

EXHIBIT "F"
DECLARATION OF CONDOMINIUM
OF
BAYOU SUNRISE, A CONDOMINIUM

**DECLARATION OF CONDOMINIUM OF
BAYOU SUNRISE, A CONDOMINIUM**

I. SUBMISSION OF PROPERTY

- 1.1 Property
- 1.2 Intent of Declarant
- 1.3 Submission of Development Property

II. DEFINITIONS

III. DESCRIPTIONS OF IMPROVEMENTS

- 3.1 Improvements
- 3.2 Entrances and Verandas
- 3.3 Parking Spaces

IV. SPECIAL AND OTHER DECLARANT RIGHTS

- 4.1 Amendment of Condominium Plan
- 4.2 Right to Convert Unit to Common Elements
- 4.3 Option to Increase Size of Units and Walls
- 4.4 Use for Sales Purposes
- 4.5 Use by the Developer
- 4.6 Easement by the Developer to Adjacent Properties
- 4.7 Reallocation of Interests

V. EASEMENTS

- 5.1 Easements, Restrictions, Conditions, and Limitations
- 5.2 Utility Easements
- 5.3 Utility Equipment
- 5.4 Easements for Ingress and Egress
- 5.5 Easement for Use of Leased or Acquired Property
- 5.6 Easements for Encroachments
- 5.7 Easement for Support
- 5.8 Easement Appurtenant to Units
- 5.9 Ownership of Common Elements and Limited Common Elements

VI. ORGANIZATION AND MANAGEMENT

- 6.1 Management of the Condominium Property

*****PROPOSED – THIS INSTRUMENT NEITHER EXECUTED NOR RECORDED.*****

- 6.2 Members
- 6.3 Bylaws

VII. ASSESSMENTS

- 7.1 Liability, for Lien and Enforcement
- 7.2 Assessments
- 7.3 Annual Budget
- 7.4 Omission of Assessment
- 7.5 Records
- 7.6 Payment of Common Expenses and Limited Common Expenses by Unit Owners
- 7.7 Default in Payment of Assessments
- 7.8 Election of Remedies
- 7.9 Surplus Funds
- 7.10 Required Reserve Funds and Working Capital Fund

VIII. MAINTENANCE AND OPERATON OF THE CONDOMINIUM PROPERTY

- 8.1 The Association's Obligation to Repair
- 8.2 Each Owner's Obligation to Repair
- 8.3 Alterations, Additions, and Improvement by the Association
- 8.4 Utilities

IX. RESTRICTIONS ON USE OF UNITS, COMMON ELEMENTS, AND LIMITED COMMON ELEMENTS

- 9.1 Rules and Regulations of Bayou Sunrise, A Condominium
- 9.2 Restrictions on Use
- 9.3 Right of Access
- 9.4 Limitation of Liability
- 9.5 Abatement of Violations
- 9.6 Failure of the Association to Insist on Strict Performance; No Waiver

X. RIGHTS OF MORTGAGEES

- 10.1 Notification of Mortgagees Required
- 10.2 Right of Inspection
- 10.3 Priority of Mortgages
- 10.4 Request for Protection by Mortgagees

XI. INSURANCE

- 11.1 Unit Owners' Responsibility for Separate Insurance Coverage
- 11.2 Insurance to be Maintained by the Association

*****PROPOSED – THIS INSTRUMENT NEITHER EXECUTED NOR RECORDED.*****

- 11.3 Governing Provisions
- 11.4 Premiums
- 11.5 Insurance Trustee
- 11.6 Loss to Common Elements Only
- 11.7 Loss to Common Elements, Limited Common Elements and/or Private Elements
- 11.8 Estimates of Repair; Plans and Specifications; Payment of Assessments.

XII. CONDEMNATION

- 12.1 Condemnation Considered a Casualty Loss
- 12.2 Partial Condemnation
- 12.3 Association Appointed as Attorney-in-Fact for Unit Owners

XIII. TERMINATION

- 13.1 Termination of the Condominium Property
- 13.2 Termination by Consent.

XIV. AMENDMENT

- 14.4 Amendments by Developer
- 14.2 Amendments by Unit Owners
- 14.3 Effectiveness of Amendments

XV. CONTROL OF THE ASSOCIATION

- 15.1 Election of Board of Directors
- 15.2 Notice of Meeting
- 15.3 Status of Unsold Units
- 15.4 Professional Management and Other Contracts.

XVI. ALLEGED DEFECTS

- 16.1 Developer's Right to Cure Alleged Defects

XVII. RESOLUTION OF DISPUTES WITHOUT LITIGATION

- 17.1 Agreement to Encourage Resolution of Disputes without Litigation

XVIII. DISPUTE RESOLUTION PROCEDURES

- 18.1 Notice
- 18.2 Negotiation

*****PROPOSED – THIS INSTRUMENT NEITHER EXECUTED NOR RECORDED.*****

- 18.3 Mediation
- 18.4 Settlement
- 18.5 Litigation

XIX GENERAL PROVISIONS

- 19.1 Covenant Against Partition
- 19.2 Disclosures

XX MISCELLANEOUS

- 20.1 Rights and Powers of Successors and Assignees
- 20.2 Heading
- 20.3 Gender/Number
- 20.4 Exhibits
- 20.5 Invalidity and Severability
- 20.6 Interpretation
- 20.7 Notice
- 20.8 Governing Law
- 20.9 Conflict Between Documents

