5) Lumascape, LS333ANS-2LED-6H6-W-27-(6) Swimming pool fixtures (3W/red-orange).

Windows

All exterior windows and glass doors within line-of-sight of the beach (seaward and shore-perpendicular) will be sea turtle friendly meeting the 45% inside to outside light transmittance

values. No other exterior lighting has been proposed. Other exterior lighting, if any, must be approved by Fish and Wildlife prior to installation.

This Article, except as to environmental issues, does not apply to Declarant's activities, or to the Association's activities during the Class "B" Control Period.

4.2. Architectural Review.

(a) By Declarant. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for architectural and other improvements within the Community. Declarant's rights under this Article IV shall continue for as long as Declarant or any Declarant Affiliate owns any portion of the Community or has a unilateral right to annex property, unless Declarant earlier terminates its rights in a Recorded instrument. Declarant may designate one or more Persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the Design Review Board. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Design Review Board. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRB, shall assume jurisdiction over architectural matters. When appointed, the DRB shall consist of at least three, but not more than seven, persons. Members of the DRB need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. The DRB members shall be designated, shall serve, and may be removed and replaced in the Association's discretion.

The Board may create and appoint subcommittees of the DRB. Subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and shall be governed by procedures the Board or the DRB may establish. Any subcommittee's actions are subject to review and approval by Declarant, for as long as Declarant may review the DRB's decisions, and the DRB. Notwithstanding the above, neither the DRB nor Declarant shall be obligated to review all actions of any subcommittee, and the failure to take action in any instance shall not be a waiver of the right to act in the future.

Unless and until such time as Declarant delegates any of its reserved rights to the DRB or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

Declarant and the Association may employ architects, engineers, or other Persons to perform the review required under this article. In addition, a horticulturalist shall be engaged by the entity performing the review under this Article to provide professional assistance in the review of landscape plans for individual Lots.

(c) **Reviewer.** The entity having jurisdiction in a particular case, whether Declarant or its designee or the DRB, shall be referred to as the "Reviewer."

(d) **Fees; Assistance.** The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Association may include the compensation of such Persons in the Association's annual operating budget.

4.3. Guidelines and Procedures.

(a) **Design Guidelines.** Declarant shall prepare Design Guidelines for the Community, which may contain general provisions applicable to all of Beach Village Resort as well as specific provisions which vary according to property location, shape, or size. Among other things, the Design Guidelines shall restrict the use of specified plant species and require the review and approval of all plant species in accordance with the Development Order. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee an application's approval.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it or any Declarant Affiliate owns any portion of the Community or has a unilateral right to annex property. Declarant's right to amend shall continue even if its reviewing authority is delegated to the DRB, unless Declarant also delegates the power to amend to the DRB. Upon termination or delegation of Declarant's right to amend, the Association may amend the Design Guidelines in accordance with the same procedures for changing Use Restrictions described in Section 3.1.

Amendments to the Design Guidelines shall be prospective only. They shall not require modifications to or removal of structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. Subject to the Community-Wide Standard, there is no limit to the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within Beach Village Resort. In Declarant's discretion, the Design Guidelines may be Recorded, in which event the Recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Unless the Design Guidelines provide otherwise, no construction activities or other activities described in Section 4.1 may begin until a request is submitted to and approved by the Reviewer. The request must be in writing and be accompanied by plans and specifications and other information the Reviewer or the Design Guidelines require. Plans and specifications shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

The Reviewer shall make a determination on each application within 45 days after receipt of a completed application and other information it requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

As long as Declarant or any Declarant Affiliate owns any portion of the Community or has the unilateral right to annex property, the DRB shall notify Declarant in writing within three business days of any action (i.e., approval, partial approval, or disapproval) it intends to take under this Article. A copy of the application and any additional information that Declarant may require shall accompany the notice. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any DRB action; provided, Declarant's right to veto must be exercised within 10 business days after it receives notice of the DRB's action. The party submitting the plans for approval shall not be notified of the DRB's action until after Declarant's right to veto has been exercised or has expired.

The Reviewer shall notify the applicant in writing of a final determination on any application within five days after such determination is made or, with respect to any DRB determination subject to Declarant's veto right, within five days after the earlier of: (i) receipt of

notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notice shall be deemed given at the time the envelope containing the response is deposited in U.S. mail. Personal or electronic delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

As part of any approval, the Reviewer may require that construction in accordance with approved plans commence within a specified time period. If construction does not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction work shall be completed within one year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action by the Association or Declarant.

Declarant or the Association, with Declarant's consent, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. For example, Builders may be permitted to submit and receive pre-approval of landscaping or other plans for general application. Such pre-approved plans shall not require resubmission prior to use on a particular Lot.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, at which time, it may or may not be unreasonable to require that such objectionable features be changed. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires Declarant's written consent for so long as Declarant or any Declarant Affiliate owns any portion of the Community or has the unilateral right to annex property, and, thereafter, requires the Association's written consent.

4.6. Limitation of Liability.

This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Beach Village Resort. The standards and procedures do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every dwelling is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

Declarant, Declarant's Affiliates, the Association, its officers, the Association, the DRB, the Association's management agent, any committee, or any member of any of the foregoing shall not be held liable for the approval of, disapproval of, or failure to approve or disapprove any plans; soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a Builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify the Association, the DRB, the members of each, and the Association officers as provided in Section 7.6.

4.7. Certificate of Compliance.

Any Owner may request in writing that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. The issuance of a certificate of architectural compliance shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of the certificate.

4.8. Enforcement.

Any construction, alteration, or other work done in violation of this Article or the Design Guidelines is subject to enforcement action. Upon written request from the Association or Declarant, an Owner shall, at his/her own cost and expense, and within a reasonable time frame identified in the request, cure the violation or restore the Lot to substantially the same condition as existed before the violation occurred. Should an Owner fail to cure the problem or otherwise restore the property as required, the Association, Declarant, or their designees shall have the right to enter the property, remove the violation, and restore the property. All costs, together with interest at the rate the Association establishes (not to exceed the maximum rate then allowed by law), may be assessed against the Benefitted Lot and collected as a Benefitted Assessment.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline imposed, Declarant or the Association may, after notifying the Owner and allowing an opportunity to be heard in accordance with the By-Laws, enter upon the Lot and remove or complete any incomplete work and assess all costs incurred against the Lot and its Owner as a Benefitted Assessment.

Any act of any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Community, subject to the notice and hearing procedures contained in the By-Laws. Declarant, Declarant Affiliates, the Association, and their respective officers and directors, shall not be held liable to any Person for exercising the rights granted by this paragraph.

The Association shall be primarily responsible for enforcing this Article. If, however, in Declarant's discretion, the Association fails to take appropriate enforcement action within a reasonable time period, Declarant, for so long as it or any Declarant Affiliate owns any portion of the Community or has the unilateral right to annex property, may, but shall not be obligated to, exercise the enforcement rights set forth above. In such event, Declarant may assess and collect Benefitted Assessments against the violating Owner and assert the Association's lien rights pursuant to Article VIII. The Association hereby assigns to Declarant such rights and authority, including the right to all funds collected, and no further assignments shall be required.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the Reviewer's decisions. If the Association or Declarant prevail, they shall be entitled to recover all costs including, without limitation, attorneys' fees and court costs, reasonably incurred in such action. The alternative dispute resolution provisions set out in Article XIV shall not apply to actions by Declarant or the Association to enforce the provisions of this Article or the Reviewer's decisions.

Article V Maintenance and Repair

5.1. Maintenance of Lots.

Each Owner must maintain his or her Lot, including all structures and other improvements comprising the Lot, in a manner consistent with the Governing Documents, the Community-Wide Standard, and any other applicable covenants, unless such maintenance responsibility is otherwise assumed by the Association, such as landscaping which will be the responsibility of the Association.

5.2. Responsibility.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless the Association carries such insurance (which it may, but is not obligated to do). If the Association assumes responsibility for insuring a Lot, the insurance premiums shall be levied as a Benefitted Assessment against the Benefitted Lot and the Owner.

Within three months of any damage to or destruction of a structure on a Lot, the Owner shall repair or reconstruct the structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article IV; provided, under special circumstances, the Association, in its discretion, may extend such time period. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs insurance proceeds do not cover.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

This Declaration establishes the Association as a way for each Owner to participate in the governance and administration of Beach Village Resort. While the Board of Directors has responsibility for the Association's day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership -- the Lot Owners.

Article VI The Association and its Members

6.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Common Maintenance Areas, including the Stormwater Management System. The

Association also has primary responsibility for administering and enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Alabama law. The Association shall be responsible for management for the Association and, as the Governing Documents permit, may contract with a property manager for such purposes. The Board of Directors of the Association is appointed or elected as provided in the By-Laws or this instrument.

