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Declaration of Condominium of Cottages at Fish River

This Declaration, made this 28th day of August, 2007, by **Robert Clark Homes, Inc., f/k/a Clark-Achee Homes, Inc.**, herein sometimes called **Declarant**, for **Declarant** and for **Declarant's** successors and assigns.

1. Purpose and General Description of Improvements

1.1 Submission to Condominium Act. This Declaration submits the lands hereinafter described and the improvements constructed or to be constructed thereon to the condominium form of ownership and use in the manner provided by the Alabama Uniform Condominium Act of 1991, §35-8A-101 et seq. of the 1975 Alabama Code, as it may be from time to time amended (herein, the "Act").

1.2 General Description of Improvements. The condominium is nineteen (19) Ground Units, which are private elements restricted to development for residential purposes by the purchasers thereof. Streets (portions of which shall be one way), a gated entry way, walkways, and storage areas will be owned as Common Elements and maintained by the Condominium Owners Association. Land lying outside of existing perimeter fences will be owned as a Common Element, but the existing perimeter fence need not be maintained by the **Declarant** or the Association. Boat slips and dock facilities will be provided above navigable waters under lease from the State of Alabama.

2. Name

The name of the condominium is the **Cottages at Fish River**.

3. The Land

The lands owned by the **Declarant** which are hereby submitted to the condominium form of ownership are in Baldwin County, Alabama, to-wit: See **Exhibit A**, incorporated herein by reference. Said land, together with all improvements as may be constructed thereon, is referred to herein sometimes as "Property" or "Condominium Property".

4. Definitions

When used in this Declaration, the plat and/or plans filed herewith, the Articles of Incorporation and Bylaws of the Association and related documents (Condominium Documents), the terms defined by §35-8A-103 of the Act shall have the meaning therein described, and the following terms shall have the meaning stated herein, unless the context requires otherwise:

1. "Bylaws" mean the Bylaws of the Association, whether in their initial form as attached hereto as **Exhibit D** or as amended from time to time.
2. "Declaration" means this instrument, together with plat and/or plans, as amended from time to time and "Declarant" means the Declarant hereunder.

3. "Mortgagee" means a natural individual, bank, savings and loan association, insurance company, mortgage company, real estate investment trust, business trust, pension fund or any other generally recognized institutional lender, or agency of the United States Government, which owns or holds a mortgage encumbering a Unit, and which has given notice to the Association of its lien as provided for by Article 19 herein.
4. "Rules and Regulations" mean the Rules and Regulations concerning the **Cottages at Fish River** adopted from time to time by the Board of the Association that are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Act or the Declaration.
5. "Occupant" means any Owner, the family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Unit within the Property. All actions or omissions of any Occupant are and shall be deemed the actions or omissions of the Owner of such Unit.
6. "Owner" or "Unit Owner" means the record owner, including **Declarant**, of fee simple title to any Unit, whether a corporate, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Unit at the foreclosure sale, or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Unit solely by virtue of a lease, contract, installment contract or other agreement.
7. "Association" means the **Cottages at Fish River Owners Association, Inc.**, and "Board" or "Board of Directors" means the Board of Directors of the **Cottages at Fish River Owners Association, Inc.**
8. "Design Code" shall mean the standards prepared, issued and amended from time to time by the DRB pursuant to Section 17.4 below for the purpose of reviewing and approving all exterior improvements, landscaping and other Improvements that may be made to Ground Unit, Limited Common Element (if any), or Common Element.
9. "DRB" shall mean the Design Review Board appointed pursuant to Article 17.
10. "Improvement" shall mean and refer to any building, structure, planting or device constructed, erected or placed upon any Common Element or Ground Unit that in any way affects the exterior appearance of any Ground Unit or Common Element. Improvements shall include (by way of illustration and not limitation) streets, buildings, sheds, foundations, covered patios, underground utilities, driveways, garages, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, satellite dishes, radio or television antennas, any grading and any excavation or fill, and any other artificial or man-made changes or alterations to the natural conditions.

When used in this Declaration, other terms defined in the Alabama Uniform Condominium Act of 1991 shall have the meanings therein described.

5. Common Elements

The Common Elements shall be owned by Unit Owners in the proportions stated in **Exhibit B**, and include all parts of the Condominium Property not a part of a Ground Unit or Limited Common Element (if any). The Common Elements, without limitation, include:

(A) Streets for ingress and egress or serving the Condominium Property, together with outdoor and exterior lights and utility services therewith;

(B) All common use boat storage areas (even if assigned to the exclusive use of a Unit);

(C) All tangible personal property required for the maintenance and operation of the Condominium and for the common use and enjoyment of the Unit Owners.

(D) Lawn areas, area outside existing perimeter fences, landscaping, walkways, sidewalks, curbs and steps, entrance signs and other improvements on any part of the Condominium Property not designated as a Ground Unit or Limited Common Element (if any).

6. Limited Common Elements

As of the date of this Declaration, the Condominium contains no Limited Common Elements.

7. Unit Boundaries and Ground Unit Use and Development Restrictions

The boundaries of each Ground Unit shall be as identified by the perimeter boundary lines designated on the Plan and Plat recorded herewith. **The fifty foot by forty-five foot (50' x 45') building site designated within each Ground Unit depicts that portion of the Ground Unit within which any residence must be constructed.** Provided however, that **Declarant** reserves the right to shift or re-orient the precise location of each building site in order to preserve existing trees and natural landscaping and to maintain aesthetics, so long as no building site is closer than thirty-one feet (31') to any other building site. There is no upper boundary nor lower boundary for a Unit. Each Unit shall be a Ground Unit and is a Private Element, and shall be used and developed as follows:

7. 1. Use Restrictions. Each Ground Unit shall be used for single-family residential purposes only; no building shall be constructed on a Ground Unit, except for an approved residential structure and garage or storage spaces under or within such building and within the area approved as a building site by the Declarant; no "out" building shall be constructed or maintained on a Ground Unit. No trade or business of any kind may be carried on in or from any Ground Unit. Use as an office by an Owner or Occupant shall not be considered a violation of this covenant if and only if such use does not create regular customer, client, or employee traffic, and further provided any such use is in compliance with all applicable rules, regulations and ordinances of the any governmental authority having jurisdiction thereof. The leasing or rental of a unit for residential purposes only shall not be considered a violation

of this covenant so long as the lease is of the entire Ground Unit, and is otherwise in compliance with the Rules and Regulations of the Association.

7. 2. Underground Utilities. All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable television, broadband, security and any other utility service for any Ground Unit shall be installed and maintained below ground.

7. 3. Designated Building Sites. Each building site is 45' by 50' in size.

7. 4. Minimum Requirements for Improvements; Parking. Prior to commencing any construction on any Ground Unit (including any grading or clearing), the location of any Improvement to be constructed thereon shall be set forth on the site development plan and approved by the **Declarant** or DRB. The residential structure on each Ground Unit shall not be constructed on ground grade, but the finished floor surface on the first occupied level shall be elevated above grade a minimum of nine (9) feet and a maximum of ten (10) feet. All automobiles or motor vehicles owned or used by the Owner or Occupant shall be parked in the enclosed parking area under the residential portion of the building on that Owner's Ground Unit, or on the driveway on the Ground Unit. Such enclosed parking area shall not be used for storage or for any other purposes or uses that would result in the space being unavailable for parking vehicles. Unless stored in an approved manner in that part of the Common Elements designated for boat storage by Unit Owners, any out-of-the-water boat shall be stored on the Condominium Property only in such enclosed parking area

7. 5. Trees. No Owner (other than Declarant) or person acting on Owner's behalf shall cut, remove, or mutilate any tree larger than four (4) inches in diameter (measured at chest height) located on any Ground Unit or Common Element, without first obtaining the approval of the **Declarant** (or after all Units have been transferred to an entity other than Declarant, the DRB), nor shall any person trim any such tree without obtaining such approval. Approval shall be sought prior to any construction or clearing activity.

7. 6. Landscaping. The landscaping plans for each Ground Unit shall be submitted to the **Declarant** or DRB for approval. All front, rear and side yards of each Unit shall be a natural area, unless the same is landscaped with shrubbery and other plant life as approved. To the extent practical, each Owner shall incorporate into the landscaping plans the natural plant life on such Ground Unit, and shall otherwise take such steps that would, to the extent practical, preserve the existing trees, plant life, wild flowers, and natural environment. All landscaping for a Ground Unit shall be completed in accordance with the approved landscaping plan, no later than sixty days following the issuance of a certificate of occupancy. No hedge, shrubbery or planting shall be placed or permitted to remain where it interferes with traffic sight lines for roadways. Landscaping and shrubbery added by or for a Unit Owner shall be short enough not to obstruct any other Unit Owner's view of Fish River; tree canopies shall be of sufficient height such that visibility of Fish River is preserved.

7. 7. Roofing. All roofs shall be of at least 6/12 pitch and constructed of metal of a type approved by **Declarant** or the DRB. Plumbing or heating vents, stacks and other projections of any nature shall be placed, if at all possible, on the rear roof of such

Improvement and shall (i) be painted the same color as the rear roof of such Improvement and shall (ii) to the extent practical, not be visible from any street. No solar or other energy collection panel, equipment or device shall be installed or maintained on any Ground Unit, unless previously approved by the DRB.

7. 8. Exterior Lighting. All exterior lighting must be approved by the DRB.

7. 9. Exterior Materials and Finishes. Approved exterior building material finishes for any Improvement shall include stucco, brick, solid wood siding (e.g., cypress or other solid wood), and such other materials as may be approved by the DRB as to type, size, color and application. All wood surfaces utilized on the exterior shall be painted or stained. Prohibited exterior finish materials include particle board, plywood, vinyl or any other type of pressed, laminated or fabricated siding, vertical siding, simulated brick or stone, concrete block, concrete, and any other materials as the DRB may from time to time determine. Metal flashing, valleys, vents and gutters shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

7. 10. Garages. No garage doors shall open onto or front a street; garage doors shall be kept closed except when in use. The parking area will be screened and the door constructed with material approved by the DRB. No garage shall be converted to any use other than for the parking of vehicles therein.

7. 11. Fences. All fences between Ground Units shall be constructed on the perimeter boundary of the Unit and shall be made of wrought iron or aluminum and shall not exceed four (4) feet in height. All materials utilized for and the location and design of all fences must be approved by the **Declarant** (or after all Units have been transferred to an entity other than Declarant, the DRB).

7.12. Windows and Doors. Reflective glass shall not be permitted on the exterior of any Improvement unless approved by the DRB. Wooden windows, metal windows, and/or wooden windows with vinyl or aluminum exterior cladding may be permitted upon approval from the DRB. Cantilevered bay windows may not be used unless approved in writing by the DRB. Burglar bars or wrought iron doors shall not be permitted. All window colors must be approved by the DRB.