*****PROPOSED – THIS INSTRUMENT NEITHER EXECUTED NOR RECORDED.*****

STATE OF ALABAMA

COUNTY OF BALDWIN

**DECLARATION OF CONDOMINIUM
OF BAYOU SUNRISE, A CONDOMINIUM**

This Declaration of Condominium of Bayou Sunrise, A Condominium, ("**Declaration**") is made by Bayou Sunrise, LLC, an Alabama limited liability company (the "**Developer**," also sometimes referred to as "**Declarant**"), pursuant to the provisions of the Alabama Condominium Act, Alabama Code § 35-8A-101 et seq., as amended (the "**Act**"), for the purpose of forming a condominium and establishing certain rights, titles, easements, covenants and/or restrictions to run with the Condominium Property.

RECITALS

The Declarant is the owner of certain real estate described in Article I below and located in the City of Gulf Shores, Baldwin County, Alabama, hereinafter referred to as the "parcel."

The Declarant intends to, and does hereby submit the parcel, together with the buildings, structures, improvements, and other permanent fixtures constructed thereon, and all rights and privileges belonging or in any way pertaining thereto, to the provisions of the Alabama Condominium Act, Alabama Code § 35-8A-101, et seq., as amended. The Condominium shall be known as Bayou Sunrise, A Condominium.

The Declarant further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of Units constructed upon the parcel or any part thereof, the condominium form of ownership; and intends that all future owners, occupants, mortgagees, and any other persons hereinafter acquiring an interest in any Unit constructed upon the parcel shall hold that interest subject to certain rights, easements, and privileges in the Common and Limited Common Elements of the Condominium constructed upon the parcel, and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct, and maintenance of the Condominium, as hereinafter set forth.

ARTICLE I
SUBMISSION OF PROPERTY

1.1 Development Property. The Declarant is the owner of certain real property located in the City of Gulf Shores, Baldwin County, Alabama, more particularly described in "**Exhibit A**" appended hereto and made a part hereof, and to improve such real property as described herein.

1.2 Intent of Declarant. It is the intent of the Declarant upon recording this Declaration to submit all of the improvements, easements, rights, and appurtenances thereunto appertaining to the condominium form of ownership upon the real property to create a Condominium to be known as Bayou Sunrise, A Condominium, (the "**Condominium**"), and to impose upon the Condominium mutually beneficial restrictions under a plan for the benefit of all of the Units and Owners thereof.

1.3 Submission of Development Property. The Declarant, upon the recording of this Declaration, does submit all of the improvements constructed upon the parcel, and the easements, rights and appurtenances thereunto appertaining, to the provisions of the Alabama Condominium Act, Alabama Code § 35-8A-101, et. seq., as amended, to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and in any other manner utilized subject to the provisions of the Act and subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration and any amendments hereto, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Property and the division thereof into condominium ownership, and all of which shall run with the land and shall be binding on all parties (and subsequent Owners as hereinafter defined), having or acquiring any right, title or interest in the Condominium or any part thereof, and shall be for the benefit of each Unit Owner or any interest therein, and shall inure to the benefit of, and be binding upon each successor-in-interest to the Unit Owners thereof.

ARTICLE II **DEFINITIONS**

2.1 Definitions. Certain terms as used in this Declaration shall be herein defined, unless the context clearly indicates a different meaning, and shall be consistent with the meanings stated in the Act:

2.2 "Act" shall mean the Alabama Condominium Act, Alabama Code § 35-8A-101, et seq., as the same may be amended from time to time.

2.3 "Assessment" shall mean a proportionate share of the funds required for the payment of the Common Expenses which from time to time may be levied against each Unit and Unit Owner.

2.4 "Association" shall mean Bayou Sunrise, A Condominium Owners' Association, Inc., a non-profit corporation organized pursuant to the Alabama Business and Nonprofit Entities Code, Alabama Code § 10A-1-1.01, et. seq., as amended.

2.5 "Board of Directors" or "Board" shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

2.6 "Building" or "Buildings" shall mean all structures or improvements located on the parcel and forming a part of the Condominium.

2.7 "Bylaws" shall mean the Bylaws of the Association. The Bylaws are appended hereto as **Exhibit "B"** and made a part hereof.

2.8 "Certificate of Formation" shall mean the Certificate of Formation of Bayou Sunrise Condominium Owners' Association, an Alabama Nonprofit Corporation, as recorded in the Office of the Judge of Probate, Baldwin County, Alabama, Secretary of State of Alabama as **Exhibit "C"**.