6.2. Membership.

Every Owner is a Member of the Association; provided, there is only one membership per Lot. If a Lot is owned by more than one Person, each co-Owner shares the privileges of the membership, subject to reasonable Association regulation and the voting restrictions described in Section 6.3(c) and in the By-Laws. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner which is not an individual (e.g., a corporation) may be exercised by any officer, director, partner, or trustee, or by an individual whom the Owner designates from time to time in a written instrument provided to the Association's Secretary.

6.3. Voting.

The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members are all Owners except the Class "B" Member and, during the period of Class "B" membership, any Declarant Affiliate. Class "A" Members have one equal vote for each Residential Lot they own, except that there is only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Section 8.9.

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member shall not vote, but may appoint a majority of the Association members during the Class "B" Control Period, as specified in the By-Laws and this instrument, and may exercise the additional rights specified throughout the Governing Documents.

The Class "B" membership terminates upon the earlier of:

- (i) when 100% of the Lots permitted under the Master Plan are issued certificates of occupancy and are owned by Class "A" Members other than Builders; or
- (ii) when, in its discretion, Declarant declares such termination in a Recorded instrument.

Upon termination of the Class "B" membership, Declarant and Declarant Affiliates shall be Class "A" Members entitled to one Class "A" vote for each Lot they own.

(c) **Exercise of Voting Rights.** Except as otherwise specified in this Declaration or the By-Laws, Owners shall exercise the vote for each Lot a Class "A" Member owns. In any situation where a Member is entitled personally to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association may acquire, hold, mortgage or otherwise encumber, lease (as landlord or tenant), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements, for payment or no payment, as the Association deems appropriate, permitting use of portions of the Common Area by others.

(b) Declarant or its designees may transfer to the Association, and the Association shall accept, personal property and/or fee title or other property interests in any improved or unimproved real property included within the property described in Exhibit "A" or "B." Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved real property originally conveyed to the Association for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association is responsible for management, operation, and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association. The Association may adopt such reasonable rules regulating use of the Common Area as it deems appropriate. The Association may enter into a property management agreement with any Person, including Declarant or any Declarant Affiliate.

7.2. Maintenance of Common Maintenance Areas.

The Association shall maintain the Common Maintenance Areas in accordance with the Community-Wide Standard. The Common Maintenance Areas shall include, but are not limited to:

- (a) the Common Area, including landscaping, structures, and other improvements;
- (b) landscaping within public rights-of-way within or abutting Beach Village Resort;
- (c) the portions of the Lots which are subject to landscaping;

(d) such portions of any additional property as may be dictated by Declarant, this Declaration, any Supplemental Declaration, any Plat, or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the Association; and

(e) the Stormwater Management System, all ponds, streams, and/or wetlands located within Beach Village Resort which serve as part of the Community's stormwater drainage system, including associated improvements and equipment, but not including any such areas maintained by a community development district or the Alabama State Park. Maintenance of the Stormwater Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance, or other surface water or stormwater management capabilities as permitted by the Alabama Department of Environmental Management or other government agencies.. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved by the Alabama Department of Environmental Management or its designee.

Without limiting the generality of the foregoing, the Association shall assume all of Declarant's (and Declarant's Affiliates') responsibilities to governmental or quasi-governmental subdivisions, any state and federal agencies, and similar entities of any kind with respect to the Common Area and the Stormwater Management System, and shall indemnify and hold Declarant and its Affiliates harmless with respect to such assumed responsibilities.

The Association may maintain other property which it does not own, including property dedicated to the public, if the Association determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and the property owner consents.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Common Maintenance Areas in continuous operation, except for any periods necessary, as determined by the Association, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association agree in writing to discontinue such operation. Notwithstanding the above, the Common Maintenance Areas may not be reduced, nor shall operation of its facilities and equipment be discontinued, without Declarant's prior written approval as long as Declarant or any Declarant Affiliate owns any property described in Exhibit "A" or "B" to this Declaration.

The costs associated with maintenance, repair, and replacement of the Common Maintenance Areas shall be a Common Expense. However, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Maintenance Areas pursuant to this Declaration, a Supplemental Declaration, or other Recorded covenants or agreements, including an regular assessment for landscaping maintenance of Lots provided by the Association.

7.3. Insurance.

(a) **Required Coverages.** The Association, acting through its Association or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within other portions of the Common Maintenance Areas to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All Association property insurance policies shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$5,000,000.00 per occurrence and in the aggregate with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage; and

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Association's business judgment, but not less than an amount equal to one-quarter of the annual Regular Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

In the exercise of its business judgment, the Association may obtain additional insurance coverage and higher limits.

Premiums for Common Maintenance Area insurance, if acquired, shall be a Common Expense.

(b) **Policy Requirements.** The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Baldwin County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Association reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Association may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefitted Assessment.

To the extent available upon reasonable cost and terms, all insurance coverage obtained by the Association shall:

- (i) be written with a company authorized to do business in Alabama which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Association deems appropriate;
- (ii) be written in the name of the Association as trustee for the Benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
- (iii) not be brought into contribution with insurance purchased by individual Owners, their Mortgagees, or any occupants of a Lot;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);
- (vii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and
- (viii) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Association shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

(i) a waiver of subrogation as to any claims against Declarant, Declarant's Affiliates, the Association, or their respective directors, officers, employees, and agents, or the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Association exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to maintain and/or insure, the Association or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 80% of the total Class "A" votes in the Association and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period may be extended until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain in a reserve fund for capital items any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement, for the benefit of the Members. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Association may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the applicable insurance coverage premiums.

7.4. Compliance and Enforcement.

(a) The Association may impose sanctions for Governing Document violations, which sanctions include those listed below and any others described elsewhere in the Governing Documents. The Association may establish a range of penalties for different violations, with violations of the Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws:

(i) imposing reasonable monetary fines, not to exceed the limit established for individual violations under Alabama law, if any, (or per day limitations in the case of a continuing violation), which shall constitute a lien upon the violator's Lot (fines may be imposed within a graduated range). There is no limit on the aggregate amount of any fine for a continuing violation;

(ii) suspending an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 90 days delinquent in paying any Regular Assessment);

(iii) suspending any Person's right to use Common Area amenities (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); provided, nothing shall authorize the Association to impair an Owner or occupant's access to his or her Lot;

(iv) suspending any services the Association provides (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) levying Benefitted Assessments to cover costs the Association incurs to bring a Lot into compliance with the Governing Documents.

(vii) suspending for up to six months the right of an Owner to engage in short-term leasing for the violation of the provisions of Article 3.1(c) as well as assessing a fine equal to the rentals retained by an Owner in violation of 3.1(c).

In addition, the Association may take the following enforcement actions to ensure compliance with the Governing Documents without the necessity of complying with the procedures set forth in the By-Laws:

- (i) exercising self-help or taking action to abate a violation on a Lot in an emergency situation (including, without limitation, towing vehicles that are in violation of parking rules and regulations);
- (ii) exercising self-help or taking action to abate a violation on the Common Area under any circumstances (including, without limitation, issuing citations for traffic violations); or
- (iii) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform the required maintenance and assess its costs against the Lot and the Owner as a Benefitted Assessment.

The above sanctions shall not apply to Declarant or any Declarant Affiliate or to any Lot owned by Declarant or any of its Affiliates. All sanctions and remedies set forth in the Governing Documents are in addition to any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party may recover all of its costs incurred in the action, including, without limitation, court costs and reasonable attorneys' fees.

(b) The decision to pursue enforcement action in any particular case shall be left to the Association's discretion, except that the Association shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Association may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

By contract or other agreement, the Association may enforce applicable city and county ordinances. In addition, Baldwin County and the City of Orange Beach, if applicable, may enforce their ordinances within Beach Village Resort.

7.5. Implied Rights; Association Authority.

The Association may exercise any right or privilege given to it expressly or by reasonable implication by the Governing Documents, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, the Association may exercise all of the Association's rights and powers without a vote of the membership.

The Association may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Maintenance Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Association has no legal duty to institute litigation on behalf of or in the name of the Association or the Members.

In exercising the Association's rights and powers, making decisions on the Association's behalf, including, without limitation, deciding whether to file a lawsuit under any circumstances, and conducting the Association's affairs, Association members and the Association's officers are subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

7.6. Indemnification of Officers, Directors, and Others.

The officers, directors, and committee members, acting in such capacity, shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability for any contract or other commitment made or action taken in good faith on the Association's behalf.

Subject to Alabama law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Association of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which the indemnitee's personal liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights which any present or former officer, director, or committee member may have. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7. Provision of Services, Activities, and Programs.