7. 13. Satellite Dishes and Antennae. No satellite dishes larger than eighteen (18) inches in diameter, radio or television antenna, or other similar devise or aerial shall be attached to or installed on any Ground Unit or any other portion of the Condominium Property, unless contained entirely within the interior of a building or other structure or otherwise approved by the DRB. No radio or television signals or any other electromagnetic radiation or transmission shall originate from any Ground Unit that may interfere with the reception of radio or television signals within the Condominium Property.

7. 14. Driveways and Sidewalks. All driveways and sidewalks on each Ground Unit shall be constructed of concrete, brick, or other materials approved by the DRB.

7. 15. Outdoor Furniture and Recreational Facilities. Any furniture, cooking equipment, play apparatus, toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment, freestanding playhouses and tree houses, basketball backgrounds on a Ground Unit shall be at the rear thereof to the greatest extent practical and not visible from the street, and shall be subject to DRB approval.

7. 16. Vehicles, Machinery, and Equipment.

(A) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts, all terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats, other water craft, trailers, and any other similar types of vehicles, machinery or equipment shall not be stored or allowed to remain: (1) on any Ground Unit unless placed, stored and maintained within an enclosed structure underneath the residence; or (2) on any portion of the Common Elements, except that approved boats, other water craft, and their trailers may be stored in the designated boat storage area. Provided however, that construction equipment used in connection with construction on a Ground Unit may be temporarily stored un-enclosed.

(B) Each Owner shall provide for adequate off street parking located solely within that Owner's Ground Unit.

(C) Any vehicle that is inoperable shall be immediately removed from the Condominium Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within the Condominium Property, except within enclosed garages or workshops or for emergency repairs.

(D) In addition to regulation of vehicular traffic under Paragraph 7.20, the Association and its Board shall have the right to restrict use of any motor vehicle on the common elements of the Condominium Property.

7. 17. Variances. In its sole and absolute discretion, the DRB shall have the exclusive right to grant variances and exceptions with respect to the provisions of Articles 7 and 17. Any request for the variance or exception shall be submitted to the DRB in writing. If approved by the DRB, the DRB shall issue a written approval executed by the chairman or vice chairman of the DRB.

7. 18. Construction and Improvements.

(A) No lumber, metals or bulk materials shall be kept or stored or accumulated on the Condominium Property, except building materials during the construction of Improvements. During construction, (i) all Ground Units shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practical, out of view from any street and (iii) all construction trash, debris and rubbish shall be placed in a dumpster or other container designed for such purposes and shall be properly disposed of.

(B) During the construction of any Improvements, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall utilize off-street parking only, and not damage trees or other vegetation required to be preserved. Upon completion of construction of any Improvements, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed.

(C) All Improvements shall be constructed in compliance with the Design Code and all applicable federal, state, county and local laws, ordinances, rules, regulations, and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate governmental authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Ground Unit. Each Owner shall also be responsible for strict compliance with the Design Code and all applicable watershed protection, soil erosion, and other governmental requirement, both during and after completion of construction of any Improvement on such Owner's Ground Unit.

7. 19. Subdivision and Interval Ownership. Other than by Declarant prior to construction thereon, no Ground Unit may be reconfigured, unless such results in a reduction of the total number of Ground Units in the Condominium Property and is approved by the Board. No Ground Unit shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

7. 20. Vehicular Traffic. (a) All vehicular traffic on the private streets and roads in the Condominium Property shall be subject to the applicable provisions of the laws of Alabama and any city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The maximum speed for all motor vehicles shall be ten (10) miles per hour, and the Association may promulgate, administer, and enforce such speed limits and other reasonable rules and regulations governing vehicular and pedestrian traffic. The Association shall be entitled to enforce such rules and regulations by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of any conflict between the provisions of the laws of the State of Alabama and the traffic rules and regulations promulgated by the Association, the more restrictive shall govern.

(b) The gravel path or drive providing access to the dock area shall be used only by pedestrian and electric golf cart traffic; motor vehicles designed for highway use and all terrain or recreational vehicles shall be prohibited on such path. No Ground Unit Owner shall access the dock area by moving across any part of the Common Elements other than the gravel path or drive designated for such purpose, except for the Owners of Units 11, 12, 13 or 14.

8. Easements

8.1 Utility Easements. Utility easements are reserved over and across all Common Elements and Limited Common Elements (if any) for providing water, sewer, gas, electricity,

telephone, broadband, cable or other utility service to adequately serve the Condominium Property.

8.2 Easements for Ingress and Egress. The Common Elements shall be subject to a perpetual nonexclusive easement in favor of all Owners and the **Declarant** for all proper and normal purposes reasonably intended for the enjoyment of said Owners and the **Declarant**, subject to all restrictions in the Declaration.

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

9. Property Development and Declarant's Reserved Rights

9.1 Area of Units. The approximate area of each Unit is indicated on **Exhibit B** hereto.

9.2 Declarant's Reservation of General Rights. Concerning the entire Condominium Property, Declarant reserves the following rights:

- to post signs;
- to use the Common Elements and easements through them;
- to show Units to prospective purchasers or tenants;
- to maintain a sales or manager's office in any unit owned by Declarant;
- to appoint or remove any officer or Board member appointed or elected solely by **Declarant**;
- to remove or alter improvements on the real property which exist at the time of recordation hereof;
- to delegate any or all of the rights hereby reserved to any duly authorized agent, assignee, or transferee selected by **Declarant**;
- to add to the Condominium Property additional land which is surrounded on three sides by the land described in Exhibit A, and to convert such additional land to no more than two (2) additional Ground Units, to develop such additional land subject to all the provisions of this Declaration, and to create Units 20 and 21 if such additional land is added.

Each such right may be exercised by **Declarant** or **Declarant's** transferee for three (3) years from the date of recording of this Declaration.

9.3 Declarant's Reservation of Control of Association. Declarant reserves the right to control the Board for the maximum time permitted by §35-8A-303 of the 1975 Alabama Code. Not later than ninety (90) days after conveyance of twenty five percent (25%) of units to persons other than **Declarant**, at least one member and not less than twenty-five percent

(25%) of the members of the Board must be elected by unit owners other than **Declarant**; and, not later than ninety (90) days after conveyance of fifty percent (50%) of units to persons other than **Declarant**, not less than thirty three and one third percent (33 1/3%) of the members of the Board must be elected by unit owners other than **Declarant**. Until such time as all units initially owned by **Declarant** have been sold to a person other than **Declarant**, **Declarant** shall be entitled to twenty (20) votes at all meetings of the Owners.

9.4 Amendment of Condominium Plan. Pursuant to Article 7, the **Declarant** reserves the right to shift or re-orient location of Ground Units which Declarant owns so long as the number of Units is not increased. Changes in the location of Units shall be reflected by an amendment to the Plan if required by law. An amendment to the Plan or this Declaration reflecting an alteration of location of the Units owned by the Declarant must be signed and acknowledged only by the Declarant and need not be approved by the other Owners and Mortgagees, whether or not such approval may elsewhere be required herein.

9.5 Use by the Declarant. Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board nor their use of the Condominium Property or application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the Condominium until the **Declarant** has completed all of the **Declarant's** contemplated improvements, and closed the sales of all of such Units. **Declarant** may make such use of the unsold Units and of the Common Elements as may facilitate such completion and sale. These Special Declarant Rights exist so long as the **Declarant** holds any Unit in the Condominium for sale in the ordinary course of business or leases any Unit which it owns.

9.6 Expenses After Sale of First Unit. Upon the first transfer by Declarant to a purchaser of a Unit and the assessment of common expenses by the Association that shall be made at such time, Declarant under §35-8A-315 shall have the responsibility of a Unit Owner for any Unit remaining unsold, and shall be liable for the payment of the proportionate share of common expenses on all such Units. Except for the responsibilities of a Unit Owner as provided herein, Declarant shall not have responsibility for the maintenance, repair or replacement of any part of the Common Elements thereafter.

9.7 Status of Unsold Units. The **Declarant** shall be deemed to be the Owner of each Unit which has not been conveyed to a person other than the **Declarant**. Unless otherwise provided in the Declaration, the **Declarant** shall be entitled to all rights and privileges available to, and shall be subject to any and all obligations and duties imposed upon, the Owner of any such Unit under the Declaration.

10. Ownership of Common and Limited Common Elements

10.1 Common Element Allocation Formula. The ownership of a portion of the Common Elements is allocated as shown in **Exhibit B**.

10.2 Limited Common Element Allocation Formula. The ownership of a portion of the Limited Common Elements (if any) is allocated by the ratio of each Unit sharing the Limited Common Element to the total number of Units sharing the Limited Common Element.

10.3 Interest Shall Not Vary. The ownership interest as set forth herein shall remain constant unless hereafter changed by amendment to this Declaration. The undivided interest of each Unit Owner in the Common Elements shall not be changed unless the Owners of record of the Units affected thereby and the holders of record of any liens thereon shall have unanimously agreed to such change expressed in an amendment to this Declaration duly recorded.

10.4 Indivisible Ownership. Except as provided in the Act and this Declaration, the ownership interest in the Common Elements shall remain undivided, and no Unit Owner shall bring any action for partition or division of the Common Elements, unless the condominium Property is removed from the provisions of the Act. Any agreement or covenant to the contrary shall be void.

11. Use of Common Elements

11.1 Owners' and Occupants' Use of Common Elements. Each Unit Owner shall have the right to use the Common Elements in common with all other Unit Owners, as may be required for the purposes of access, ingress, egress, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend to each Unit Owner, and to such Unit Owner's agents, servants, tenants, family members, invitees and licensees. Such rights to use the Common Elements shall be subject to and governed by the provisions of the Act, Declaration, Bylaws, and Rules and Regulations of the Association.

11.2 Public Use Prohibited and Interference With Use. The Common Elements shall be used only by Unit Owners and their agents, servants, tenants, family members, invitees and licensees for access, ingress to and egress from the respective Units and for such other purposes incidental to the use of the Units. The use, maintenance and operation of the Common Elements and Limited Common Elements (if any) shall not be unreasonably interfered with by any Unit Owner, and shall be subject to reasonable Rules and Regulations as may be adopted by the Board from time to time.

12. Utilities

Each Unit Owner shall be required to pay all charges for utilities used or consumed in an Owner's Unit, including but not limited to water, electricity, gas, cable television, and telephone service. The utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association shall be responsible for the payment of common water and sewage used in the Common Elements.

13. Owner's Liability for Common and Limited Common Expenses

13.1 Allocation Formula. Liability for Common Expenses shall be allocated as reflected in **Exhibit B**. Any expense associated with the maintenance, repair, or replacement of a Limited Common Element (if any) must be assessed against the units to which that Limited Common Element is assigned; any common expense or portion thereof benefitting fewer than all of the units must be assessed exclusively against the units benefitted.