2.9 "Common Elements or Common Areas" shall mean:

(1) Any part of the Condominium other than the Private Elements which are held or designated for use by the Unit Owners and shall include the following:

(a) the foundations and footings, load bearing walls, perimetrical walls, structural slabs, framing, columns, beams and supports, the roofs, and mechanical equipment designated as Common Elements, ramps, handrails, sidewalks, stairways and entrances and exits, the installations for central services such as ventilation, power, light, electricity, telephone and television cable, gas, fire protection, security, cold and hot water, plumbing, water tanks and pumps, storm drains, sewer lines, flues, and the like, and all similar devices or installations existing for common use, but excluding all compartments or installations of utilities and services which exist for private use in the Private Elements, the premises and facilities, if any, used for the maintenance or repair of the Condominium, all common areas and grounds, yards, retaining walls, lawn areas, landscaping, trees, curbs, roads, walkways, common parking areas, all easements, rights or appurtenances affecting or relating to the use of the Condominium Property unless specifically included in any Unit, all other elements (other than Limited Common or Private Elements) desirable or rationally necessary for common use or necessary to the existence, upkeep and safety of the Condominium Property and furniture, equipment and any other personal property transferred or assigned by the Declarant to the Association or from time to time owned or leased by the Association and held for use in common by the Unit Owners.

2.10 "Common Expenses" shall mean the expenses arising out of the operation and ownership of the Common Elements and Limited Common Elements and shall include, but not be limited to, expenses of administration of the Common Elements and Limited Common Elements of the Condominium; expenses of insurance; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and Limited Common Elements and any portion of any Unit maintained by the Association; any valid charge against the Condominium as a whole; and any expenses declared to be Common Expenses by the provisions of the Condominium Documents, as the same may be amended from time to time in accordance with the provisions thereof, and such expenses and liabilities of the Association, together with any allocation to reserves.

2.11 "Condominium Documents" shall mean this Declaration and all exhibits hereto, including the Rules and Regulations of Bayou Sunrise, A Condominium, the Bylaws, the Certificate of Formation of the Association, and the Plat and Plans, as the same may be amended from time to time.

2.12 "Declaration of Condominium" or "Declaration" shall mean this Declaration Of Condominium of Bayou Sunrise, A Condominium, as it may be amended from time to time.

2.13 "Developer" or "Declarant" may be used interchangeably and shall mean Bayou Sunrise, LLC, an Alabama limited liability company, and its successors and assigns.

2.14 "Land" shall mean the parcel of real property described in Exhibit "A" hereto upon which the buildings and improvements comprising the Condominium are located as submitted to the provisions of the Act, this Declaration and any amendment hereto.

2.15 "Limited Common Elements" or "Limited Common Areas" shall mean and include any area designated as Limited Common Elements by this Declaration and the Condominium Documents including the Plat and Plans and any amendments thereto, and any areas defined in the Act as Limited Common Areas for the exclusive use of one or more, but fewer than all of the Units. The Limited Common Elements shall include, among any other property so designated, designated parking spaces, verandas, terraces, wires, conduits, bearing walls, bearing columns, or any other fixture serving only a specific Unit. Should any Limited Common Element be determined not to be a Limited Common Element under the Act, the same shall be part of the Common Elements with an exclusive easement of use appurtenant to the Private Element to which it was originally assigned as a Limited Common Element.

2.16 "Limited Common Expenses" shall mean the expenses arising out of the ownership or the right to exclusive use of designated Limited Common Elements and shall include, but not be limited to, the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation, and betterment of the Limited Common Elements, and expenses declared to be Limited Common Expenses by the provisions of the Condominium Documents, as the same may be amended from time to time in accordance with the provisions thereof.

2.17 "Members" shall mean and refer to the Members of the Association.

2.18 "Mortgage" shall mean a first mortgage lien on one (1) or more Units.

2.19 "Mortgagee" shall mean a holder of a Mortgage who has given notice to the Association that the Mortgagee is the holder of a Mortgage affecting all or any part of the Condominium Property as hereinafter provided.

2.20 "Owner" or "Unit Owner" shall mean and refer to every person and/or entity who is an Owner of record of a Unit.

2.21 "Occupant" shall mean a person occupying or in possession of a Unit, regardless of whether that person is a Unit Owner.

2.22 "Plans" or "Plat" shall mean the Plans or Plat showing the Private Elements, the Common Elements and the Limited Common Elements of the Condominium Property appended hereto as Exhibit "D" and Exhibit "D-1" and made a part hereof for all purposes, as the same may be amended. The Plans contain a certification executed by an independent registered engineer in accordance with the Act. The Plat is unrecorded.

2.23 "Private Element" shall mean the parts of the Condominium Property as set forth in the Plat and Plans intended for the exclusive ownership and possession by a Unit Owner. Each Private Element is identified by diagrammatic floor plan as shown on the Plans, and shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

(1) The upper and lower boundaries extended to their planar intersections with the perimetrical boundaries as follows:

- (a) the upper boundary shall be the lower plane of the roof decking of each Unit;
- (b) the lower boundary shall be the plane of the upper surface of the concrete floor slab which serves as the Unit's first floor, excluding any floor covering such as carpeting, vinyl, hardwood or ceramic tile which are all deemed to be part of the Private Elements.

(2) The perimetrical boundaries shall be the vertical planes of the interior surfaces of the exterior windows, glass doors and entry doors, and the unfinished interior surfaces of the exterior walls and party walls (excluding paint, wallpaper and light fixtures) extended to their planar intersections with each other and with the upper and lower boundaries which are all deemed to be part of the Private Elements.