The Association may provide, or provide for, services, activities, and programs (collectively, "services") for all or any of the Members and their Lots, and may enter into contracts or agreements with other entities, including Declarant or its Affiliates, to provide such services. The Association may charge use or service fees for any such services, or may include the costs, including the cost of personnel employed to facilitate or administer such services, in the Association's budget as a Common Expense and assess it as part of the Regular Assessment, if provided to all Lots. If provided to less than all Lots, the Association may assess such costs as a Benefitted Assessment, as applicable.

By way of example, such services might include, without limitation, landscape maintenance (which is required under this instrument but shall be subject to the provision of this section); pest control service; cable television service; telephone; internet access; security monitoring; caretaker; transportation; fire protection; utilities; trash collection and recycling; recreational and social activities or programs; educational programs; cultural, artistic, and environmental programs; and other similar services, activities, or programs designed to further a sense of community among Owners, residents, vacationers, and other occupants within Beach Village Resort.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, subject to the contract terms, the Association may modify or cancel existing contracts for services, activities, or programs in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.8. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with neighboring properties to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.9. Facilities and Services Closed to the Public.

Certain of the Common Maintenance Areas, including facilities, may be closed for public use and enjoyment. Such facilities and areas may include, for example: greenbelts, bike and pedestrian trails and paths, parks, areas conducive to gathering and interaction, roads, sidewalks, and medians. During Class "B" Control Period, Declarant may designate such facilities and areas

as closed or open to the public. The Association may designate facilities and areas as closed or open for public use.

7.10. Use of Technology.

In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, the Association may, as a Common Expense, provide for or offer services, which make use of computers and other technological opportunities. For example, to the extent Alabama law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send required notices by electronic means; hold Association or Association meetings and permit attendance and voting by electronic means; send and collect assessment and other invoices over the computer; sponsor a community cable television channel; create and maintain a community intranet or Internet home page offering interactive participation opportunities for users; maintain an "online" newsletter or bulletin Association; and provide funding for any of the above purposes.

7.11. Compliance with the Development Order.

The Association shall be responsible for complying with all applicable requirements of the Development Order; provided, to the extent the Development Order requires, Declarant shall fulfill the Association's obligations in this regard until termination of the Class "B" Control Period. Among other things, the Development Order assigns to Declarant and the Association various responsibilities concerning preservation, management, and maintenance of the Community's common open space and natural areas and the protection of the Community's existing environment and various indigenous plant and animal species. The Association shall be authorized to perform such responsibilities, whether directly assigned under the Development Order or delegated or assigned to the Association by Declarant, in the manner required under the Development Order and as deemed appropriate in the Association's discretion. The costs incurred by the Association in carrying out its responsibilities under the Development Order shall be assessed against all Owners as a Common Expense in accordance with Article VIII. Among other things, the Association shall be authorized or required to do the following: maintain the Surface Water Management System, subject to the Alabama Department of Environmental Management's regulatory requirements. The Association's obligation in this regard shall include maintaining the Community's irrigation system and keeping current all necessary and required permits.

Article VIII Association Finances

8.1. Budgeting and Allocating Common Expenses.

The Association is authorized to levy Regular Assessments against all Lots subject to assessment under Section 8.5 to fund the Common Expenses.

Before the beginning of each fiscal year, the Association shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall separately reflect all fees for recreational amenities and shall reflect the sources and estimated amounts of funds to cover such expenses, including any prior year's surplus or deficit, any non-assessment income, and anticipated assessment income.

The Common Expenses shall include, without limitation, costs associated with the maintenance and repair of the Stormwater Management System, as required under this Declaration.

In determining the Regular Assessment, the Association may consider any assessment income expected to be generated from any property reasonably anticipated to become subject to assessment during the fiscal year.

The Association shall send a copy of the final budget and notice of the amount of the Regular Assessment to each Owner at least 30 days before the fiscal year begins. The budget shall not be subject to Owner approval and there shall be no obligation to call an Owners' meeting to consider the budget.

Declarant may, but shall not be obligated to, reduce the Regular Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.6(b)) which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

If any proposed budget is disapproved under Section 8.8, or the Association fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Association may revise the budget and adjust the Regular Assessment from time to time during the year, subject to Section 8.8 and the notice requirements set forth above and in Alabama law.

8.2. Budgeting for Reserves.

The Association may include in the Common Expense budget a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period. Reserve budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. So long as the Association exercises business judgment in

determining the amount or necessity of the reserve fund, the amount shall be considered adequate.

The Association may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. So long as Declarant or any Declarant Affiliate owns any property described in Exhibit "A" or "B," neither the Association nor the Association shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

The Association may enter into agreements with Declarant, on negotiated terms, under which Declarant may obligate itself to provide or contribute to reserve funds as needed on a "cash basis" in lieu of funding reserves on an accrual basis. The Association has no duty to fund reserves during any period that Declarant is funding Association budget deficits.

8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments may be levied against the entire Class "A" membership in equal shares if the Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing at least a majority of the total votes allocated to Lots which will be subject to the Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if any. Special Assessments shall be payable in such manner and at such times as determined by the Association, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.4. Benefitted Assessments.

The Association may levy Benefitted Assessments against one or more particular Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services which an Owner requests pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.7) or which the Association otherwise provides in the Association's discretion. Benefitted Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing a Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Association shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Benefitted Assessment under this subsection.

- (c) to cover costs of landscaping maintenance of a Lot.
- (d) to cover costs of maintenance of Limited Common Areas, including Cabanas.

Lots which Declarant or any Declarant Affiliate owns are exempt from Benefitted Assessments unless the Association assumes the maintenance responsibility for landscaping with the consent of the Declarant or any Declarant Affiliate.

8.5. Commencement of Assessment Obligation; Time of Payment.

The obligation to pay assessments commences as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration; or (b) the month in which the Association first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Regular Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Owners shall pay assessments in the manner and on the dates the Association establishes. The Association may require advance payment of assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners with a history of delinquent payment. If the Association so elects, assessments may be paid in quarterly or monthly installments. Unless the Association otherwise provides, the Regular Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Association may require that the outstanding balance on all assessments be paid in full immediately.

8.6. Obligation for Assessments.

(a) **Personal Obligation.** Each Owner, by accepting a deed or entering into a Recorded contract of sale for any Lot, covenants and agrees to pay all assessments authorized in the Governing Documents for each Lot owned. All assessments, together with interest (computed from the assessment's due date at a rate of at least 12% per annum or such higher rate as the Association may establish, subject to Alabama law), late charges as determined by Association resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Association's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Regular Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempt from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant by each Owner. No reduction or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Association to take some action or perform some required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Option to Fund Budget Deficits. During the Class "B" Control Period, Declarant may satisfy the obligation for assessments on Lots which it or any Declarant Affiliate owns either by paying assessments in the same manner as any other Owner or by funding the budget deficit. The budget deficit is the difference between the amount of assessments levied on Class "A" Member-owned Lots, plus any other income received during the fiscal year, and the amount of the Association's actual expenditures during the fiscal year, but excluding expenses exclusively for capital improvement costs and reserves. Unless Declarant otherwise notifies the Association in writing at least 30 days before the beginning of the fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year.

Regardless of Declarant's election, Declarant's assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, except with respect to Benefitted Assessments, Declarant shall pay assessments on Lots which it or its Affiliates own in the same manner as any other Owner.

8.7. Lien for Assessments.

The Association shall have a lien against each Lot, including Declarant's Lots, to secure payment of delinquent assessments, as well as interest, late charges (subject to Alabama law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association's lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

Notwithstanding the above, and subject to Alabama law, any lien for Association assessments or charges levied solely for the purpose of acquisition, development, or construction of infrastructure or capital improvements serving the Community (or to pay the cost to underwrite, service, and repay any debt incurred to finance any such acquisition, development, or construction) may be designated by the Association as a "Capital Improvement Assessment"

which shall be superior to (a) the Association's lien for other Common Expenses, and (b) all other liens except those deemed superior under Alabama law and which may not be made subordinate by this provision.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage, and convey the Lot. The Association may sue for unpaid assessments and other charges without foreclosing or waiving its assessment lien.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure. The purchaser of a foreclosed Lot shall not be personally liable for assessments on such Lot due prior to the foreclosure sale. Such unpaid assessments shall be a Common Expense collectible from Owners of all Lots subject to assessment under Section 8.4, including such purchaser, its successors and assigns.

Notwithstanding the above, while the Association owns a Lot: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association.

8.8. Limitation on Assessment Increases.

Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations, after termination of the Class "B" Control Period, any Regular Assessment that is more than 10% greater than such assessments for the immediately preceding fiscal year is subject to disapproval at a meeting by the Members representing 75% of the Class "A" Members subject to such assessment. There shall be no obligation to call a meeting for the purpose of considering the disapproval of any budget except on petition of the Members subject to assessment under the budget, as provided for special meetings in the By-Laws. Any such petition must be presented to the Association within 10 days after delivery of the budget and notice of any assessment.