13.2 Payment and Late Charges. Each Unit Owner including **Declarant** shall pay his proportionate share of the Common Expenses and/or Limited Common Expenses (if any) within fifteen (15) days after they become due. Payment of the Common Expenses and/or Limited Common Expenses shall be in such amounts and at such times as determined pursuant to the Bylaws. No Unit Owner shall be exempt from payment of his proportionate share of the Common Expenses by waiver or non-use or non-enjoyment of the Common Elements or by abandonment of his Unit. Each Unit Owner shall be personally responsible and legally liable for sums assessed by the Association. If such an assessment is not paid within fifteen days, then a late fee of five percent (5%) thereof may be imposed by the Board. Interest on the principal amount of the assessment and the late fee shall become due, and may be enforced as further described in Paragraph 14.7.

14. Assessments by and Liens in Favor of Association

14.1 Liability and Enforcement. The Association has authority to administer the operation and the management of the Common Elements, Limited Common Elements (if any), and the Condominium Property, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To provide the funds necessary for such proper operation, the Association has the right to make, levy, and collect assessments against the Owners of all Units to pay Common and Limited Common Expenses (if any) and such other expenses which the Association is authorized to incur under this Declaration and the Act.

14.2 Assessments. All assessments for the payment of Common Expenses and Limited Common Expenses shall be levied annually and paid monthly, quarter annually, or semi-annually (as the Board may determine) by the Owners of all Units. Unless specifically otherwise provided for in this Declaration, each Owner of a Unit and each Owner's Unit shall bear the same fractional share of such assessment as specified in **Exhibit B**. The assessments for Common Elements and Limited Common Expenses shall be payable in advance commencing on the date of the purchase of a Unit, or in such other installments and at such times as may be determined by the Board in accordance with the Association's By-Laws.

14.3 Annual Budget; Special Assessments; Reserve Funds.

A. Within sixty (60) days prior to the beginning of each fiscal year of the Association, the Board shall adopt a proposed annual budget for the next fiscal year, and such budget shall project the expenses which may be required for the proper operation, management and maintenance of the Condominium Property, including reasonable allowances for contingencies and reserves. Within thirty (30) days after adoption of such proposed annual budget by the Board, copies of said budget shall be made available to each Member. The Board shall set a date for meeting of the Members to consider ratification of the budget, not less than fourteen (14) nor more than thirty (30) days after mailing or delivering the budget to the Members. Unless at such meeting a majority of the Members present in person or by proxy reject the budget, the budget is ratified. In the event the proposed budget is rejected,

the budget for the last year shall continue in effect until such time as a new budget is ratified. If the budget is ratified, the assessment for said year shall be established based upon such budget.

B. If the Board at any time determines in the sole discretion of said Board that the assessments levied are or may prove to be insufficient for any reason, including emergencies and nonpayment of any Owner's assessment, the Board shall have the authority to levy such additional assessment as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents and the Act.

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

14.4 Omission of Assessment. The omission by the Association, before the expiration of any year, to fix the assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

14.5 Detailed Records. The Association shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements and the Limited Common Elements (if any), specifying and itemizing the maintenance and repair expenses.

14.6 Payment of Common and Limited Common Expenses. All Unit Owners shall be obligated to pay the assessment for Common Expenses and/or Limited Common Expenses (if any) adopted by the Board pursuant to the terms of this Declaration. No Owner shall be liable for the payment of any part of the Common Expenses or Limited Common Expenses first assessed against such Owner's Unit after a sale or other conveyance by the Owner of such Unit. The purchasers of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against such Unit up to the time of conveyance, without prejudice to the purchaser's right to recover from the selling Unit Owner the amounts paid by the purchaser thereof. Whenever any Unit may be sold or mortgaged by the Owner thereof, which sale shall be concluded only upon compliance with the other provisions of this Declaration, the Association, upon written request of the Owner or purchaser of such Unit, shall furnish to the Owner, the purchaser, or any proposed Mortgagee a statement verifying the status of the payment of any assessment which shall be due and payable to the Association by the Owner of such Unit and the other information required by the Act. Any purchaser or proposed Mortgagee may rely upon such statement in concluding the proposed purchase or mortgage transaction and the Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged when any assessment is in default, the purchase or mortgage proceeds shall first be applied by the Purchaser or Mortgagee to the payment of any delinquent assessment or installment due the Association before application of the payment to the selling Unit Owner.

14.7 Lien Declared; Interest and Collection Expenses. The Association shall have a lien on each Unit for any unpaid fine and for any unpaid assessment duly made by the Association for a share of Common Expense, Limited Common Expense (if any) or otherwise, together with interest thereon at a rate as may be determined by the Board (not to exceed one and one-half (1.5%) percent per month) on the unpaid balance, a reasonable service charge as determined by the Board (subject to a minimum service charge of \$30.00), reasonable attorney fees (subject to a minimum attorney fee of \$250.00) and all other expenses of collection. **Under §35-8A-316, such lien need not be recorded in the public records of Baldwin County other than by the recording of this Declaration, but shall be extinguished unless proceedings to enforce the lien are instituted within three (3) years after the assessment becomes due.** All such liens shall be subordinate to any lien for taxes, the lien of any prior mortgage of record to the extent provided by Paragraph 19.4 (A), and any other lien recorded prior in time. A Unit Owner is not entitled to arbitrate an asserted lien claim of the Association.

14.8 Foreclosure on Liens. A lien in favor of the Association may be foreclosed according to the statutory manner for foreclosing a mortgage with power of sale under Alabama law, as same may be from time to time amended. The provisions of **§35-8A-316** of the 1975 Alabama Code shall govern foreclosure of such lien, including the giving of reasonable notice to the appropriate Unit Owner and lien holder, and the priority of liens. The Association shall be entitled to bid at any sale held in connection with the foreclosure of the assessment lien and may apply as a cash credit against its bid all sums secured by the lien enforced. Arbitration is not a pre-requisite to foreclosure.

14.9 Liability Survives Transfer. Upon any conveyance of a Unit, the grantor of such Unit shall remain liable for all unpaid assessments pertaining to such Unit duly made by the Association or accrued up to the date of such conveyance.

14.10 Election of Remedies. Institution of a suit at law to collect payment of any delinquent assessments shall not be deemed to be an election by the Association which shall prevent it thereafter seeking enforcement by foreclosure, nor shall proceeding by foreclosure be deemed to be an election precluding the institution of a suit at law to collect any sum then owed to the Association.

15. Use and Occupancy Restrictions

15.1 Use; Leasing. Subject to **Declarant's** reserved developmental rights and the right of the Association to maintain such office as is reasonably necessary for Association management, **no part of the Property may be used for purposes other than residential use. Leasing or renting of an entire Ground Unit shall be permitted, but less than an entire Ground Unit shall not be leased or rented. Leasing or renting of any Unit for an initial period of less than twelve (12) consecutive months shall not be permitted. Any Owner who leases a Ground Unit shall be strictly liable to the Association for any damage caused by or resulting from the acts or omissions of the tenant, the tenant's family, the tenant's guest or anyone using the property with the permission of the tenant.** The Association shall have the right to require that a written, substantially uniform lease be used, that such lease provide for a separate security deposit for the protection of

the Association, and that the Association be provided a copy of such lease before a tenant takes possession. The Board shall have the power and right to impose additional reasonable terms, conditions and restrictions on leasing or other use of a Unit by persons other than its Owners.

15.2 Animals or Pets. Except for animals trained to assist the disabled, animals or pets shall not be permitted within any Unit or upon Common Elements, other than (a) a limited number of domesticated animals commonly accepted in the local community as pets and housed within a Unit in cages or aquariums, and (b) dogs and cats, to a maximum combined number of three. All pets or animals shall be maintained by the Owner or Occupant in a manner to minimize impact on other Unit Owners, and are subject to such rules and regulations as the Board may adopt, including compliance with registration procedures imposed by the Board. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. All pets must be confined to an enclosed area and not allowed to roam freely; when outside of an enclosed area, all pets must be under leash. Pets shall not be permitted to leave excrement outside the Ground Unit of the pet owner; and, each Unit Owner is responsible for cleaning up after his, her or its pet when outside of that Unit Owner's Ground Unit. An Owner shall be liable to the Association for the costs of repairing any damage to the Common caused by the pet of such Owner or Occupant.

No Unit Owner shall keep or maintain any pet in or about the Condominium Property unless such Unit Owners and a representative of the Association have signed a "Pet Permission Agreement" with regard to such pet. The right to maintain a pet is conferred only by the signing of a Pet Permission Agreement, is in the nature of a conditional license, and is subject to revocation and termination at any time by the Board on their sole determination that such pet is vicious, is annoying other residents, or is otherwise a nuisance, or on the failure of a Unit Owner to comply with these rules and regulations pertaining to pets.

15.3 Restrictions on Conduct and Use.

A. Nothing shall be stored in or upon the Common Elements without prior consent of the Board.

B. No Unit Owner or Occupant shall disturb or annoy other Occupants of the Condominium Property nor shall any Occupant or Unit Owner commit or permit any nuisance, noxious, offensive, immoral or illegal act in his Unit or on the Property. No noxious or offensive activities shall be carried on, nor shall any outside lighting be used, nor shall sound speakers or other sound producing devices be used, nor shall anything be done, on any part of the Condominium Property which, in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to other Owners or Occupants.

C. Except for a single "for sale" or "for rent" sign not to exceed six (6) square feet in size, no sign, banner, streamer, or other on-premises advertising of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board.

D. No Owner or Occupant shall cause or permit anything to be placed on the outside walls of an Improvement, and no sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to or placed upon the exterior walls or roof of any building, without prior written consent of the Board.

E. No exterior clothes line shall be permitted, except in the aftermath of natural disaster or other prolonged power outage or in the parking area underneath the residence and screened from public view.

15.4 Rules and Regulations. Additional use restrictions may be imposed by Rules and Regulations adopted by the Association to impose reasonable additional use and occupancy requirements related to conduct of Occupants and esthetics, and to further implement the provisions of this Declaration and the reasonable use of the Condominium.

15.5 Enforcement against Tenant by Association. Each Unit Owner who has or shall hereafter lease a Unit irrevocably empowers and authorizes the Association to enforce the rules and regulations of the Association and to terminate the lease and evict any tenant who fails to comply with said rules, or who provides other sufficient cause for termination of the lease and eviction in accordance with the laws of Alabama, this Declaration, Rules and Regulations of the Association, or any contract for lease. The Association, the Board or its managing agent shall not become liable to any Unit Owner or lessor or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this paragraph.

15.6 Abatement of Violations. The violation of any rule or regulation adopted by the Board, or the breach of any Bylaw, or the breach of any provision of the Declaration shall give the Association the rights, in addition to any other rights set forth in the Declaration, Articles or Bylaws: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, or condition contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass, or (b) subject to Article 28 requiring arbitration, to enjoin, to abate, or remedy such thing or condition by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such action or proceedings against a defaulting Unit Owner, including arbitration and court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting Owner, and the Association shall have a lien for all of the same upon the Unit of such defaulting Owner, upon all of such defaulting Owner's additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon all of such defaulting Owner's personal property in such defaulting Owner's Unit or located elsewhere on the Condominium Property. Nothing herein contained shall prevent an Owner from maintaining an arbitration proceeding against the Association and the expense to remedy a default of the Association shall be a Common Expense if an arbitration of competent jurisdiction finds the Association to be in default as alleged in such proceeding.