Private Elements or Units shall include any non-structural interior partition walls located within the boundaries of a Unit, except such part as may comprise part of the Common Elements; the decorated surfaces of all boundary walls, ceilings and floors, including wallpaper, paint, interior brick surface, gypsum board, lath, wallboard, plaster, carpeting, flooring and other finishing materials; all immediately visible fixtures, appliances, kitchen cabinets, and water and sewage pipes located within the boundaries of the Private Elements and serving only the Private Element; and the mechanical systems and installations providing electrical power, gas, water, heating and air conditioning service to the Private Element, including the individual air conditioning compressor(s) even though such equipment may be located outside the boundaries of the Private Element, provided that no pipes, wires, conduits, ducts, flues, shafts and other facilities situated within such Private Element, and forming a part of any system serving one or more other Private Elements or the Common Elements, shall be deemed to be a part of such Private Element; and, provided further, that no bearing wall providing structural support and located within the boundaries of the Private Elements shall be deemed part of the Private Elements. Parking spaces

assigned to a Unit shall remain Limited Common Elements despite such assignment. No right to an assigned parking space shall exist separate from the ownership of a Unit.

2.24 "Property" or "Condominium Property" shall mean the Land and all improvements and structures erected, constructed or contained therein or thereon, including all buildings, and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, submitted to the provisions of the Act under this Declaration, as it may be amended from time to time.

2.25 "Residential Unit" is a Unit which will be used as a single-family residence as provided for in this Declaration.

2.26 "Rules and Regulations" shall mean the Rules and Regulations of Bayou Sunrise, A Condominium, which are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Act or the other Condominium Documents, a copy of which is appended hereto as Exhibit "E" and made a part hereof for all purposes, as the same may be amended.

2.27 "Unit" or "Condominium Unit" shall mean the Private Elements as shown on the Plat and Plans together with the undivided interest in the Common Elements and Limited Common Elements assigned to each Unit as hereto provided.

ARTICLE III **DESCRIPTION OF IMPROVEMENTS**

3.1 Improvements. Bayou Sunrise, A Condominium, consists of five (5) buildings containing a total of seventeen (17) Units together with vehicular parking areas, a pool, gazebo, pier, landscaping, other facilities, and other Common Elements and Limited Common Elements. The improvements are shown on the Plans appended hereto as Exhibit "D". The Plat appended hereto as Exhibit "D-1" identifies in reasonably sufficient detail the Common Elements, the Limited Common Elements and each Unit of the Condominium and their relative locations. The Plans contain a Certification executed by an independent registered engineer in accordance with this Declaration and the Act. The Plans contain a Certification that the Plans contain all information required by the Act. The Plans include floor plans of the buildings showing the layout, the location of each Unit, the approximate dimensions of each Unit, the type of such Unit and the Unit number for each Unit.

3.2 Entrances and Verandas. Exterior entrances and verandas are Limited Common Areas as designated by the Plat and Plans and this Declaration. Each exterior entrance and veranda shall be deemed to be a Limited Common Element appurtenant to the Unit from which it is directly accessible. Each Unit Owner shall be entitled to an exclusive easement for the use of any exterior veranda accessible exclusively from such Owner's Unit, but such right shall not entitle an Owner to construct anything thereon, paint, nor change any structural part thereof.

3.3 Parking Spaces. All parking spaces indicated on the Plans and Plat shall be Limited Common Elements, appurtenant to the Unit to which it is directly accessible. The Owner of each Unit shall be entitled to an exclusive easement for the use of each such parking space, subject to the Rules and Regulations.

ARTICLE IV **SPECIAL DECLARANT RIGHTS**

4.1 Amendment of Condominium Plan. The Developer reserves the right to change the interior design or arrangement of all Units, to alter the boundaries between Units and to increase or decrease the number of Units so long as the Developer, or its affiliates or members, own(s) the Unit(s) so altered. Changes in the boundaries between Private Elements, as hereinbefore provided, shall be reflected by amendment to the Plan and, if necessary, amendment to this Declaration. If two (2) adjoining Units are combined by the Developer to make one (1) large Unit, the Association's assessments and the ownership interest in the Common Elements attributable to the combined Unit shall remain as though there are two (2) separate Units. An amendment to the Plan or this Declaration reflecting an alteration of the boundaries of the Units owned by the Developer must be signed and acknowledged only by the Developer and need not be approved by the Owners or Mortgagees, whether or not such approval may elsewhere be required herein; provided, however, that, except as may be required in the case of addition of property to the Condominium in accordance with Alabama Code § 35-8A-210 of the Act, any change which shall result in a change in the undivided interest in the Common Elements or the Limited Common Elements or a change in the share of the Common Expenses or the Limited Common Expenses with respect to Owners of Units other than the Developer at the time of such change or which shall result in the alteration of boundaries of Units (other than the common walls separating the Units owned by the Developer) may not be made without an amendment of this Declaration approved by the Owners and any affected Mortgagee in the manner elsewhere required herein.

4.2 Right to Convert Unit to Common Elements. The Developer expressly reserves the right until the closing of the sale of the last Unit to convert part or all of any Unit owned by Developer into Common Elements or Limited Common Elements, or both. This reserved development right may be exercised with respect to all or any portion of the Condominium Property in any order and at any time. There is no limitation on this right.