An emergency situation is any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible where a threat to personal safety is discovered;
- (c) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible and which could not reasonably have been foreseen by the Association in preparing and distributing the pro forma budget pursuant to

Section 8.1. However, prior to the imposition or collection of such an assessment, the Association shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Notice of the Association meeting at which such resolution is to be considered, explaining the nature of the assessment proposed, shall be provided to the Members along with the notice of such assessment; or

(d) to defend itself in litigation, arbitration, or other legal or administrative actions brought against it.

8.9. Exempt Property.

The following property shall be exempt from payment of Regular Assessments and Special Assessments:

- (a) All Common Area and other portions of the Community which are not Lots;
- (b) Any property dedicated to and accepted by any governmental authority or public utility.
- (c) Vacant Lots owned by the Declarant.

8.10. Use and Consumption Fees.

The Association may charge use and consumption fees to any Person using Association services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

PART FOUR: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the Community.

Article IX Easements

9.1. Easements in Common Area.

Declarant grants to each Owner a right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying the property to the

Association;

(c) The Association's right to:

(i) adopt rules regulating Common Area use, including rules limiting the number of guests who may use the Common Area, and charge use fees for such use;

(ii) suspend the right of an Owner to use any Common Area amenity (A) for any period during which any assessment or other charge against the Owner's Lot remains delinquent, and (B) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;

(iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;

(iv) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;

(v) permit use by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Association's discretion; and

(vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred; and

(d) The rights of Owners:

Any Owner may extend his or her right to use the Common Area to the members of his or her family, tenants, and social invitees, as applicable, subject to reasonable Association regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the tenants of such Lot for the lease term.

The guests, patrons, or employees of Non-Residential Lots shall not have a right or easement to use the Association's pool club or other Common Area recreational facilities the Association owns. Such Persons may use these facilities only with the Association's express permission, which it shall not be required to give.

Any Person's use and enjoyment of the Common Area is subject to the Association's authority to promulgate and enforce Use Restrictions and reasonable rules and regulations governing such use and to charge use, consumption, or membership fees as provided for in this Declaration. The rules and regulations and fees may be different for different classifications of users, including, but not limited to, Owners of Residential Lots, Owners and guests or permitted

users of Non-Residential Lots, guests or social invitees unaccompanied by Owners, or otherwise.

The posting of rules and regulations and fees in a conspicuous manner and location within Beach Village Resort or the publication in a community newsletter of general circulation within Beach Village Resort shall be deemed sufficient notice to all permitted users; provided, the Association, in its discretion, may provide notice of rules, regulations, and fees by other means or methods.

9.2. Easements of Encroachment.

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. A permitted encroachment is a structure or fixture which extends unintentionally from one person's property on to another's a distance of less than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

9.3. Easements for Utilities, Etc.

(a) **Installation and Maintenance.** Declarant reserves for itself, so long as Declarant or any Declarant Affiliate owns any property described in Exhibit "A" or "B," and grants to the Association and utility providers, perpetual, non-exclusive easements throughout Beach Village Resort (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure to serve Beach Village Resort, cable and other systems for sending and receiving data and/or other electronic signals, drainage systems, and security and similar systems;

(ii) install walkways, pathways and trails, street lights, and signage on property which Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a Plat;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) **Specific Easements.** Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, to develop the property described in Exhibits "A" and "B." The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into structures on a Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

9.4. Easements to Serve Additional Property.

Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities.

If the above easement grants permanent access to any property which is not submitted to this Declaration, Declarant, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefitted property.

A reciprocal easement for the benefit of Lot 70 and Beach Village Resort is shown on the final plat. The Association will be responsible for maintaining a dumpster and pad for the benefit of the Owners, and the owner of Lot 70 will be responsible for maintaining a dumpster, grease trap, and pad for its exclusive use. The Association and the owner of Lot 70 shall be responsible for maintaining the easement on the respective properties. The Declarant shall have an ingress and egress easement over Lot 70 as a construction entrance which shall be used not to hinder any operations on Lot 70 as a food court. Owners and guests shall have the benefit of this easement to access the food court for the purchase of food and beverages.

9.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over Beach Village Resort as necessary for the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance, landscaping maintenance, and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Any member of the Association, and its duly authorized agents and assignees, including committee members, and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Declarant grants to the Association, subject to any required notice, an easement and right

to enter a Lot to abate a Governing Document violation and/or to remove any structure, thing, or condition which violates the Governing Documents. Any costs incurred, including reasonable attorneys' fees, shall be assessed against the Lot Owner as a Benefitted Assessment.

9.6. Easements for Lake and Pond Maintenance and Flood Water.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Maintenance Areas to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Common Maintenance Areas; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not inside a dwelling or other structure) adjacent to or within 100 feet of bodies of water and wetlands within Beach Village Resort, in order to (a) temporarily flood and back water upon and maintain water over such portions of Beach Village Resort; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Maintenance Areas; and (c) maintain and landscape the slopes and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from their intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences or other occurrences not reasonably foreseeable or under the control of Declarant or such other Person.

9.7 Easements for Cross-Drainage.

All portions of the Community shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Community; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Association, and Declarant as long as it or any Declarant Affiliate owns any property described in Exhibit "A" or "B" to the Declaration.

9.8. Rights to Stormwater Runoff, Effluent, and Water Reclamation.

Declarant reserves for itself and its designees all rights to ground water, surface water, stormwater runoff, and effluent located or produced within the Community, and each Owner

agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section may not be amended without Declarant's consent, and the rights created in this Section shall survive termination of this Declaration.

9.9 Cabanas.

Declarant reserves for itself and its designees the right to construct up to 29 Cabanas in the Pool Club area, as shown on the plat or as an added exhibit to this declaration, as Limited Common Areas, and to grant an exclusive right or easement of use to be appurtenant to a Lot for the use of such Cabanas. Such areas shall be subject to Article 8.4(d) providing for Benefitted Assessments to maintain the same by the Association.

9.10 Easement to Beach and Gulf of Mexico

An easement exists in favor of each owner of a Lot and the owner's guests and licenses to have pedestrian subject to the conditions set out in Instrument 1807489 recorded in the Office of the Judge of Probate, Baldwin County, Alabama.

Article X Party Walls and Other Shared Structures

10.1. General Rules of Law to Apply.

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to party structures. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XI.

10.2. Maintenance; Damage and Destruction.

Unless otherwise specifically provided in additional covenants relating to such Lots, the Owners sharing the party structure shall share the cost of necessary or appropriate party structure repairs and maintenance equally.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner sharing the structure may restore it and be entitled to contribution for the restoration cost in equal proportions from other sharing owners. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

PART FIVE: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Article XI Dispute Resolution

11.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree to attempt to resolve disputes involving Beach Village Resort without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to, directly or indirectly, file a law suit for a Claim described in subsection (b), without first submitting the Claim to the alternative dispute resolution procedures described in Section 11.2.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;
- (iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article IV, which shall not be subject to review; or
- (iv) trespass, nuisance, property damage, enforcement of laws, codes, or ordinances within Beach Village Resort.

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 11.2:

- (i) any Association action to collect assessments or other amounts due from any Owner;
- (ii) any Association action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part

Two of this Declaration (relating to creation and maintenance of community standards);

(iii) any suit in which any indispensable party is not a Bound Party; and

(iv) any suit as to which the applicable statute of limitations would expire within 180 days of giving the Notice required by Section 11.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article.

11.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent, and to the Association, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Association may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the Bound Parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Baldwin County area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within 30 days after submitting the matter to

mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Except as provided in Section 11.2(e), the Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

(e) Actions Involving Declarant - Final and Binding Arbitration. Except for disputes in which a party other than an Owner or the Association is an indispensable party, all disputes, including any Claim described above, between an Owner or the Association and Declarant or any Declarant Affiliate shall be resolved by final and binding arbitration in accordance with this subsection (e) and, except as specifically provided, shall not be submitted as a lawsuit or other proceeding in any Alabama state court or federal court. This subsection (e) is an agreement to arbitrate and is specifically enforceable under Alabama law. Any arbitration award shall be subject only to review by the Alabama or federal appellate courts in the same manner as are trial court judgments. Judgment may be entered upon the arbitration award in any court of competent jurisdiction to the fullest extent permitted under Alabama law.

Prior to commencing arbitration under this subsection, the parties shall engage in negotiation and mediation in accordance with Sections 11.2(a)-(c), regardless of whether such matter is a Claim under Section 11.1. If negotiation and mediation are unsuccessful in resolving the dispute, the Owner or the Association, as applicable, shall have until expiration of the applicable statute of limitations under Alabama law (as would apply to the same claim being brought in a Alabama or federal court) to submit the dispute to the American Arbitration Association for arbitration in Baldwin County. Unless otherwise agreed by the parties to the dispute, the American Arbitration Association shall appoint three arbitrators, including one attorney, to conduct the arbitration in accordance with its rules. The arbitrators shall render a written judgment accompanied by findings of fact and conclusions of law.