15.7 Failure of the Association to Insist on Strict Performance; No Waiver. Failure of the Association to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not restrict or limit the right of the Association to fully enforce the provisions hereof on a later occasion or situation. The receipt by the Association of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed to be a waiver of such breach. No waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of the Association.

16. Maintenance, Repairs and Replacements

16.1 Owners Obligation. Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Ground Units and all Improvements thereon or therein and all lawns, landscaping and grounds within same shall be the responsibility of the Owner of such Ground Unit. Each Owner shall be responsible for maintaining his, her or its Ground Unit and Improvements in a neat, clean and sanitary condition, both inside and outside. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Improvements and re-roofing when the same become worn or would be replaced by a prudent Owner. No exterior changes, alterations or Improvements shall be made to any Ground Unit or Improvement without first obtaining the prior written approval of the same from the DRB. Each Ground Unit Owner shall not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements and shall comply with all Rules and Regulations adopted by the Association and shall be liable for all damages to another Unit or to the Common Elements caused by any contractor engaged by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise.

16.2 Reporting Repairs Needed. Each Ground Unit Owner shall to promptly report to the Association any defects or needed repairs for which the Association is responsible. If the Unit Owner fails to promptly notify the Association of any such known defects which need to be repaired, the Unit Owner shall be responsible for the increased cost of any repairs which are created due to the initial repairs not being reported promptly.

16.3 Association Obligations for Maintenance, Repair and Replacement. Maintenance of, repairs to and replacements within the Common Elements shall be the responsibility of and shall be furnished by the Association. The authorized representatives of the **Declarant**, Association, Board or Managing Agent shall be entitled to reasonable access to any Unit and Limited Common Elements (if any) as may be required in connection with an emergency, or in connection with maintenance of, repairs of or replacements within the Common Elements or any equipment facilities or fixtures affecting or serving other Units, Common Elements, or to make any alteration required by any governmental authority.

16.4 Damage by Owner. If damage should be caused to the Common Elements, Limited Common Elements (if any), or to a Unit or Units owned by others due to the act or neglect of a Unit Owner or of his agent, servant, tenant, family member, invitee or licensee, or

Occupant, then such Unit Owner shall pay for such damage or such maintenance, repair and replacements, as may be determined by the Association to the extent not covered or not fully paid by the Association's insurance. The liability of a Unit owner for such expenses may be enforced by the Association through such procedures for assessment and foreclosure as it may hereafter adopt.

16.5 Special Provisions for Docks, Boat Lifts and Water Craft. (a) That part of the dock area which is over navigable waters is owned by the State of Alabama and is or will be leased to the Association. **The interest of the Association under such lease shall be part of the Common Elements, but the lands under navigable waters and the facilities above navigable waters are not part of the Common Elements.** Each Owner will be eligible to select one boat slip in the order of purchase of Ground Units, so long as boat slips remain available, **and the Declarant shall then designate the boat slip available to the Ground Unit Owner;** thereafter, **exclusive use of such slip shall be reserved for the Owner of whatever person or entity thereafter owns such Ground Unit.** Other than in connection with the transfer of ownership of a Ground Unit, boat slips and the right to use boat slips shall not be assignable or transferrable to any person or entity; provided however, that Declarant and/or Robert A. Clark shall have the right to assign or transfer to another Ground Unit Owner any boat slip reserved for the use of a Ground Unit owned by it or him and the extra or 20th boat slip not reserved for the use of any of the 19 Ground Units.

(b) Responsibility for overall maintenance of the dock area generally shall rest on the Association. Provided, each Ground Unit Owner shall be responsible for the maintenance and repair of the boat lift in the boat slip assigned for that Ground Unit. Further provided, that each Ground Unit Owner shall be responsible for any damage to the dock area, Common Elements, and the real or personal property of any other Ground Unit Owner which results from his, her or its negligence or carelessness in the use of the dock area, failure to properly navigate or handle any water craft, failure to secure any water craft, or failure to remove vessel from the water in connection with hurricane or tropical storm, flooding or other natural disaster.

(c) Each Ground Unit Owner understands that it may not be possible to absolutely secure a vessel in the water against the effects of extreme weather, and agrees to remove his, her or its water craft from Fish River whenever extreme weather should be reasonably anticipated; and, each Ground Unit Owner agrees to indemnify the Association and each other Ground Unit Owner against damage resulting from matter described in this Paragraph.

17. Design Review Board; Design Code for Ground Units

17.1. Board Composition. The Design Review Board ("DRB") shall consist of not less than two nor more than four persons, appointed or elected as provided in Section 17.2 below; provided, however, that Declarant or its designee may exercise all the powers and rights of the DRB until the termination of Declarant control. The members of the DRB may, but shall not be required to be, members of the Association or Owners of any Unit. The term of office for each member of the DRB shall be three years, except as provided in Section 17.2 below. Each Owner, by acceptance of a deed to or other conveyance to a Ground Unit, shall be

deemed to ratify the provisions of this Declaration, including the restrictions imposed on development of Ground Units under Articles 7 and 17 or elsewhere in this Declaration.

17.2. Appointment and Removal of DRB Members. For so long as the **Declarant** owns any portion of the Condominium Property or until such earlier date as **Declarant** may elect, **Declarant** shall have the sole and exclusive right to appoint and remove all of the members of the DRB. At such time as **Declarant** no longer owns any portion of the Condominium Property or, upon **Declarant's** written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the DRB, then the members of the DRB shall be appointed by the Association, through its Board of Directors. After **Declarant** has yielded control, any member of the DRB may be removed, with or without cause, by the Association. In the event of death or resignation of a member of the DRB, then **Declarant** or the Association (as applicable) shall appoint a replacement member to fill the vacancy for the remainder of the term of such former member.

17.3. Procedure and Meetings. The DRB shall elect a chairman and a vice-chairman, one of whom shall preside at all meetings of the DRB. The DRB shall meet as necessary as well as upon call of the chairman or vice-chairman, at such places as may be designated by the chairman or vice-chairman. A majority of the total number of members of the DRB shall constitute a quorum of the DRB for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy shall constitute the action of the DRB on any matter that comes before it. The DRB is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the DRB in performing its functions set forth herein. Each member of the DRB may be paid a stipend or honorarium as may from time to time be determined by the **Declarant** or the Association, as applicable, and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the DRB, subject to the approval of such expenses by the **Declarant** or the Association, as applicable. The DRB shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the DRB.

17.4. Design Code. The DRB is authorized to promulgate and amend or modify from time to time a written Design Code governing policies, guidelines and minimum requirements to be satisfied with respect to the site preparation, construction, location, landscaping and design of all Improvements on any Ground Unit, the content and the construction of any Improvements on a Ground Unit are to be submitted to and approved by the DRB, and any other matters affecting the construction, repair or maintenance of any Improvements on an Ground Unit. The Design Code adopted by the DRB shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

17.5. Approval of Plans and Specifications.

A. To preserve the architectural and aesthetic appearance and the natural setting and beauty of the Condominium Property, to establish and preserve a harmonious design for the condominium Property and to protect and promote the value of the Condominium Property

and all Improvements thereon, no Improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Ground Unit by any Owner (other than Declarant), that affect the exterior appearance of any Ground Unit, unless plans specifications therefor have been submitted to and approved by the DRB. Without limiting the foregoing, the construction and installation of any dwelling, sidewalk, driveway, parking lot, deck, patio, courtyard, swimming pool, playhouse, awning, walls, fence, exterior light, satellite dish, or radio or television antenna shall not be undertaken, nor shall any exterior addition or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any Improvements unless the plans and specifications for the same have been submitted to and approved by the DRB.

B. The DRB shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. One copy of all plans, specifications and related data so submitted to the DRB shall be retained in the records of the DRB and the other copy shall be returned to the Owner submitting the same marked "approved", "approved as noted" or "disapproved". The DRB shall establish a fee to be charged to and paid by each Owner who submits plans and specifications to the DRB for review, which fee shall be sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Notwithstanding anything provided herein to the contrary, an Owner without DRB review may make interior improvements and alterations within that Owner's Improvements that do not affect exterior appearance.

C. The DRB shall have the right to disapprove any plans and specifications upon any ground that is consistent with the objectives and purposes of these Covenants, including purely aesthetic considerations, and failure to comply with any of the provisions of this Declaration or the design Code, failure to provide requested information, objection to exterior design, appearance or material, objection on the ground of incompatibility of any such proposed Improvement with the scheme of development proposed for the Condominium Property, objection to the location of any proposed Improvements on any such Ground Unit, objection to the color scheme, finish, proportions, style or architecture, height, build or appropriateness of any Improvement or any other matter that, in the sole judgement of the DRB, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Condominium Property. The DRB shall have the right to approve any submitted plans and specifications with conditions or stipulations with which the Owner of the Ground Unit must comply.

D. Approval by the DRB for Improvements to one particular Ground Unit shall not be deemed an approval or otherwise obligate the DRB to approve similar plans and specifications for any other Ground Unit.

E. If the DRB fails to approve, or approve as noted, in writing any such proposed plans and specifications within sixty days after such plans and specifications have been submitted, then the plans and specifications will be deemed to have been **disapproved**.

F. Any revisions, modifications or changes in any plans and specifications previously approved by the DRB must be approved by the DRB in the same manner specified above.

17.6 Landscaping Approval. No landscaping, grading, excavation or fill work of any nature shall be implemented by any Owner, other than **Declarant**, on any Ground Unit unless and until landscaping plans therefor have been submitted to and approved by the DRB.

17.7 Construction Without Approval. If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Ground Unit without DRB approval of the plans and specifications or (b) the DRB shall determine that any approved plans and specifications for any Ground Unit are not being complied with, the Owner of such Ground Unit shall be deemed to have violated this Declaration, and the DRB shall have the right to exercise any of the rights and remedies provided by this Declaration.

17.8 Inspection. The DRB or any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Ground Unit or any Improvements being constructed thereon in order to determine whether the approved plans and specifications thereof are being complied with. Any such entry shall not be deemed to be trespass or any other wrongful act by the DRB.

17.9 Surface and Subsurface Conditions. Approval of the submitted plans and specifications by the DRB shall not be construed in any respect as a representation or warranty of the DRB, the **Declarant** or the Association to the Owner submitting such plans and specifications as to the suitability of the proposed Improvements for the surface, subsurface or weather conditions of such Ground Unit. It shall be the sole responsibility of the Owner to determine the suitability and adequacy of the surface and subsurface conditions of the Ground Unit for the construction of any and all Improvements and the suitability of every Improvement located on the Ground Unit for the weather conditions that may occur on or around said Ground Unit. Neither the DRB and its individual members, nor the Association and its members, nor the **Declarant** and its agents and employees shall be liable to any Owner or Occupant, or the successors, assigns, licensees, lessees, employees and agents of any Owner or Occupant, for loss or damage on account of injuries to any of the Condominium Property or to any Improvements now or hereafter located upon any Ground Unit, or on account of any past or future injuries to any Owner, Occupant or other person in or upon any portion of the Condominium Property, that are caused by, or arise as a result of soil or subsurface conditions, known or unknown, under or on the Condominium Property.