4.3 Option to Increase Size of Units and Walls. The Developer expressly reserves the right to increase the size of any Unit created by this Declaration and owned by the Developer and to increase the height of any wall on the Condominium Property without the consent of any Unit Owner or Mortgagee. There is no limitation on this option to increase the size of the Units.

4.4 Use for Sales Purposes. All Units and Common Elements shall be subject to the Developer's statutory right concerning use of Units as sales offices, and Common Elements as provided in Alabama Code § 35-8A-215. The Developer expressly reserves the right to use one or more Units owned by the Developer as models, and any portion of the Common Elements or one or more Units for management offices and/or sales offices.

The Developer reserves the right to relocate offices and/or models from time to time within the Condominium. Upon relocation or sale of a model, the management office or sales office and the furnishings thereof may be removed by the Developer. The Developer further reserves the right to maintain on the Common Elements advertising signs in any location or locations and from time to time relocate and/or remove the same, all in the sole discretion of the Developer.

4.5 Use by the Developer. Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board of Directors, 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 Developer has completed all of the Developer's contemplated improvements and closed the sales of all of such Units. Subject to the rights of the Mortgagees hereunder, the Developer may make such use of the unsold Units and of the Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office and model units, the showing of the Condominium Property and the Units therein, and the display of signs thereon and therein. These special declarant rights shall exist so long as the Developer owns any Unit in the Condominium, holds any Unit in the Condominium for sale in the ordinary course of business, or leases any Unit it owns. The Developer expressly reserves the right to lease any Unit which it may own in the Condominium Property on such terms as it may deem proper and desirable and may transfer Units to the Association for use as management or sales offices.

4.6 Easement by the Developer to Adjacent Properties. The Developer, its successors and assigns, reserves a perpetual nonexclusive easement for access, ingress and egress in, over and through all access routes, parking areas, and other Common Areas for its guests, licensees, lessees, customers and employees to and from any adjacent and contiguous property for the purpose of real estate sales, management and marketing activities for the construction of the proposed 17 Units which may be reasonably necessary for the Developer, its successors and assigns, to conduct its business.

4.7 Reallocation of Interests. If Units are added to or withdrawn from the Condominium in accordance with the provisions of this Declaration, reallocation of undivided interests in the Common Elements and Common Expenses among all Units included in the Condominium after the addition or withdrawal shall be in proportion to the relative sizes of Units, based on the floor area of each Unit, not including Limited Common Elements appurtenant to such Unit.

ARTICLE V **EASEMENTS**

5.1. Easements, Restrictions, Conditions and Limitations. The Private Elements, Common Elements and Limited Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions and covenants prescribed and established in the Condominium Documents governing the use of said Private Elements, Common Elements and Limited Common Elements in setting forth the obligations and responsibilities incident to

ownership of each Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. Said Private Elements, Common Elements and Limited Common Elements are further declared to be subject to the easements, restrictions, conditions and limitations now of record affecting the Condominium Property, which easements and restrictions are described in **Exhibit "F"** appended hereto and made a part hereof for all purposes.

5.2 **Utility Easements.** Utility easements are reserved throughout the whole of the Property, including Units, as may be required for utility services (including, without limitation, water, sewer, gas, electricity, telephone, fiber optics, internet ports or cabling, and cable television) in order to adequately serve the Condominium.

5.3 **Utility Equipment.** There may be utility equipment located on the Common Elements appurtenant to some Units. An easement is hereby reserved in favor of each Unit for the purpose of placement, maintenance, repair and replacement of said utility equipment by the Developer and the Owner(s) of the appurtenant Unit; provided that no utility equipment shall be placed in or on any part of the Common Elements or Limited Common Elements other than as initially located unless the written approval of the Association shall have first been obtained.

5.4 **Easements for Ingress and Egress.** The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement over all driveways, walkways, and other Common Areas, in favor of all Owners and the Developer for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners and the Developer, subject to all restrictions in the Condominium Documents. The Limited Common Elements shall be subject to a nonexclusive easement in favor of the Association for repair, service and other uses reasonably intended or required by the Association.

5.5 **Easement for Use of Leased or Acquired Property.** Each Unit Owner shall have a nonexclusive easement for use of any property hereafter acquired by the Association for the common benefit of the Unit Owners by purchase, lease or otherwise, for all normal and proper purposes for which the same are reasonably intended, subject to all restrictions in the Condominium Documents and the Rules and Regulations.

5.6 **Easements for Encroachments.** To the extent any Private Element, Common Element or Limited Common Element encroaches on any other Private Element, Common Element, or Limited Common Element, whether by reason of deviation from the Plans in the original construction, repair, renovation, restoration or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement shall exist for the encroachment and/or the maintenance of the same, so long as the encroaching Private Element, Common Element, or Limited Common Element stands. A valid easement shall not relieve a Unit Owner of liability for negligence, intentional acts, or willful and intentional misconduct by a Unit Owner or a Unit Owner's agents, employees, tenants, or guests. In the event any Unit, any adjoining Unit, or any adjoining Common Elements or Limited Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then constructed, reconstructed or repaired, encroachment of

parts of the Common Elements or Limited Common Elements upon any Unit or of any Unit upon any of the other Private Elements, Common Elements or Limited Common Elements resulting from such construction, reconstruction or repair shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the encroaching improvements shall stand.