If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and the Respondent, shall be released and discharged from any and all liability to the Claimant arising out of the dispute. The parties shall share equally the costs of conducting the arbitration until a prevailing party is determined;

provided, the prevailing party shall be entitled to recover all of its costs incurred in the action, including, without limitation, reasonable attorneys' fees.

11.3. Initiation of Litigation by Association.

After the Class "B" Control Period, the Association shall not initiate any judicial or administrative proceeding, including arbitration, which is reasonably expected to cost at least \$100,000.00 in legal fees to prosecute to completion without Association approval upon the specific recommendation of the Dispute Resolution Committee (which shall be created as provided in the By-Laws). The Dispute Resolution Committee's recommendation must be in writing and must be accompanied by a feasibility analysis including an explanation of the issues, a budget for legal and related expenses, the amount in controversy, the expectation of success, and a copy of bids from a minimum of three qualified law firms.

Article XII Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates) (an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any Association insurance policy;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders; or

(e) If the U.S. Department of Housing and Urban Development is insuring or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Lot, material amendment to the Governing Documents or extraordinary action of the Association, as defined under VA Pamphlet 26-7.

12.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering the Owner's Lot.

12.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Association to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Article XIII Disclosures and Waivers.

13.1 Changes in Plan.

Each Owner acknowledges that Beach Village Resort is a Planned Unit Development. Each Owner further acknowledges and agrees that the present plans and themes for Beach Village Resort's development may change in Declarant's discretion and that no notice or consent is required for such changes except as may be required by law. No representations, warranties, or assurances are made by any Person, and none shall be relied upon by any Owner (a) that any Lots, or other property or facilities will be added, modified, or eliminated within Beach Village Resort; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that he or she is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to: (a) the design, construction, completion, development, use, benefits, or value of Beach Village Resort; or (b) the number, types, sizes, prices, or designs of any residential or non-residential structures or improvements built or to be built in any part of Beach Village Resort, except as may be set out in a written contract with the Declarant.

13.2. No Liability For Third Party Acts.

Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property in Beach Village Resort. The Association may, but is not obligated to, maintain or support certain activities within the Community which promote or enhance safety or security within the Community. However, the Association, and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including fire protection, burglar alarm, or other security monitoring systems, or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Lot that the Association, the Association and Association committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Beach Village Resort assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

13.3. Water Management.

Each Owner acknowledges that Declarant and its Affiliates are not related to the local permitting authority for surface water permits. Each Owner further acknowledges and agrees that any lakes or wetlands within Beach Village Resort are designed as water management areas and are not designed as aesthetic features. Due to fluctuations in ground water elevations within the immediate area, the water level of lakes will rise and fall and Declarant has no control over such elevations. Therefore, each Owner agrees to release and discharge Declarant and its Affiliates from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claims relating to such fluctuations in the water elevations (including the absence of water). Owners shall not alter, modify, expand, or fill any lakes or wetlands located within or in the vicinity of Beach Village Resort without the prior written approval of the local permitting authority, Declarant, the U.S. Army Corps of Engineers, and such other local, state, and federal authorities as may have relevant jurisdiction over such matters.

13.4. Liability for Association Operations.

The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant (including its successors and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto) which relate to or arise out of Association management and operations,

including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Common Maintenance Areas and the collection of assessments.

13.5. Assumption of Risk and Indemnification.

By purchasing a Lot in the vicinity of any Private Amenity or other property reserved for commercial or non-residential use and open to the general public, each Owner expressly assumes the risk of noise, personal injury, death, or property damage caused by maintenance and operation of such property, including, without limitation: (a) noise from the permitted operations of such use; (b) noise caused by the permitted users of such property; and (c) reduction in privacy caused by traffic (including non-residents of Beach Village Resort) to or from such property.

Each Owner agrees that Declarant, the Association, any Private Amenity owner(s), and any of Declarant's Affiliates or agents shall not be liable to any Owner or any other Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, death, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of Owner's Lot to the Private Amenity or non-residential property, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's Affiliates or agents, or the Association. The Owner agrees to indemnify and hold harmless Declarant, Declarant's Affiliates and agents, and the Association against any and all such claims by Owner's visitors, tenants, and others upon such Owner's Lot.

PART SIX: CHANGES IN THE COMMUNITY

Communities such as Beach Village Resort are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Beach Village Resort and its Governing Documents must be able to adapt to these changes while protecting the things that make Beach Village Resort unique.

Article XIV Changes in Ownership of Lots

Any Owner, other than Declarant or any Declarant Affiliate, desiring to sell or otherwise transfer title to his or her Lot shall give the Association written notice within 7 days of transfer of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all future obligations of the Lot Owner, including assessment obligations, until the date upon which the Association, notwithstanding the transfer of title, receives such notice.

Article XV Changes in Common Area

15.1. Condemnation.

Whenever any part of the Common Area is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Association shall determine, in the exercise of its business judgment, whether each Owner is entitled to notice.

The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within 60 days after such taking, Declarant, so long as Declarant owns any property described in Exhibit "A" or "B" of this Declaration, and Members representing at least 75% of the total Class "A" votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans the Association approves. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any Common Area improvements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Association shall determine.

15.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Association from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

Article XVI Amendment of Declaration

16.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, during the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose.

Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National

Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

16.2. By the Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of the Members representing at least 75% of the Association's total Class "A" votes. In addition, so long as Declarant or any Declarant Affiliate owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's written consent is required for any amendment.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

16.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). No amendment may specifically remove, revoke, or materially adversely affect the right of a Non-Residential Lot Owner to continue operating a permitted business within a Non-Residential Lot or, by design, materially adversely impact a Non-Residential Lot Owner's permitted operations, without the consent of such Non-Residential Lot Owner. No amendment may specifically remove, revoke, or materially adversely affect the application of, or compliance with, the Development Order, the Consent Amended Final Judgment, or the Incidental Take Permit, without the written consent of the entity or entities whose approval is required to amend or to issue such documents.

Any amendment to this Declaration which alters any provision relating the Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Area, must have the prior approval of the Alabama Department of Environmental Management or such other governmental authorities having such approval rights.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon the earliest of (a) actual notice; (b) Recording; or (c) later effective date specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or

circumstances operate to amend any provisions of this Declaration.

16.4. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and this Article shall govern amendment of such exhibits. Exhibit "C" is incorporated by reference and may be amended as provided in Article III or pursuant to Sections 16.1 and 16.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

DECLARANT:

Beach Village Resort, LLP
an Alabama limited liability partnership:

By:

Stephen T. Hicks
Stephen T. Hicks

Its: Partner

Beach Village Resort, LLP
an Alabama limited liability partnership:

By:

Paul A. Stewart
Paul A. Stewart

Its: Partner

STATE OF Alabama)

COUNTY OF Baldwin)

I, Ashley Cook, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Stephen T. Hicks, whose name as Partner of Beach Village Resort, LLP, an Alabama limited liability 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 said instrument, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership on the day the same bears date.

Given under my hand and seal this the 1 day of October, 2020.



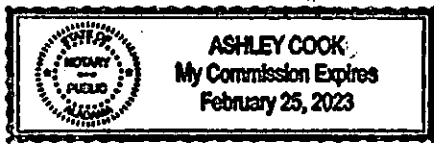
Ashley Cook
Notary Public
My Commission Expires: Feb 25, 2023

STATE OF Alabama)

COUNTY OF Baldwin)

I, Ashley Cook, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Paul A. Stewart, whose name as Partner of Beach Village Resort, LLP, an Alabama limited liability 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 said instrument, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership on the day the same bears date.

Given under my hand and seal this the 1 day of October, 2020.



Ashley Cook
Notary Public
My Commission Expires: Feb 25, 2023

MORTGAGEE'S CONSENT AND SUBORDINATION

22nd STATE BANK, an Alabama banking corporation ("Secured Lender"), the mortgagee under that certain mortgage, executed by Beach Village Resort Cottages, an Alabama Limited Partnership, dated the 11th day of September, 2020, and recorded as Instrument number 1859042 in the Office of the Judge of Probate of Baldwin County, Alabama (the "Mortgage"), does hereby consent to the recording of this Declaration of Covenants, Conditions, and Restrictions for Beach Village Resort. Furthermore, Secured Lender does hereby subordinate in all respects its interest in and to the mortgaged property described in the Mortgage to this Declaration; provided, however, that the liens of the Association for assessments under this Declaration shall be subordinate to the lien of Secured Lender under the Mortgage. Secured Lender does hereby acknowledge and agree that this Declaration shall be unaffected by any default, foreclosure or exercise of any other remedy under the Mortgage, as if this Declaration were executed, delivered and recorded prior to the execution and recording of the Mortgage.