17.10 Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither **Declarant**, the DRB, the Association, nor any agent, employee, representative, member, shareholder, partner, joint venturer, officer or director thereof, shall have liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article, (b) any defects, structural or otherwise, in work done according to such plans and specifications, (c) the failure to approve or the disapprove of any plans, drawing, specifications, (d) construction related to such plans (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such

Owner or Occupant, or any damage to any Improvements or the personal property of any Owner or Occupant, or the respective family members, guests, employees, servants, agents, invitees or licenses of such Owner or Occupant, that may be caused by, or arise as a result of any defect, structural or otherwise, in any Improvements or the plans and specifications thereof or any past, present, future soil or subsurface conditions, known or unknown (including, without limitation, geological formations or conditions on or under any Ground Unit), and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Ground Unit or any Improvements situated thereon.

17.11 Commencement and Completion of Construction. If construction of the Improvements has not substantially commenced (by clearing and grading, placement of pilings in the ground, pouring of footings and otherwise commencing framing and other related construction work) within one year of approval by the DRB of the plans and specifications for such Improvements, then no construction may be started on such Ground Unit, and the Owner of such Ground Unit shall be required to resubmit all plans and specifications for any Improvements to the DRB for approval in the same manner specified above. Upon commencement of clearing of any Ground Unit, construction of any Improvement must commence immediately; and, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one year of the commencement of construction. Completion shall be evidenced by a certificate of occupancy issued by the appropriate governmental authorities.

17.12 Enforcement and Remedies. If any provision of Article 17, 7, or other Article governing use and development of a Ground Unit is breached or is not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the DRB and the Association shall each have the right, but not the obligation, at their option to (a) enjoin any further construction on any Ground Unit and require the removal or correction of any work in place that does not comply with the plans and specifications approved by the DRB for such improvements, and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Ground Unit and take all action necessary to extinguish such violations or breach and to minimize or remediate erosion caused by such violation or breach, including but not limited to delays in construction or inadequate erosion control procedures. All costs and expenses incurred by the DRB or the Association in enforcing any such provisions, including without limitation attorneys' fees, arbitration expenses and fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved and costs and expenses of correction or remediation or in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provision of this Declaration shall be paid by such Owner. If the same is not paid when due, the full amount thereof shall be subject to the assessment and lien provisions of this Declaration, and shall be subject to foreclosure.

18. Notice by Owner of Lien or Suit

A Unit Owner shall give notice to the Association in writing within five (5) days of either (a) any lien claim against the Owner's Unit for any lien other than a first mortgage, real

property taxes, and regular or special assessments by the Association, or (b) a suit, arbitration demand, or other proceeding which may affect title to the Owner's Unit. The period during which notice shall be given starts to run when the Owner first has knowledge thereof.

19. Mortgagee Rights

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

19.2 Notification of Mortgagees Required. Any Mortgagee shall have the right to be given written notification by the Association of:

- A. any ninety (90) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Declaration;
- B. any loss to or taking of the Common Elements if such loss or taking exceeds Ten Thousand and No/100 (\$10,000.00) Dollars;
- C. damage to a Unit covered by the Mortgage if the amount of such damage exceeds Twenty Thousand and No/100 (\$20,000.00) Dollars;
- D. any condemnation of all or a portion of the Condominium Property;
- E. a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- F. any proposed action that requires the consent of a specified percentage of Mortgagees.

19.3 Right of Inspection. Upon reasonable request, Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property and to receive reports.

19.4 Priority of Mortgagees.

A. Any lien in favor of the Association created upon any Unit shall be subject and subordinate to and shall not affect the rights of any Mortgagee made in good faith and for value and recorded prior to the creation of the Association lien, provided that after the foreclosure of any such mortgage there may be an Association lien created pursuant to this Declaration on the interest of the purchaser after the date of such mortgage foreclosure sale. Notwithstanding the above and pursuant to §35-8A-316 (b), the lien in favor of the Association created pursuant to this Declaration is prior to any Mortgage to the extent of the Common

Expense assessments based on the annual budget which would have become due in absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.

B. No provision of this Declaration, the Articles, the By-Laws or the Rules and Regulations shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the Mortgagees in the case of distribution to Unit Owners of the insurance proceeds or condemnation awards for losses or a taking of Units or the Common Elements or any portion thereof.

C. No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage made in good faith and for value. All of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or otherwise.

20. Owners Association

20.1 Governing Body. The condominium shall be managed and regulated by the Cottages at Fish River Owners Association, Inc., which shall at all times serve in the capacity as "Association" as referred to in this Declaration and the Act. It shall be the governing body for all of the Unit Owners for the maintenance, repair, replacement, administration and operation of the Property. It shall prepare an annual budget and shall determine assessments (both regular and special) as shall be required to operate the Property. The initial Bylaws of the Association shall be those attached. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and all funds received by the Association shall be applied for the use and benefit of the Unit Owners.

20.2 Membership. The membership of the Association shall at all times consist exclusively of all of the Unit Owners. Each Unit Owner shall be a member of the Association so long as an Owner, and membership shall automatically terminate when ownership of a Unit ceases. Upon the conveyance or transfer of a Unit Owner's interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association. Proof of any change in membership shall be established by recording in the Probate Judge's Office in Baldwin County, Alabama of the instrument conveying a Unit and delivery to the Association of a certified copy thereof.

20.3 Voting; Designated Representative.

A. The aggregate number of votes for all members of the Association and the votes applicable to each Unit are stated in **Exhibit B**.

B. Multiple Owners of a Unit shall collectively be entitled to the votes reflected in **Exhibit B**, which shall be cast as such multiple owners decide among themselves. Fractional voting shall not be allowed. If a Unit is owned by more than one person, the person entitled to cast the vote or votes for the Unit may be designated by a certificate signed by all of the record Owners of the Unit and filed with the Secretary of the Association. If a Unit is owned by a corporation, partnership, trust or other legal entity, the person entitled to cast the vote or

votes for the Unit may be designated by a certificate of appointment signed by a duly authorized representative of the entity and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the Ownership of the Unit involved. A certificate may be revoked by any Owner of an interest in the Unit.

C. If a Unit is owned by more than one person and they do not designate a voting member, the following shall apply:

- (1) If more than one such Owner is present at any meeting, and they are unable to concur in a decision on any subject requiring a vote, they shall lose their right to vote on that subject at that meeting. However, said vote or votes shall be included in the determination of the presence or absence of a quorum.
- (2) If only one such Owner is present at a meeting, that person shall be entitled to cast the vote or votes pertaining to the Unit.
- (3) If more than one such Owner is present at the meeting, and they concur, any one such Owner may cast the vote or votes for the Unit.

20.4 Enforcement of Declaration and Rules and Regulations.

A. The Board shall have the authority to make and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Units, Limited Common Elements (if any), and the Common Elements. Copies of all such Rules and Regulations be furnished to all Owners. Upon any violation of any duty imposed under the Declaration, these Bylaws, or any Rules and Regulations duly adopted, the Board shall have the power **to impose reasonable fines** which shall constitute a lien on the Unit, **to suspend an Owner's right to use the Common Elements and Limited Common Elements** (if any), and **to suspend a member's privilege to vote**, in addition to any other remedy provided herein or by law..

B. The Board shall not impose a fine, suspend voting, or impose sanctions on an Owner or Occupant for violation of rules until the following procedure is followed:

- (1) Demand. Written demand to cease or cure an alleged violation shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation, and (iii) a time period during which the violation may be abated without further sanction or a statement that any further violation of the same rule may result in the imposition of sanctions.
- (2) Notice. If the violation continues past the period allowed in the demand for abatement, or if the same rule is subsequently violated, the Board shall serve the violator with written notice of a hearing to be held by the Board. The notice shall contain (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the

notice; (c) an invitation to attend the hearing and produce any statement, evidence and witnesses on his or her behalf; and (d) the proposed sanction to be imposed.

(3) Hearing. The hearing shall be held by the Board in executive session pursuant to this notice, affording the member a reasonable opportunity to be heard. Proof of notice and the invitation to be heard 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 or director who delivered such notice. The notice requirement shall be deemed satisfied if an alleged violator 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. After following such procedure, the Board may impose a fine, suspend voting, or impose sanctions on an Owner or Occupant.

C. Nothing contained in the provisions governing sanctions shall preclude the Association from taking other remedial actions promptly and without resort to these procedures for sanctions.

21. Insurance

21.1 Purchase of Insurance. Insurance coverage must be carried upon the Condominium Property as provided herein and in **accordance with §35-8A-313**. All insurance coverages shall be consistent with local and state insurance laws, and by companies authorized to write in Alabama such insurance. All insurance policies upon the Condominium Property shall be purchased by the Association in the name of the Association as trustee for each Unit Owner and their mortgagees as their interest may appear. The Association shall retain the original of all insurance policies in a safe place. Insurance premiums maintained by the Association shall be paid by the Association as a common expense. If the Association fails to pay such insurance premiums when due or fails to comply with other insurance requirements of a Mortgagee, the Mortgagee shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance. To the extent of any money so advanced, the Mortgagee shall be subrogated to the assessment and the lien rights of the Association as against the individual Unit Owners for the payment of such item of common expense.

21.2 Certification to Mortgagee. A certificate of insurance shall be furnished to any mortgagee requesting a copy.

21.3 Coverage. Commencing no later than the time of the first conveyance of a Unit to a person other than **Declarant**, the Association is required to maintain the following insurance coverage:

(1) Property Insurance on Common Elements and Limited Common Elements (if any). The Association must obtain, maintain, and pay the premium upon a "master" or "blanket" policy of property insurance covering all of the **Common**

Elements (except land, streets, paving, and other items usually excluded from coverage), Limited Common Elements (if any), and other personal property belonging to the Association. The policy shall be **in an amount not less than eighty (80%) percent of current replacement costs.**

Periodically, the Association shall obtain an opinion or an appraisal from a qualified person for the purpose of determining the full replacement cost thereof.

(2) Public Liability Insurance. The Association must obtain, maintain, and pay the premiums upon a comprehensive general liability insurance policy (including medical payments insurance) covering all the Common Elements and Limited Common Elements (if any). Coverage limits shall be in amounts as determined by the Board. Liability coverage under this policy shall include, without limitation: property damage, bodily injuries and deaths in connection with the operation, maintenance or use of the Common Elements and Limited Common Elements.