5.7 Easement of Support. Each Private Element, Common Element and Limited Common Element shall have an easement of support from every other Private Element, Common Element, and Limited Common Element which provides such support.

5.8 Easements Appurtenant to Units. 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 special reference to such easements and rights appear in such instrument. Each Unit Owner does hereby designate the Association as his lawful attorney-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements contemplated by the provisions hereof.

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

The extent or amount of such ownership shall be expressed by a percentage relating to each Unit as set forth on Exhibit "G" appended hereto and made a part hereof for all purposes, and shall remain constant, unless changed in accordance with the provisions hereof, including without limitation those relating to addition of property to the Condominium, or by the unanimous approval of all Unit Owners. The Owners of Units with Limited Common Elements appurtenant to such Units as designated or described on the Plans appended hereto shall have the exclusive right to use such Limited Common Elements so designated or described unless changed by the Developer as permitted herein or by the unanimous approval of the Unit Owners. Each Owner of a Unit to which a Limited Common Element is appurtenant shall have the right to use the Limited Common Element for all purposes incident to the use and occupancy of such Owner's Unit as herein provided without hindering or encroaching upon the lawful rights of the other Unit Owners, which rights shall be appurtenant to and run with the Units to which the Limited Common Elements are attached.

ARTICLE VI **ORGANIZATION AND MANAGEMENT**

6.1. Management of the Condominium Property. The operation and administration of the Common Elements and the Condominium Property shall be performed by the Association. The powers and duties of the Association shall include those set forth in the Act,

the Alabama Business and Nonprofit Entities Code, (Alabama Code § 10A-1-1.01), this Declaration, the Bylaws appended and the Certificate of Formation appended hereto.

6.2 Members. The Members of the Association shall be composed of all record Owners of the Units. Change of membership in the Association shall be established by recording in the records of the Judge of Probate of Baldwin County, Alabama, the warranty bill of sale or other instrument establishing record transfer of interest to a Unit of the Condominium, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a record Unit Owner and a Member of the Association. Membership of the prior Unit Owner shall thereby be terminated. All present and future Unit Owners, tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations. Votes on matters decided by vote of the Members shall be cast in the manner provided in the Articles and Bylaws of the Association. Each Unit shall be allocated one (1) vote, and no Unit may divide its vote.

6.3 Bylaws. The Bylaws of the Association shall be in the form appended as Exhibit "B" to this Declaration, and made a part hereof for all purposes, and may be amended from time to time as set forth therein.

ARTICLE VII ASSESSMENTS

7.1. Liability for Lien and Enforcement. The Association is given the authority to administer the operation and the management of the Common Elements, the Limited Common Elements, and the Condominium Property. The Association is hereby granted the right to make, levy, and collect assessments against the Owners of all Units to pay Common Expenses, and for such other expenses which the Association is authorized to incur under the terms and conditions of this Declaration. In furtherance of said grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation and management of the Condominium Property, the following provisions shall be effective and binding upon the Owners of all Units.

7.2 Assessments. All assessments for the payment of Common Expenses whether to Common Elements or Limited Common Elements shall be levied annually and paid monthly by the Owners of all Units affected, and unless specifically otherwise provided for in this Declaration, each Owner of a Unit and each Unit shall bear the same percentage share of such assessment as the percentage share of ownership for the undivided interest in the Common Elements. The assessments for Common Expenses shall be payable over the course of the year in advance in monthly installments 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 of Directors in accordance with the Bylaws.

7.3 Annual Budget. Within sixty (60) days prior to the beginning of each fiscal year of the Association, the Board of Directors shall adopt a proposed annual budget for such fiscal

year, and such budget shall project the amount of funds for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium Property, including reasonable allowances for contingencies and reserves therefore if the Board of Directors shall so provide, in accordance with the Act and this Declaration. The budget shall take into account any projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. Within thirty (30) days after adoption of such annual budget by the Board of Directors, a copy of said budget shall be made available to each Member. The Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget not less than ten (10) 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 shall be deemed 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.

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

7.4 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 Unit 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.

7.5 Records. The Association shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements and Limited Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements, Limited Common Elements and any other expenses incurred. Records authorizing the payments involved shall be available for examination by any Member or Member's representative at convenient hours on weekdays in a location designated by the Board of Directors in Baldwin County, Alabama.

7.6 Payment of Common Expenses and Limited Common Expenses by Unit Owners. All Unit Owners shall be obligated to pay the assessment for Common Expenses and/or Limited Common Expenses adopted by the Board of Directors pursuant to the terms of this Declaration subject to the provisions of the Rules and Regulations. No Unit Owner may be exempted from liability for such Unit Owner's contribution toward Common Expenses and/or Limited Common Expenses by waiver of the use or enjoyment of any of the Common Elements, Limited Common Elements or by abandonment of an Owner's Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses or Limited Common Expenses assessed against such Owners

Unit subsequent to a sale or other conveyance by the Owner of such Unit. The Purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against such Unit or Limited Common Element appurtenant to 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 therefor. Whenever a Unit is sold or mortgaged by the Owner thereof, such sale or Mortgage shall be concluded only upon compliance with the other provisions of this Declaration. The Association, upon written request of a Unit Owner or Purchaser of such Unit, shall furnish to the Unit Owner, the Purchaser, or any proposed Mortgagee (within the time period prescribed by the Act) 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 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 a Unit is to be sold or mortgaged when any assessment is outstanding against the Owner of such Unit and such assessment due the Association 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.