IN WITNESS WHEREOF, Secured Lender has caused this Consent and Subordination to be executed through its authorized representative on this the 25th day of September, 2020.

22nd STATE BANK

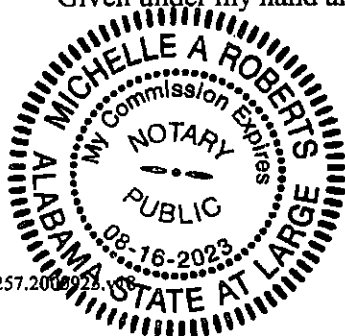
By: [Signature]
As Its: Prison Reeder (Printed)
SVP

STATE OF Alabama)

COUNTY OF Mobile)

I, Michelle A. Roberts, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Prison Reeder, whose name as SVP of Alabama Credit Union, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking entity on the day the same bears date for the purpose of consenting to the recordation of this instrument.

Given under my hand and seal this the 29th day of September, 2020.



Michelle A. Roberts
Notary Public
My Commission Expires: 8-16-23

EXHIBIT "A"

Land Initially Submitted

The property shown on the final plat of Beach Village recorded at Slide 2727-D, Instrument Number 1831829, in the Office of the Judge of Probate, Baldwin County, Alabama, excluding Lot 70, which is not made subject to these covenants, except as provided in Article 9.4.

Also described as:

Lot 2, Southern Visions Subdivision, as recorded on Slide 2646-F, Probate Court Records, Baldwin County, Alabama.

TOGETHER WITH: A 20 foot wide easement for ingress and egress as follows:
Commencing at the Northwest corner of the Southwest Quarter of Section 13, Township 9 South, Range 4 East, Baldwin County, Alabama, run South 89°-40'-56" East and along the East/West Half Section line of said Section 13, a distance of 618.63 feet to the Point of Beginning and the centerline of a 20 foot ingress, egress easement; said easement being 10 feet either side of the following described centerline: thence South 04°-14'-05" East and along said centerline, 72.8 feet; thence South 44°-04'-49" East and along said centerline, 240.17 feet to a point on the North line of Beach Village Resort and the Terminus of said centerline.

EXHIBIT "B"

Land Subject to Annexation

Any adjacent or non-adjacent real property subject to the Development Order (Ordinance 2018-1288), as it may be amended from time to time, including Lot 70 as shown on the plat referenced in Exhibit "A."

EXHIBIT "C"

Initial Use Restrictions

The purpose of Design Guidelines and Use Restrictions is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities which fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article IV, and the Association, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Lot under one set of circumstances, the same thing may be disapproved for another Lot under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it stop the Association from taking enforcement action in any appropriate circumstances.

Subject to the above, the following restrictions shall apply to all of Beach Village Resort until such time as they are amended, modified, repealed, or limited pursuant to the Declaration.

(a) **Animals and Pets.** No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Community, except that a reasonable number of usual and common household pets, as determined in the Association's discretion, may be kept on a Lot. The Association may prohibit the presence of cats to comply with government regulations. Owners renting residences may elect to have "pet-friendly" accommodations.

Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Association whenever outside a structure. Upon the Association's request, an Owner, at his or her expense, shall remove any pet which is permitted to roam free, or, in the Association's sole discretion, endangers health, makes objectionable noise, or constitutes a nuisance or inconvenience to other Owners or residents of any portion of the Community. If the Owner fails to honor such request, the Association may cause the pet to be removed at the Owner's expense. The Association, without prior notice, may remove any pet from the dunes or other beach areas. No pets shall be kept, bred, or maintained for any commercial purpose. No pets are allowed in the pool area.

(b) **Wildlife.** Capturing, killing, or trapping wildlife is prohibited within the Community, except in circumstances imposing an imminent threat to the safety of Persons or pets, or as permitted under section (a) of this Exhibit "C."

(c) **Firearms; Fireworks.** The use and discharge of firearms within the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The use and discharge of fireworks is prohibited except by license granted by the Association.

(d) **Nuisances.** No Owner shall engage in any activity which constitutes a nuisance (meaning offensive or detrimental activity, as determined by the Association), or which

materially disturbs or destroys the vegetation, wildlife, or air quality within the Community, or which results in unreasonable levels of sound or light pollution.

(e) Exterior Lighting. No alteration to declarant-provided exterior lighting on any Lot is allowed due to Fish and Wildlife regulations.

(f) Storage of Goods. Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Area (except by the Association), or, if not in active use, any portion of a Lot which is visible from outside the Lot is prohibited.

(g) Prohibited Conditions. The following conditions, structures, or activities are prohibited on any Lot:

(i) Dog runs and animal pens of any kind.

(ii) Shacks or other structures of a temporary nature on any Lot except as may be authorized by Declarant during the initial construction of improvements within the Community. Temporary structures used during the construction or repair of a dwelling or other improvements shall be removed immediately after the completion of construction or repair;

(iii) Permanent basketball goals and playground equipment except as may be provided by the Association;

(iv) No private flags of any kind may be displayed from residences;

(v) Outdoor athletic and recreational facilities such as playscapes, swing sets, and sport courts unless provided by the Association in a common area;

(vi) Outside clotheslines or other outside facilities for drying or airing clothes unless properly screened and approved in advance in accordance with Article IV; No towels to be dried or placed on balconies of residences;

(vii) Alterations to the infrastructure.

In any event, and notwithstanding the above list of prohibited conditions, any structure, improvement, or thing proposed for construction, erection, installation, or placement on a Lot requires prior Reviewer approval in accordance with Article IV, unless specifically made exempt under the Design Guidelines.

(i) Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which, in the Association's reasonable discretion, emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Lots. Such restriction shall not be applied to prohibit an otherwise permitted use of a Non-Residential Lot.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Community which, in the Association's reasonable determination, tends to cause embarrassment, discomfort, annoyance, or nuisance to others.

(j) **Signs.** No sign shall be erected within the Community, except those required by law, including posters and circulars; provided, the following types of signs may be erected on a Lot without the Association's written consent: (i) residential or non-residential identification signs for identification of the occupant and its address, in a style designated by the Design Guidelines or approved by the Reviewer; and (ii) security signs in a style and location designated by the Design Guidelines or approved by the Reviewer. This restriction shall not apply to entry, directional, and marketing signs installed by Declarant or any Declarant Affiliate, or a Builder, acting with Declarant's specific consent. The Association, with the Association's approval, shall have the right to erect signs on the Common Area. Signs advertising or identifying a Lot as being for sale or rent shall be of uniform design as approved by the Association.

(k) **Holiday Decorations.** Owners shall not display holiday decorations on their Lots. Permitted decorations may be displayed for such periods as are normal and customary for comparable residential communities by the Association.

(l) **Antennas and Satellite Dishes.** No antenna, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside the dwelling on a Lot. The Association shall provide a master satellite, antenna, cable, or other communication system for the benefit of all of Beach Village Resort.

(m) **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in securely covered, scavenger-proof containers of a type, size and style which are pre-approved by the Reviewer or specifically permitted under the Design Guidelines, or as required by the applicable governing jurisdiction. Such containers shall be screened from view outside of the Lot except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. Rubbish, trash, and garbage must be removed from the Lots and may not accumulate on any Lot. Outdoor incinerators may not be kept or maintained on any Lot. The Association may enact such other rules and regulations concerning litter and trash control as may be necessary or appropriate to comply with the Development Order and the Incidental Take Permit.

(n) **Unsightly or Unkempt Conditions.** All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot in a manner which is unsanitary, unsightly, offensive or detrimental to any other portion of the Community, as the Association may determine. No activities shall be conducted upon or adjacent to any Lot or within any structure on a Lot which are or might be unsafe or hazardous to any Person or property. Open fires are prohibited within the Community, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes.

(o) **Vehicles and Parking.** As used in this Section, the term "vehicles" includes, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and

recreational vehicles.

No vehicle may be left upon any portion of the Community except in a driveway or other area the Association designates. Parking is not allowed on the roadways. Parking is limited and guest parking will be in designated areas. No person shall park any pick-up truck with a camper top or other raised enclosure or commercial lettering or logos, or any recreational vehicle, mobile home, trailer, camper, stored vehicle, commercial vehicle (including all vehicles with commercial lettering or logos), or any unlicensed or inoperable vehicle within the Community. "Sports utility vehicles" and "mini-vans" (as such vehicles are commonly referred to, as determined in the Association's discretion) and pick-up trucks without raised enclosures or commercial writing or logos shall be treated as automobiles and may be parked in driveways outside of enclosed garages. Boats or other watercraft and RV's are not permitted. This Section shall not apply to emergency vehicle repairs or to construction, service, and delivery vehicles for periods necessary to perform the services or make a delivery. Notwithstanding the above, for purposes of cleaning, loading, unloading, and short term parking, recreational vehicles may be parked for up to one hour within each calendar month.