(3) Flood Insurance. The Board shall determine whether to obtain, maintain, and pay the premiums upon a "master" or "blanket" flood insurance policy covering Common Elements and personal property owned by the Association.

(4) Personnel Coverage. If the Association employs personnel, all coverages required by law, including workman's compensation, shall be obtained.

(5) Fidelity Bonds. If the Board determines that it is advisable to do so, the Association shall obtain, maintain and pay the premiums upon a master or blanket fidelity bond to protect against loss of money by dishonest acts on the part of all officers, directors and employees of the Association and all other persons handling, or responsible for, funds of the Association or funds administered by the Association. Where a management agent has the responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The fidelity bond shall name the Association as the obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than one hundred fifty (150%) percent of the estimated annual common expenses. The bonds shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The premiums on all bonds required to be maintained by the management agent shall be paid by the management agent. The bond shall provide that any first mortgagee shall receive notice of cancellation or modification of the bond.

(6) Other Insurance. The Association shall obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable. The premiums for each insurance shall be a common expense.

(7) Prohibition Against Increased Risk by Unit Owner. Without the prior written consent of the Board, nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the property. No Unit Owner shall permit anything to be done or kept in his Unit or in or on the Common Elements which will result in the cancellation of insurance of any Unit or any part of the Common Elements or which will be in violation of any law.

21.4 Required Provisions. Insurance coverage as required under this Article shall in substance and effect:

(1) Provide that the insurer thereunder waives any right of subrogation against a Unit owner or member of his household.

(2) Contain no provision relieving the insurer from liability for a loss occurring because the act or omission of any Unit owner.

(3) Provide that such policy may not be canceled or substantially modified (whether or not requested by the Association) except by the insurer giving at least thirty (30) days prior written notice thereof to the Association, the Unit Owner, each holder of a first mortgage on individual Units, and every other person in interest who shall have requested such notice of the insurer.

(4) Provide that each Unit owner is an insured person with respect to liability arising out of his interest in Common Elements or membership in the Association.

(5) Contain a standard mortgagee clause which shall: (i) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit, whether or not named therein; and (ii) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Association or Unit Owners or any persons under any of them: and, (iii) Waive any provisions invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or conveyance, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

(6) No act or omission by any Unit Owner, unless acting within the scope of Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(7) The insurance coverage will comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, as they apply to condominiums.

21.5 Unit Owners Personal Insurance. Each Ground Unit Owner shall obtain his, her or its own **property insurance on his Ground Unit and all Improvements thereon and contents therein and personal liability insurance (in an amount of at least \$1,000,000), which shall provide primary coverage for his, her or its liability to the Association or other Ground Unit Owners or third parties, and under which the condominium owner's Association shall be named as an additional insured.** Each Ground Unit Owner shall provide the Association with proof of required insurance and shall indemnify the Association from any loss arising from an occurrence, act, or omission as to which Ground Unit Owner is required to provide insurance coverage. Without an amendment to this Declaration, the Board of the Association from time to time may require personal liability insurance in an amount greater than the amount above specified.

22. Application of Insurance Proceeds

22.1 Insurance Trustee. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Association, as Insurance Trustee for each of the Unit Owners in the percentages as established by the Declaration. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their mortgagees. The Insurance Trustee shall have the power to adjust all claims arising under insurance policies purchased by the Association; to bring suit thereon in its name and/or in the name of other insureds; to deliver releases on payment of claims; to compromise and settle such claims, and otherwise to exercise all rights, powers, and privileges of the Association and each Unit Owner and any other holder of an insured interest in the condominium Property under such insurance policies. However, the actions of the Insurance Trustee shall be subject to the approval of any first mortgagee if the claim shall involve more than one Unit, and if only one Unit is involved, such actions shall be held in trust for the mortgagee and the Unit Owner as their interest may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination of whether or not any damaged property shall be reconstructed or repaired except as may be specifically provided to the contrary elsewhere in the Declaration.

22.2 Distribution of Proceeds. Proceeds of insurance policies received by the Association as Insurance Trustee shall be distributed in the manner required by **§35-8A-313** (e) and (h), as from time to time amended.

23. Repair or Rebuild Following Casualty

23.1 Determination to Rebuild or Repair. Any portion of the Common Elements and Limited Common Elements for which insurance is required under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (A) The Condominium is terminated in accordance with the Act;
- (B) Repair or replacement would be illegal under any state or local statute or ordinance covering health or safety; or,
- (C) The Unit Owners agree not to rebuild.

The cost of repair or replacement of a Common Element or Limited Common Element (if any) in excess of insurance proceeds and reserves is a Common Expense or Limited Common Expense as provided in this Declaration.

23.2 Plans. Any rebuilding or repair must be substantially in accordance with the Act and in accordance with the Plans for the original Improvements or as last constructed.

23.3 Responsibility. If the damage is only to those parts of a Ground Unit for which the responsibility or maintenance and repair is that the Ground Unit Owner, then the Ground Unit Owner shall be responsible for reconstruction and repair after casualty.

23.4 Construction Funds. The funds for payment of costs of reconstruction and repair after casualty for which the Association is responsible (which shall consist of proceeds of insurance held by the Association as Insurance Trustee and funds collected by the Association from assessment against Unit Owners on account of such casualty) shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the following manner and order: first, in the manner provided by the Board; second, any surplus held as a reserve for future repairs or improvements.

24. Unit Owner Liability

24.1 Basis of Liability. Neither the Association nor any Unit Owner shall be liable for the acts or omissions of any other Unit Owner. A Unit Owner shall be liable for the acts or omissions on his own part in the same manner and to the same extent as any other person, and shall have liability in connection with water craft and docks as provided in Paragraph 16.5.

24.2 Defense by Association. All actions seeking to impose liability on Unit Owners arising by virtue of their condominium ownership and who are not alleged to be liable by reason of any act or omission on their own part shall be defended by the Association. Where Plaintiff's demand exceeds Unit Owner insurance established by the Association, such Unit Owner must be given notice by the Association and shall have the right at the Unit Owner's own expense to individual representation by counsel.

24.3 Pro Rata Liability. A Unit Owner shall be liable for no more than a pro rata share of any settlement, judgment or cost of defense incurred by the Association. Where liability arises with relation to Common Elements or Limited Common Elements (if any) in which a Unit Owner has an interest, such pro rata share shall be based on such interest as reflected in **Exhibit B**. In no event may such pro rata share exceed the value of such Unit Owner's interest in the condominium. Unpaid portions of a judgment which has been so prorated shall not be reassessed among remaining Unit Owners should those held liable fail to pay.

24.4 Suit by Owner. Subject to the Provisions of Article 28, a Unit Owner shall have the capacity to sue the Association and other Unit Owners who may be liable by reason of any act or omission on their own part. Such action shall be at the expense of such Unit Owner, and who shall nevertheless be required to pay any pro rata cost of defense,

settlement or judgment of such action which may be assessed against Unit Owners by the Association.

24.5 Lack of Agency. Except as an officer of the Association, no Unit Owner shall have the authority to act for or obligate the Association.

25. Redress for Noncompliance

The Owner of each Unit, its Occupants, and the Owner's agents, servants, employees, family members, licensees, invitees, and lessees shall comply with the provisions of this Declaration and Rules and Regulations promulgated by the Association. Subject to Article 28, failure to comply shall be grounds for an action for the recovery of damages, injunctive relief, or both, maintainable by the Association or by any other Unit Owner or by any person who holds a lien of record upon a Unit and is aggrieved by any such noncompliance.

26. Amendment of Declarations

26.1 Percentage Required. Unless the unanimous consent of Unit Owners is required by another provision of this Declaration or the Act or unless amendment by **Declarant**, Association or certain Unit Owners is permitted by §35-8A-217 (a) or under Article 9 of this Declaration, this Declaration may be amended only upon two-thirds (2/3) affirmative vote or agreement of all Unit Owners. If the amendment concerns any matter which effects the security interest of any mortgagee, then such amendment must additionally be approved by two-thirds (2/3) of the Mortgagees secured by the Property. Amendments shall be executed by the President and Secretary of the Association and recorded in the Records of the Probate Court of the County of Baldwin, State of Alabama. Any said amendment shall be effective as to all persons from the moment of said recordation.

26.2 Amendments Requiring Extraordinary Consent. Except in the event a portion of the Condominium Property is removed from the provisions of this Declaration following a casualty loss or expropriation, no amendment of this Declaration shall create or increase special Declarant rights; increase number of Units (except for an increase due to the addition of land to the condominium form of ownership consistent with Paragraph 9.2); change boundaries of a Unit or the interest allocated to it (except for such change by Declarant pursuant to Article 9 hereof), or the uses to which restricted; or alter the percentage of undivided interest of each Owner in the Common Elements, each Owner's participation in the common surplus, and/or each Owner's obligation to share in the common expenses, without the unanimous consent of Unit Owners affected thereby.

27. Termination

If Unit Owners entitled to eighty percent (80%) of the votes in the Association vote to or agree in writing, the Condominium may be terminated. Procedures for liquidation shall be governed by the Act.

28. Board's Determination and Arbitration Binding

28.1 Binding Arbitration before Board. In the event of any dispute or disagreement: (a) between any Unit Owners relating to the Property or its use and enjoyment; or (b) concerning the rights or obligations of **Declarant** or its members (whether in connection with any express warranty under §35-8A-413 or otherwise), or the rights or obligations of the Board or Association; or, (c) concerning any questions of interpretation or application of the provisions of the Declaration, Bylaws, or Rules and Regulations, the dispute shall be arbitrated before the Board and the determination thereof by the Board shall be final and binding on each and all such parties. If the dispute involves rights or obligations of the Board, the Board shall decline to arbitrate and arbitrators shall be selected pursuant to the following paragraph. Provided however, that after Declarant no longer has the power to elect a majority of the Board, Declarant and its members shall be subject to arbitration only before a panel of independent arbitrators.

28.2 Third Party Arbitration. In the event the Board declines (or is obligated to decline) to decide a dispute required to be arbitrated under the previous paragraph, such disagreement shall be referred to three (3) arbitrators, one to be appointed by each party or class of parties, and the third to be appointed by the two (2) appointed by the parties; and the award in writing signed by any two (2) of them shall be final. If either party shall refuse or neglect to appoint an arbitrator within fifteen (15) days after the other shall have appointed an arbitrator and served written notice thereof upon the other, then the arbitrator so appointed by the first party shall proceed to arbitrate and determine the matters of disagreement as if he were an arbitrator appointed by both parties for that purpose, and his award in writing signed by him shall be final. The parties to the arbitration shall share the expense thereof. The decision of the arbitrator or arbitrators shall be enforceable by the Circuit Court of Baldwin County, Alabama.

28.3 Judicial Redress without Arbitration. For matters seeking judgment for an amount assessed by the Board against a Unit or Unit Owner or seeking equitable relief, the Board, on behalf of the Association, may sue in Baldwin County, Alabama courts without previous reference to arbitration.