7.7 Default in Payment of Assessments. The payment of any assessment or installment thereof due the Association shall be in default if such assessment or installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the rate established by the Board of Directors not to exceed the maximum interest rate per annum allowed by law, until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall have a Lien against the Units for delinquent assessments. Said Lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Owner of each Unit, and such Lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association. Said lien shall also secure all costs and expenses, including late penalties and reasonable attorneys' fees and court costs incurred by the Association in collecting delinquent assessments and enforcing the same upon said Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements.

The Lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Alabama. The Lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest, at the maximum legal rate on judgments or the rate established by the Board of Directors, whichever is greater, on any such advance made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien, or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Unit expressly subject to the Lien.

The Lien herein granted to the Association shall be effective from and after the time of the recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama,

and no further recordation of any claim of lien for assessment under this section is required. Such Lien shall include only assessments which are due and payable when the action to enforce the lien is commenced, plus late penalties and penalties imposed by the Association for Rules and Regulations violations, interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided.

7.8 Election of Remedies. Institution of a suit at law to collect payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking enforcement of the collection by foreclosure of any sums remaining owing to it, nor shall proceeding by foreclosure to affect such collection be deemed to be an election precluding the institution or a suit at law to collect any sum then remaining owing to the Association. 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.

7.9 Surplus Funds. Surplus funds of the Association remaining after payment of Common Expenses, Assessments, reserves, interest, penalties, court costs, or attorney's fees may, in the sole discretion of the Board of Directors, be refunded to the Unit Owner's pro rata in accordance with each Unit Owner's Common Expense liability, or credited on a pro rata basis to the Unit Owner to reduce each Unit Owner's future Common Expense Assessments, or added to any contingency or other reserve funds maintained by the Association.

7.10 Required Reserve Funds and Working Capital Fund. Assessments levied by the Board of Directors shall include an adequate reserve fund based on the buildings' components and the components' anticipated life expectancy for maintenance, repair and replacement of those Common Elements and Limited Common Elements which must be replaced or repaired on a periodic basis and shall be payable in regular installments other than by special assessments. A working capital fund shall be established and each Unit Owner purchasing a Unit from the Developer shall pay a one (1) time assessment equal to two (2) months' assessment at the time of closing of the purchase of a Unit to be used by the Association as working capital. The Developer is prohibited from using the working capital funds to defray any of its expenses.

ARTICLE VIII

MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY

8.1 The Association's Obligation to Repair. The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the following, the costs of which shall be charged to all Unit Owners as a Common Expense:

(A) the Common Elements which by definition excludes the interior surfaces of all interior walls, floors, ceilings, and the interior surfaces of entrance doors, of the Units (the painting of the exterior faces of the exterior doors and window frames shall be the responsibility of the Association);

- (B) incidental damage caused to a Unit by any work done by the Association;
- (C) portions of all Units contributing to the support of the building, the outside walls and load bearing columns, excluding, however, interior wall and floor surfaces; and
- (D) the Limited Common Elements.

This section shall not relieve a Unit Owner of liability for damage to the Common Elements or Limited Common Elements caused by the Unit Owner, the Unit Owner's family members, contractors, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such person(s). The cost of repair for any damage so caused by the Unit Owner, the Unit Owner's family members, contractors, guests, invitees, lessees or licensees shall be charged as a special assessment against the Unit and the Unit Owner thereof.

8.2 Each Owner's Obligation to Repair.

(A) Except for those portions of the Condominium Property which the Association is required to maintain and repair, each Unit Owner shall, at such Unit Owner's expense, maintain the Private Elements attributable to such Owner's Unit in good and tenantable condition and repair, and shall be responsible for the repair, maintenance and replacement, if necessary, of the following items in such Owner's Unit:

- (1) Fixtures and equipment in such Owner's Unit, including the refrigerator, stove and all other appliances within the Unit; drains, sinks, plumbing and plumbing fixtures and connections within the Unit; electrical panels, wiring, outlets, and electrical fixtures within the Unit, interior doors, window screenings; all exterior doors (except the painting of the exterior faces of the exterior doors and windows, which shall be the responsibility of the Association); all interior wall coverings including paint, wallpaper and light fixtures; and all flooring including carpeting, vinyl and ceramic tile within a Unit; and
- (2) plumbing, heating and conditioning, and electrical system(s), whether located within or without a particular Unit or on common property, serving only that Unit, including the breaker boxes, wiring, flues, and all other plumbing, electrical, gas or mechanical systems.

In the event any such system or a portion thereof is within another Unit or requires access to another Unit, the repair, maintenance, or replacement of any portion of such other Unit attached shall be performed by the Association, and the cost thereof shall constitute, and charged as an assessment against the Unit and the Unit Owner responsible, therefore.