(p) Use of Water Bodies. Wetlands, inland waterways, channels, canals, lakes, ponds, streams, and other bodies of water within the Community are part of the Community's water management system, and the use of watercraft on any body of water within the Community is prohibited. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of inland waterways, channels, canals, lakes, ponds, streams, or other bodies of water within or adjacent to the Community.

(q) Solar Equipment. No solar heating equipment or device is permitted outside the dwelling or other structures on the Lot.

(r) Shorelines. No Owner, by virtue of ownership of property adjacent to an inland waterway, channel, canal, beach, or other shoreline, shall have any right superior to that of other Owners (or the general public, to the extent that the public has a right of access) to use or control the use of any inland waterways, channels, canals, beaches, or other shorelines within or adjacent to the Community. All such areas shall be subject to the Association's control.

(s) No Person shall use on the Lots or the Common Areas such plant species as are listed in or referenced by the Development Order as prohibited within Beach Village Resort. Notwithstanding such prohibitions, the Design Guidelines may set forth additional prohibitions on the use of plant species. The use in landscaping of any plant species shall be subject to approval in accordance with Article IV and the Design Guidelines. In addition, the import into Beach Village Resort of any plant species used in landscaping, other than those transplanted from within the Community, shall be subject to approval in accordance with Article IV and the Design Guidelines.

(t) Use of Golf Carts. Golf carts are prohibited within Beach Village Resort, except for management and maintenance purposes by the Association.

EXHIBIT "D"
BY-LAWS
OF
BEACH VILLAGE RESORT HOME OWNER'S ASSOCIATION, INC.

Article I Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Beach Village Resort Home Owner's Association, Inc.
(the "Association").

1.2. Principal Office.

The principal office of the Association shall be located in Baldwin County, Alabama.
The Association may have such other offices, either within or outside Alabama, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Declaration of Covenants, Conditions, and Restrictions for Beach Village Resort, recorded by Beach Village Resort, LLP ("Declarant") in the Office of the Judge of Probate of Baldwin County, Alabama, as it may be amended (the "Declaration"), unless the context indicates otherwise.

Article II Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Association shall have two classes of membership, Class "A" and Class "B," as more

fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

2.3. Annual Meetings.

The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. Meetings shall be of the Voting Members unless Alabama law otherwise requires or the Board otherwise specifies in the notice of the meeting. The Board shall schedule subsequent regular annual meetings so as to occur during the third quarter of the Association's fiscal year on such date and at such time as the Board may specify.

2.4. Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by at least 25% of the Members of the Association.

2.5. Notice of Meetings.

Written or printed notice stating the place, day, and hour of any meeting of the Voting Members shall be delivered, either personally, by mail, or by electronic means including email at an email address provided to the Association, to each Voting Member entitled to vote at such meeting, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the Association's records, with postage prepaid. If by electronic means, the notice shall be deemed to be delivered when sent to the email address to the Voting Member at the email2 address provided to the Association by the Voting Member.

2.6. Waiver of Notice.

Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may waive, in writing, notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member shall be deemed waiver by such Voting Member of notice of the time, date, and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings.

If any meeting of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have

been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting.

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9. Proxies.

Voting Members may vote by proxy, subject to any specific provision to the contrary in the Declaration or these By-Laws.

Every proxy shall be in writing specifying the Lot for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of

any Lot for which it was given, (b) receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Majority.

As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum.

Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by proxy of Voting Members representing a majority of the total Class "A" and Class "B" votes in the Association shall constitute a quorum at all Association meetings; provided, until such time as the Class "B" control of the Association has ended, the presence of Members representing at least 10% of the total Class "A" and Class "B" votes in the Association shall constitute a quorum.

2.12. Conduct of Meetings.

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings. *Robert's Rules* shall govern procedure.

2.13. Action Without a Meeting.

In addition to such matters as to which the Governing Documents or Alabama law permit to be voted on by written ballot in lieu of a meeting, any action required or permitted by law to be taken at a meeting of the Voting Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by

Voting Members holding at least 80% of the votes entitled to be cast at a meeting if all Voting Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Voting Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Voting Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article III Board of Directors: Selection and Meetings

3.1. Governing Body; Composition.

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one vote. Except with respect to directors appointed by the Class "B" Member, directors shall be Members, tenants of Lots, or residents of Beach Village Resort; provided, however, only one such person representing a particular Lot may serve on the Board at any time. A "resident" shall be any natural person 19 years of age or older whose principal residence is a Lot within Beach Village Resort. If a Member or tenant is not a natural person, any officer, director, partner or trust officer of such Member or tenant shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member. No Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2. Number of Directors.

The Board shall consist of three to seven directors, as provided in Section 3.3.

3.3. Manner and Timing of Selection.

(a) The initial Board shall consist of three directors identified in the Articles of Incorporation. Except as otherwise provided in this Section 3.3, the Class "B" Member shall have sole and full authority to appoint, remove and replace the members of the Board until termination of the Class "B" Control Period.

(B) Within 90 days after termination of the Class "B" Control Period, as provided in the declaration, the President shall call for an election by which the Voting Members shall be entitled to elect seven directors.

(e) Not later than the first annual meeting after the termination of the Class "B" Control Period, an election shall be held. Three directors shall serve a term of two years and four directors shall serve a term of one year, as such directors shall determine among themselves.

Upon expiration of the term of office of each director elected by the Voting Members, Voting Members entitled to elect such director shall be entitled to elect a successor to serve a term of two years. Directors elected by the Voting Members shall hold office until their respective successors have been elected.

3.4. Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. The Board shall appoint a Nominating Committee to nominate candidates for election to each position on the Board of Directors which is to be filled by the votes of Voting Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and four Members or representatives of Members, with at least two representatives from each class of members entitled to elect a member of the Board. Members of the Nominating Committee shall be

appointed by the Board not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. Nominations for any position may also be permitted from the floor at any meeting at which an election is to be held. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Voting Member may cast all votes assigned to the Lots which it represents for each position to be filled from each slate of candidates on which such Voting Member is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled from each slate who receive the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5. Removal of Directors and Vacancies.

Any director elected by the Voting Members may be removed, with or without cause, by the vote of Voting Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Voting Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Voting Members who has three consecutive unexcused

absences from Board meetings shall be deemed to have resigned. Any director elected by the Voting Members who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present.

In the event of the death, disability, or resignation of a director, or upon the Board's removal of a director pursuant to the foregoing paragraph, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Members entitled to fill such directorship may elect a successor for the remainder of the term. Any director whom the Board appoints shall be selected from among Members (or representatives of Members) within the class of membership represented by the director who vacated the position.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as Declarant's representative. The Class "B" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

3.6. Organizational Meetings.

The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.7. Regular Meetings.

Regular meetings of the Board may be held at such time and place as a majority of the

directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter unless the directors waive such requirement or otherwise act by unanimous written consent in lieu of a meeting.

3.8. Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, fiberoptics or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a

written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Telephonic Participation in Meetings.

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.11. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12. Conduct of Meetings.

The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. *Robert's Rules* shall govern procedure.

3.13. Open Meetings; Executive Session.

(a) Subject to the provisions of Section 3.13(b), all Board meetings shall be open to all Voting Members and, if required by law, all Owners; but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.14. Action Without a Formal Meeting.

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

Article IV Officers

4.1. Officers.

Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may,

but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Voting Members, to serve until their successors are elected.

4.3. Removal and Vacancies.

The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

Article V Administration

5.1. Powers and Duties of Board.

(a) General Authority. The Board shall be responsible for conducting the affairs of the Association and shall be authorized to exercise all rights and powers of the Association and to do all acts and things on behalf of the Association except those as to which the Governing Documents or Alabama law specifically require to be done or approved by the Voting Members

or the membership generally. The Board shall have all powers necessary for the administration of the Association's affairs.

(b) Duties. Duties of the Board shall include, without limitation:

(i) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;

(ii) levying and collecting such assessments from the Owners as provided in *Code of Alabama* (1975) §35-20-12, The Alabama Homeowners Association Act;

(iii) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;

(iv) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(v) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's best judgment, in depositories other than banks;

(vi) making and amending use restrictions and rules in accordance with the Declaration;

(vii) opening bank accounts on behalf of the Association and designating the signatories required;

(viii) making or contracting for the making of repairs, additions, and

improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;

(ix) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(x) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(xi) paying the cost of all services rendered to the Association;

(xii) keeping books with detailed accounts of the Association's receipts and expenditures;

(xiii) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 8.3;

(xiv) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(xv) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Alabama law, the Articles of Incorporation or the Declaration; and

(xvi) assisting in the resolution of disputes between owners and others without

litigation, as set forth in the Declaration.