28.4 Attorney fees. In any dispute arising from the alleged default of a Unit Owner, the prevailing party shall be entitled to recover from the losing party a reasonable attorney's fee and costs of the proceedings.

28.5 Waiver of Jury Trial. If for any reason the arbitration provisions hereof shall not be fully effective and enforceable, then each and every dispute or disagreement of the types described in Paragraph 28.1 shall be resolved in the District or Circuit Court of Baldwin County, Alabama, to the jurisdiction and venue of which each present and future Owner consents by accepting title to a Unit in the Condominium Property. Concerning any such dispute or claim, each such Owner, on behalf of such Owner and such Owner's heirs, personal representatives, successors, and assigns **waives any right to trial by jury** arising under the constitution and laws of Alabama, any other state, or the United States of America.

29. Severability

If any provision of the Declaration is held invalid, the validity of the remainder of this Declaration shall not be affected thereby. The remainder of this Declaration shall be construed as if such invalid part was never included therein.

30. Number and Gender

As used in this Declaration, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

31. Headings

The headings of paragraphs and sections in this Declaration are for convenience or reference only and shall not in any way limit or define the content or substance of such paragraphs and sections.

32. Notices

Notices provided for in the Act, Declaration, or Bylaws shall be in writing, and shall be addressed to the Association or Board, as the case may be, and to any Unit Owner at the Unit Owner's last known address or at such other address as hereinafter provided. The Association or Board may designate a different address or addresses for notices to it, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be deemed delivered two (2) business days after mailing by United States certified mail, or when delivered in person, whichever is the earlier. Notices by Mortgagees shall be in accordance with Article 19; notices to Mortgagees shall be by first class mail.

33. Obligations of Successive Owners

By acceptance of a deed, bill of sale or other instrument of conveyance, each grantee, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby imposed shall run with the land, and shall bind any person having at the time any interest in the Unit, the Property, or any portion thereof, and shall inure to the benefit of such grantee.

IN WITNESS WHEREOF, the said **Declarant**, on the date above first written, has caused this instrument to be executed.

Robert Clark Homes, Inc., f/k/a Clark-Achee Homes, Inc.

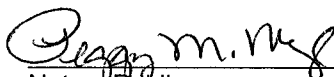


By: Robert A. Clark
As its President

STATE OF ALABAMA
BALDWIN COUNTY

I, the undersigned, an official authorized to take acknowledgments, hereby certify that Robert A. Clark whose name as President of **Robert Clark Homes, Inc., f/k/a Clark-Achee Homes, Inc.**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of such corporation on the day the same bears date.

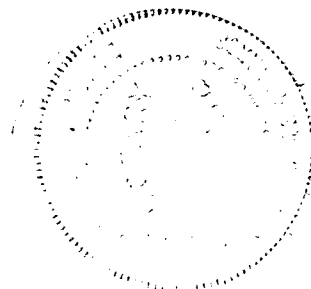
Given under my hand and seal on this the 28th day of August, 2007.



Notary Public

My commission expires 6/26/11

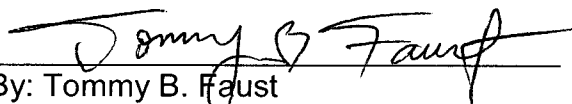
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: June 26, 2011
BONDED THRU NOTARY PUBLIC UNDERWRITERS



CONSENT OF MORTGAGEE

First Gulf Bank, N.A., as holder of mortgages on real property described herein, consents to this declaration of condominium by the above named Declarant.

IN WITNESS WHEREOF, said mortgagee has caused its duly authorized officer to affix his hand and seal this 28th day of August, 2007.

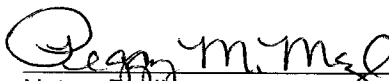


By: Tommy B. Faust
as its Vice-President

STATE OF ALABAMA
BALDWIN COUNTY

I, the undersigned notary public in and for said county in said State, hereby certify that Tommy B. Faust, whose name as Vice-President of **First Gulf Bank, N.A.** is signed to the foregoing instrument and who is known to me, acknowledged before me 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 corporation on the day same bears date.

Given under my hand and seal on this 28 day of August, 2007.



Notary Public

My commission expires 6/26/11

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: June 26, 2011
BONDED THRU NOTARY PUBLIC UNDERWRITERS

This Instrument Prepared By:
JAMES E. SMITH
P.O. Box 416
Fairhope, AL 36533
Telephone: 251.928.1355

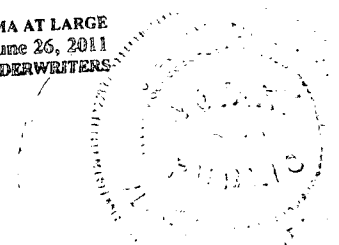


EXHIBIT "A"
to Declaration Condominium of **Cottages at Fish River**

From the Southeast corner of the Southwest quarter of Section 32, Township 6 South, Range 3 East, Baldwin County, Alabama, run thence North 89°54' West 856.67 feet to an iron pipe on the West right of way of Baldwin County Highway No. 9 for the **Point of Beginning**; thence run Northeastwardly along the arc of a curve to the right, having a radius of 994.93 feet, an arc distance of 160.50 feet to an iron pipe; thence run South 87°32'09" West 197.14 feet to an iron pipe; thence run North 09°50'16" East 102.57 feet to an iron pipe; thence run North 87°39'39" East 203.47 feet to an iron pipe on the West right of way of Baldwin County Highway No. 9; thence run Northeastwardly along the arc of a curve to the right, having a radius of 994.93 feet, an arc distance of 255.74 feet to a point, being the centerline of Spring Branch; thence run Westwardly along said centerline of Spring Branch, 890 feet, more or less, to a point; thence run Southwestwardly along said centerline of a canal 410 feet, more or less to a point; thence run Southeastwardly along said East margin of Fish River, 221 feet, more or less, to a point; thence run South 89°54' East 905 feet, more or less, to the **Point of Beginning**.

SUBJECT TO:

1. A permanent easement for ingress/egress and utilities described as follows: All of the South 15 feet of the above described property which lies between the West line of Baldwin County Highway No. 9 and the Northern terminus of the West line of the 40 foot road, (formerly known as "White Road", and now known as "Sweeney Road") as shown on plat of survey by Geo-Surveying, Inc. dated May 1, 2006.
2. Right of way conveyed State of Alabama by James A. Baywell and Edith C. Baywell by instrument dated June 6, 1963, and recorded in Deed Book 333, page 67.
3. Right of way conveyed Baldwin County by James A. Baywell and Edith C. Baywell by instrument dated January 5, 1964 and recorded in Deed Book 340, Page 333.
4. Right of way conveyed Baldwin County by Ollie Delchamps by instrument dated July 5, 1958 and recorded in Deed Book 288, page 4.
5. Rights of other parties, the United States of America and State of Alabama, in and to the shore, littoral or riparian rights to the property described herein which lies adjacent to Fish River and an unnamed canal and branch.
6. Mineral conveyance from James Marion Gratz to Dannette B. Gratz dated August 24, 1993 and recorded in Real Property Book 529, Page 1345.
7. Any and all rights and claims of others pertaining to the Non-exclusive Easement as recorded in Real Property Book 546, page 1866.
8. General Utility Easement conveyances from R. G. Metz and Myrna Metz to Celia H. DeLaney dated April 25, 2003 and recorded as Instrument No. 735118.
9. Covenants To Run With The Land dated December 31, 1996 and recorded in Miscellaneous Book 91, Page 1112.

Said property is subject to zoning, planning and other restrictions or regulations as may be imposed by the municipal, district, county or other governmental authorities with jurisdiction over said lands, and is further subject to any prior oil, gas or mineral reservations or conveyances by owners prior to Declarant.

EXHIBIT "B"
Allocation of Interest
according to Unit of **Cottages at Fish River**

<u>Unit</u>	<u>Square Footage</u>	<u>Liability for Common Expenses and Interest in Common Elements</u>	<u>Votes</u>
1	7071, more or less	1/19 th	1
2	9394, more or less	1/19 th	1
3	7049, more or less	1/19 th	1
4	9306, more or less	1/19 th	1
5	9877, more or less	1/19 th	1
6	7304, more or less	1/19 th	1
7	8692, more or less	1/19 th	1
8	7101, more or less	1/19 th	1
9	5330, more or less	1/19 th	1
10	7054, more or less	1/19 th	1
11	9882, more or less	1/19 th	1
12	6871, more or less	1/19 th	1
13	6344, more or less	1/19 th	1
14	7890, more or less	1/19 th	1
15	8304, more or less	1/19 th	1
16	7144, more or less	1/19 th	1
17	8678, more or less	1/19 th	1
18	8875, more or less	1/19 th	1
19	5432, more or less	1/19 th	1

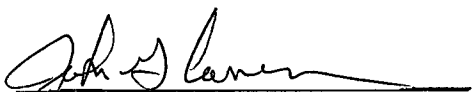
Nineteen (19) units are created under this Declaration. **In addition to the allocation in the above table, Declarant shall have additional votes pursuant to Paragraph 9.3 of the Declaration.** Declarant shall have the right to create Units 20 and 21 in the event that additional land is submitted to the condominium form of ownership, consistent with Paragraph 9.2.

EXHIBIT "C"
to Declaration of Condominium of **Cottages at Fish River**

Certificate of Completion

The undersigned, **John G. Cameron**, a registered engineer in the State of Alabama, pursuant to Sections 35-8A-201(c) and 35-8A-209(g), 1975 Code of Alabama, hereby certifies:

The walkway, utilities and gazebo are on Common Elements and are substantially complete. There are no buildings or structures on units or private elements, excepting a one story house and detached garage on Units 1 and 2.



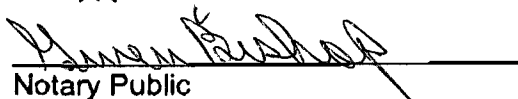
John G. Cameron
Alabama registration number 26292

STATE OF ALABAMA
BALDWIN COUNTY

Before me, the undersigned notary public, personally appeared **John G. Cameron**, who is known to me and who, after being by me first duly sworn, did depose and say under oath as follows: That I signed the foregoing certification, and the matters and facts therein stated are true and correct.


John G. Cameron

Sworn to and subscribed before me
this 29th day of August, 2007.



Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Feb. 14, 2011
Bonded thru Notary Public Underwriters.

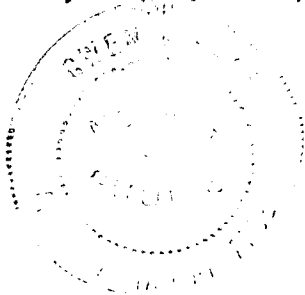


EXHIBIT "D"

Initial Bylaws of Cottages at Fish River Owners Association, Inc.

1. ADOPTION OF BYLAWS

1.1 Bylaws Applicability. The provisions of these Initial Bylaws and amendments thereof from time to time are applicable to the entirety of the **Cottages at Fish River** property. Unless otherwise clearly indicated by the context, all references to "Bylaws" herein are to these Initial Bylaws as they are now or may be amended hereafter.