(c) Operation of Board. After termination of the Class "B" Control Period, the Board shall operate through two committees: the Business Affairs Committee and the Governance Committee. Each committee shall consist of three directors whom the President shall appoint.

The Business Affairs Committee shall be primarily responsible for the Association's business affairs, which shall include such matters as management, personnel, common area maintenance and operation, insurance, contracts, and finances. The Governance Committee shall be primarily responsible for governance issues, which shall include such matters as interpretation and enforcement of the Governing Documents, architectural control (subject to the provisions of the Declaration), regulation of use, rulemaking, and oversight of the Covenants Committee, if established. The President shall determine in each instance which committee shall be responsible for a particular matter before the Board.

Each committee shall meet at least quarterly and shall conduct such review, investigation and consideration of matters delegated to it as the committee deems appropriate. The decision of a majority of the members of the committee on any matter shall constitute its recommendation to the Board. The committee shall report to the Board on each matter delegated to it, summarizing its findings and recommendations. In taking action on such matter, the Board shall give great weight to the committee's recommendation. The directors shall be entitled to rely upon the investigation and recommendations of each committee. Notwithstanding any other provision in this Section, so long as the Board contains fewer than five directors, the two committee structure shall not apply, but the Board shall be guided by the principles set forth herein in taking action regarding business affairs or governance affairs.

(d) Board Standards. The actions of the Business Affairs Committee, and of the Board in acting upon the recommendations of the Business Affairs Committee and otherwise conducting the Association's business affairs, shall be evaluated and governed under the business judgment rule. The business judgment rule protects a director from personal liability so long as the party claiming liability does not prove that the director failed to: (i) serve in a manner the director believes to be in the best interests of the Association and the Members; (ii) serve in good faith; or (iii) act with such care as an ordinarily prudent person in a like position would use under similar circumstances.

The actions of the Governance Committee, and of the Board in acting upon the recommendations of the Governance Committee and otherwise conducting the Association's governance affairs, shall be governed and evaluated under the rule of reasonableness. The rule of reasonable requires the Board to act in a fair and nondiscriminatory manner and to adhere to the procedures established in the Governing Documents.

The Board and any committee which the Board appoints shall carry out their responsibilities in accordance with the operational standards set forth in the Governing Documents or such higher standards as the Declarant, the Board, and the Architectural Review Committee may establish. Such standards shall, in all cases, meet or exceed the standards set by Declarant and the Board during the Class "B" Control Period. Operational standards may evolve as the needs and demands of Beach Village Resort change.

The burden of proof in any challenge to a decision of the Board shall be on the party asserting liability. It is intended that the highest and broadest duties which the directors owe to the Members be those specifically set forth in this Section.

5.2. Powers and Duties of Officers.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically conferred or impose upon them. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

5.3. Compensation of Directors and Officers.

Directors and officers shall not receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total votes in the Association at a regular or special meeting of the Association. Any officer or director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the directors other than the director requesting the reimbursement, if applicable. Nothing herein shall prohibit the Association from compensating an officer or director, or any entity with which an officer or director is affiliated, for services or supplies furnished to the Association in a capacity other than as an officer or director pursuant to a contract or agreement with the Association, provided that such officer's or director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

5.4. Management Agent.

The Board may employ for the Association one or more professional management agent or agents at such compensation as the Board may establish, to perform such duties and services

as the Board shall authorize, including the exclusive management of short-term vacation rental as agent of any Member electing to participate in vacation rentals. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making or decision-making authority or ultimate responsibility for those duties set forth in Section 5.1(b). Declarant or any Declarant Affiliate may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

5.5. Committees.

(a) General. In addition to those committee specifically authorized elsewhere in the Governing Documents and in this Section 5.5, the Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

(b) Covenants Committee. The Board may appoint a Covenants Committee consisting of at least three and no more than seven Members, including at least one Class "A" member and at least one Class "B" member, if any. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article VI of these By-Laws.

5.6. Right of Class "B" Member to Disapprove Actions.

So long as the Class "B" Membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Declarant under the Declaration or these By-Laws, or interfere with development or construction of any portion of Beach Village Resort, or diminish the level of services being provided by the Association. The Class "B" Member may exercise this right to disapprove to block proposed actions or to require reversal of actions taken in violation of this Section, but otherwise may not use its right to disapprove: to require any action on behalf of any committee, the Board, or the Association; to reduce the level of services which the Association is obligated to provide; to prevent capital repairs; or to block any action or expenditure required to comply with applicable laws and regulations.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) below have been met and either the Class "B" Member has waived its right to disapprove or the 10-day period described in subsection (c) has expired without the Class "B" Member exercising its right to disapprove. Any action taken in violation of this Section or in disregard of the Class "B" Member's exercise of such right of disapproval shall be outside the scope of the Association's authority and invalid and the Class "B" Member shall be entitled to pursue any and all remedies available at law or in equity, including damages or injunctive relief, to remedy such violation of its rights hereunder.

(a) Notice. The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the

Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with Section 3.9 and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard. The Class "B" Member shall be given the Opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

(c) Exercise of Right to Disapprove. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

5.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

5.8. Right To Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives,

or Service Area and other owners or residents associations, within and outside Beach Village Resort. Any common management agreement shall require the consent of a majority of the Board.

Article VI Accounting and Financial Matters.

6.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Accounting.

The following accounting standards shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association; and
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.

6.3. Reports.

(a) Commencing at the end of the quarter in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

- (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
- (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) a balance sheet as of the last day of the preceding period; and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(b) An annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines from time to time. For the year which includes the end of the Class "B" ("Declarant") Control Period, the annual report shall include audited financial statements.

6.4. Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Voting Member approval in the same manner provided in Section 8.2 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the Association's budgeted gross expenses for that fiscal year. During the Class "B" Control Period, no Mortgage shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Voting Members representing at least 51% of each class of votes.

Article VII Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) Notice. The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article V; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the

Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing.** If a hearing is requested within the 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable Opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) **Appeal.** Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the hearing date.

Article VIII Miscellaneous

8.1. Parliamentary Rules.

Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Alabama law or the Governing Documents.

8.2. Conflicts.

If there are conflicts among the provisions of the documents governing Beach Village Resort, (including the provisions of Alabama Homeowners' Association Act), then the Act, the Articles of Incorporation, the Declaration, and these By-Laws (in that order) shall prevail.

8.3. Books and Records.

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within Beach Village Resort as the Board shall designate.

(b) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

(d) The Board shall maintain records and information to be made available to each Member or potential purchaser, upon written request, within a reasonable time not to exceed 30

days from the date of the request, and upon the payment of reasonable associated costs. The records and information may be kept in paper or electronic form or the Member or potential purchaser may be directed to the location of any public record containing the records or information.

(e) Upon written request by a Member or potential purchaser and upon payment of reasonable costs, the Board, as specified in subsection (d), shall provide or direct the member or potential purchaser to the location of the public record containing the following:

- (i) Documents reflecting the most recent assessments, any pending homeowners' association assessments approved by the board but not yet in effect, or any mandatory dues and charges with the amounts, including dates due and payable;
- (ii) Common areas owned by the association and those common areas not owned by the association but which HOA dues go to pay;
- (iii) A copy of the current operating budget and reserve funds, if any, and a statement of financial condition for the last fiscal year;
- (iv) Documents evidencing any insurance coverage provided for all lot owners by the association, including any fidelity bond;
- (v) Documents evidencing any loans against the association and any collateral provided by the association for the loans;
- (vi) The official name of the association with current contact information of the current officers and agent, if any;
- (vii) A copy of the current covenants, conditions, and restrictions adopted by the association along with any amendments, modifications, restatement, or supplement and current architectural control regulations;
- (viii) Any association initiation or transfer fees which may be due at the time of the real estate closing;
- (ix) A list of all existing common areas; and

- (x) The case number or other identifying information of any pending lawsuits, judgments, liens, arbitration, or any other dispute resolution process to which the association is a party and contained in a public record.

8.4. Notices.

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

- (a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Voting Member;

- (b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

- (c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

8.5. Amendment.

- (a) By Class “B” Member. Prior to termination of the Class “B” Control Period, the Class “B” Member may unilaterally amend these By-Laws. Thereafter, the Class “B” Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) to enable any institutional or governmental

lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots. So long as the Class "B" Membership exists, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member and the approval requirements set forth in Article XVI of the Declaration are met, if applicable.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 51% of the total Class "A" votes in the Association, 51% of the total Class "B" votes in the Association, and the consent of the Class "B" Member, if such exists. In addition, the approval requirements set forth in the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Beach Village Resort Home Owner's Association, Inc., an Alabama corporation; That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 1 day of October, 20 20.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 1 day of October, 20 20.

Sandy Y. Lumb
Secretary