1.2 Personal Application. All present or future owners, lessees or tenants, or their employees, or any other person that might use the facilities of the Condominium in any manner are subject to these Bylaws and to the Rules and Regulations established and promulgated by the Association.

2. PURPOSE AND POWERS OF THE ASSOCIATION

The Association shall have the power and duties necessary for the administration of the affairs of the Condominium, and may do all acts and things as are not prohibited by law, by the Declaration or by these Bylaws. The Association, without limiting its rights to perform any lawful activities, shall have the right to exercise all powers of an owners association under §35-8A-302 of the 1975 Alabama Code.

3. BOARD OF DIRECTORS

3.1 Number and Qualifications; Declarant's Relinquishment of Control. The affairs of the Association shall be governed by the Board of Directors, which shall consist of at least three (3) and no more than five (5) directors, who shall be appointed by Declarant during such time as Declarant reserves control and who shall be in part elected by Unit Owners to the extent allowed under the Declaration during the time of phase out of exclusive Declarant control. After the end of Declarant control, Directors shall be elected by Unit Owners.

All Board members elected by Unit Owners shall be Unit Owners or mortgagees of Units. In the case of partnership, limited liability company, corporate, or fiduciary owners or mortgagees, a partner, member, shareholder, officer or employee thereof may be elected to the Board. Directors elected by the Declarant need not be Unit Owners.

3.2 Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and the condominium property, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board. The powers and duties to be exercised by the Board shall include, but shall not be limited, to the following:

- a. Operation, care, upkeep and maintenance of the Association and Condominium property;
- b. Determination of the amounts required for the operation, maintenance and other affairs of the Association;
- c. Collection of the assessments and fines from the Unit Owners;
- d. Employment and dismissal of personnel (whether as employees or contract managers), as necessary for the efficient maintenance and operation of the Condominium property;
- e. Adoption and amendment of the Rules and Regulations covering the details of the operation of the Association and the Condominium property;
- f. Opening of bank accounts on behalf of the Association and designating the signatories on same;
- g. Making repairs, additions and improvements to, or alterations of, the Condominium property, and repairs for the restoration of the Condominium property in accordance with the provisions of the Declaration, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;
- h. Obtaining insurance pursuant to the provisions of the Declaration;
- i. Preparing an annual budget for submission to the members;
- j. Exercising all those powers of an owners association under §35-8A-302 which are not reserved to the members;
- k. To borrow money for Association purposes, provided same be approved by a two-thirds vote of Unit Owners.
- l. To elect and remove Association Officers.

3.3 Manager. The Board may employ a manager at compensation established by the Board to perform such duties and services as the Board shall authorize. Any such agreement for management services, whether entered into by the Declarant or the Association, shall provide for termination by the Association, without cause and without payment of any costs of termination, on no more than ninety (90) days written notice, and the term of any such agreement shall not exceed three (3) years.

3.4 Election and Term of Office. The terms of office at the initial elections shall be for three (3) years, two (2) years, and one (1) year, such that terms will expire on a staggered basis. At the expiration of the initial term of each member of the Board, his or her successor shall be elected by the Association (or appointed by Declarant, to the extent permitted by the Declarant during the time of reserved control by Declarant allowed by §35-8A-303 of the 1975 Alabama Code) to serve for a term of three (3) years. The members of the Board shall hold office until their respective successors shall have taken office.

3.5 Removal of Members of Board. Any one or more Directors who was elected by members of the Association may be removed without cause by majority vote of Unit Owners, and a successor may then and there or thereafter be elected to fill the remainder of the term for the vacancy thus created. Any Board member appointed by Declarant may be removed by Declarant at any time, who may thereupon appoint a successor.

3.6 Vacancies. Vacancies in the Board caused by any reason other than the removal by a vote of the members or removal by Declarant shall be filled by vote of a majority of the remaining members of the Board. Each person so elected shall be a member of the Board until a successor shall be elected at the next annual meeting of the membership for the remainder of the term of the director so replaced.

3.7 Regular Meetings. Regular meetings may be held at such time and place as shall be determined from time to time by a majority of the members of the Board, but at least two such meetings shall be held during each year.

3.8 Special Meetings. Special meetings may be called by the President on three business days notice to each member of the Board, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the Secretary in like manner and on like notice on the request of at least one-third (1/3) of the Board.

3.9 Waiver of Notice. Any member of the Board may waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice.

3.10 Quorum. A majority of the Board members shall constitute a quorum for the transaction of business. 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. If at any meeting of the Board there shall be less than a quorum present, a majority of Directors present may adjourn the meeting to a specific time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.11 Action Without a Meeting. Any action that may be taken by the Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so to be taken, is signed by all the Directors before such action.

3.12 Compensation. No Director shall receive any compensation from the Association for acting as a Director.

4. MEMBERSHIP MEETINGS

4.1 Annual Meetings. Within ninety (90) days after units representing twenty-five (25%) percent or more in percentage of ownership shall have been sold, the first annual membership meeting shall be held. Notwithstanding the previous sentence, the Declarant may call the first annual membership meeting earlier for the purpose of relinquishing power to select the Board. Annual meetings shall be held thereafter on such date as the Board directs.

4.2 Place of Meetings. Membership meetings shall be held at the office of the Association or at such other suitable place convenient to the Owners as may be designated by the Board.

4.3 Special Meetings. The President shall call a special membership meeting upon a petition signed and presented by Unit Owners having a total of at least one third (1/3) of the Unit votes.

4.4 Notice of Meetings. The Secretary shall mail to each member a notice of each annual or special meeting of the Association of Unit Owners, at least ten (10) but not more than sixty (60) days prior to such meeting. The notice shall state the purpose thereof, as well as the time and place where it is to be held. Notice shall be mailed to such address as such Unit Owner shall have designated in writing to the Secretary. The mailing of notice of meeting in the manner provided in this section shall be considered service of notice.

4.5 Quorum. The presence in person or by proxy of members having fifty-one (51%) percent of the total authorized votes of all members shall constitute a quorum at all membership meetings.

4.6 Majority Vote. The vote of a majority of members at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required by law or the Declaration.

4.7 Number of Votes and Persons Entitled to Vote. Each Ground Unit shall have one (1) vote. The method of determining who shall vote in the event of multiple owners of a unit and in the event of units owned by corporations, limited liability companies, partnerships and other persons created by law shall be as stated in Article 20 of the Declaration.

5. OFFICERS

5.1 Designation. The officers of the Association shall be the President, the Secretary, and the Treasurer, all of whom shall be elected by Declarant and/or Unit Owners in the same manner as the Board of Directors. The Board may appoint such other officers as in its judgment may be necessary. The President must be a member of the Board of Directors.

5.2 Term of Office. Officers shall be elected annually.

5.3 Removal of Officers. Upon the affirmative vote of a majority of the Directors, any officer may be removed, either with or without cause, and his or her successor may be elected at any regular meeting or special meeting of the Directors.

5.4 President. The President shall be the chief executive officer of the Association; shall preside at all meetings of the Unit Owners and of the Board of Directors; and shall have all of the general powers and duties which are incident to his office and shall perform all of the duties assigned by the Board.

5.5 Secretary. The Secretary shall keep the minutes of all meetings of the Association of Unit Owners and of the Board of Directors; shall be in charge of such books and papers as the Board may direct; shall give notice in conformity with these Bylaws of any and all meetings; and, shall perform all other duties assigned by the Board.

5.6 Treasurer. The Treasurer shall have the responsibility for condominium funds and securities; shall be responsible for maintaining accounting records; shall be responsible for keeping full and accurate financial records and books of account

showing all receipts and disbursements; shall prepare all required financial statements; shall be responsible for the deposit of all moneys and other valuables in the name of the Association in such depositories as may, from time to time, be designated by the Board; and shall perform all the duties assigned him by the Board.

5.7 Agreement, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by any two officers of the Association or by such other person or persons as may be designated by the Board of Directors.

5.8 Compensation of Officers. No officer shall receive any compensation from the Association for acting as such.

6. OPERATION OF THE PROPERTY

6.1 Determination of Common Expenses and Budget. Board of Directors shall at least annually prepare a proposed budget for the Association, determine the amount required to meet the common expenses of the Association, and allocate and assess such common expenses. Common expenses shall include, but shall not be limited to, all charges for taxes (except real property taxes and other such taxes which are or may be assessed separately on each Unit and the personal property or any other interest of the owner); assessments; insurance, including fire and other casualty and liability insurance; cost of repair, reinstatement, rebuilding and replacement of the Common Elements; yard, janitorial, and other similar services; wages; contract management fees, accounting and legal fees; management fee, and other necessary expenses of upkeep, maintenance, management and operation for the common elements; and the reserve established to provide for replacement, working capital, obsolescence and other appropriate purposes.

6.2 Reserve Fund. Unless determined otherwise by the Board, Unit Owners shall at all times have paid into the Owners Association assessments for common expenses and reserves for capital improvements **equal to at least two (2) months assessments for each Unit.** Such amounts shall be collected at the time of closing of the sale of each Unit and transferred to the Association and maintained in a separate account for the use and benefit of the Association. Payment of such reserves by Declarant on each Unit owned by Declarant shall be due at the time the first Unit is sold to a person other than Declarant. Such amounts shall not be deemed an advance payment of a regular assessment.

7. MISCELLANEOUS

7.1 Notices. All notices shall be given to the Board, Association, Unit Owners and mortgagees as provided in the Declaration.

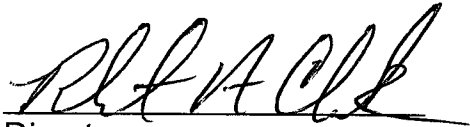
7.2 Gender. The use of any gender in these Bylaws shall be deemed to include all genders, and the use of the singular shall be deemed to include the plural, whenever the context so requires.

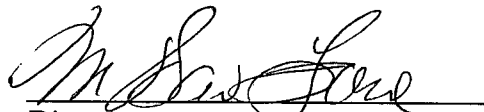
7.3 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches.

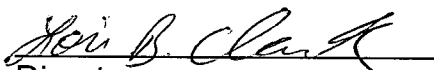
8. AMENDMENTS TO BYLAWS

Pursuant to §35-8A-306(a)(6), these Initial Bylaws may be modified or amended by the vote at a properly called meeting of the Unit Owners representing at least two-thirds (2/3) of the votes of all Unit Owners. Modifications or amendments to the Bylaws shall be valid only when recorded in the Probate Records of Baldwin County, Alabama, and signed on behalf of the Association by the President and Secretary.

Adopted this 29 day of August, 2007 by unanimous vote of the Board of Directors of **Cottages at Fish River Owners Association, Inc.**


Director


Director


Director

This Instrument Prepared By:
JAMES E. SMITH, P.C.
P.O. Box 416
Fairhope, AL 36533
Telephone: 251/928-1355

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