- (B) Each Unit Owner agrees as follows:

- (1) to perform all maintenance, repairs and replacements which are the Unit Owner's obligations under subparagraph (A) of this Section;
- (2) to pay all utilities as herein provided and all taxes levied against the Owner's Unit;
- (3) not to make or cause to be made repairs to any plumbing, heating, ventilation or air conditioning system located outside the Owner's Unit, except those required to be maintained by such Unit Owner as elsewhere provided and only to have licensed plumbers or electricians authorized to do such work within the Condominium by the Association or its delegate;
- (4) not to make any addition or alteration to such Owner's Unit or to the Common Elements or Limited Common Elements or to do any other act if such addition, alteration or act would impair the structural, soundness, safety or overall design scheme of any part of the Condominium Property or that would impair any easement or right of a Unit Owner or the Developer/Declarant, unless the prior written consent of the Association and all Unit Owners affected has been obtained.
- (5) not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, Limited Common Elements, or to any outside or exterior portion of any Unit, excluding any alteration or addition made pursuant to the procedure described in subparagraph (4) above and including, but not limited to, altering in any way exterior doors, windows, or the exterior faces of the exterior doors or windows, affixing outside shutters to windows, or painting any part of the exterior of an Owner's Unit, without the prior written consent of the Association; provided that if such consent is granted, the Unit Owner shall use only materials and/or systems approved by the Association and installed by a contractor approved by the Association, who shall comply with all Rules and Regulations with respect to the work which may be adopted by the Association and the Unit and Unit Owner shall be liable for all damages to another Unit or to the Common Elements or Limited Common Elements caused by any contractor employed by a Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and
- (6) to promptly report to the Association any defects or needed repairs for which the Association is responsible.

(C) The Association shall be obligated to answer any written request by a Unit Owner for any required approval, or proposed addition, alteration or improvement to a Unit within sixty (60) days after such request, but its failure to do so within the stipulated time shall not constitute the consent of the Association to the proposed addition, alteration or improvement. Any

application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Association, without, however, its incurring any liability on the part of the Board of Directors or any one of them or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim of injury to a person or damage to property arising therefrom. The review by the Association under this section shall in no way make the Association liable for any alterations, additions, or improvements to any Unit by any Unit Owner. Rather, such review is for purposes of aesthetics and control only. The provisions of this section shall not apply to Units owned by the Developer until a deed for such Unit has been delivered to a Purchaser other than the Developer.

8.3 Alterations, Additions and Improvements by the Association. Except in the case of loss or damage to the Common Elements or Limited Common Elements as contemplated by this Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements or Limited Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements or Limited Common Elements in accordance with this Declaration) unless the same is authorized by the Board of Directors and ratified by the affirmative vote or written authorization of the members casting not less than sixty-seven percent (67%) of the total votes of the Members of the Association by proxy at any meeting of the Members called for that purpose. The cost of the foregoing shall be assessed against the Owners of Units as provided herein except as otherwise provided in this section. Where any alterations or additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners who exclusively, or substantially exclusively, benefit therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors at its sole discretion. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alterations and additions shall be made only when authorized by the Board of Directors and ratified by not less than sixty-seven percent (67%) of the total Members exclusively, or substantially exclusively, benefiting therefrom. Alterations, improvements or repairs of an emergency nature may be made upon authorization by a vote of the majority of the Directors available for consultation if the same is necessary and in the best interest of the Members as may be determined by the Directors.

8.4 Utilities. Each Unit Owner shall be required to pay all charges for utilities, including but not limited to electricity, cable television, media, internet and telephone service, used or consumed in an Owner's Unit. The utilities serving each Unit only shall be separately metered. The utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association, however, shall have authority to pay the cost of utilities used or consumed in the Units and have the costs thereof apportioned among the Units based upon use of the utility or any other formula the Association may deem appropriate.

ARTICLE IX

RESTRICTIONS ON USE OF UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

9.1 Rules and Regulations of Bayou Sunrise, A Condominium. The Association is authorized to promulgate, amend and enforce Rules and Regulations. Appended hereto as **Exhibit "E"** are the initial Rules and Regulations concerning the operation and use of the Condominium. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners, tenants, occupants, and any other persons who use any part of the Condominium Property in any manner are subject to and shall comply with the provisions of the Condominium Documents and the Rules and Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any person shall constitute such person's agreement to be subject to and bound by the provisions of the Condominium Documents and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the Unit and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions for violation of any Rule or Regulation by a Unit Owner, or a Unit Owner's family members, contractors, guests, invitees, lessees, including the payment of penalties for such violations.

9.2 Restrictions on Use. The use of the Condominium Property is subject to the following restrictions:

- (A) Single Family Residential Use. Each Unit is hereby restricted to use as a single-family residence only. No Unit shall be used for commercial, retail or office use. Parking spaces contained within the Condominium shall be used exclusively for the parking of passenger vehicles.
- (B) Condominium Documents. Each Owner shall comply with and shall require the Occupants of the Unit of said Owner to comply with all provisions of the Condominium Documents pertaining to the Unit that apply to such Owner or the Unit of said Owner.
- (C) Storage and Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored in the Common Elements (except areas specifically designated by the Association), nor shall anything be placed on, constructed on, or planted in, or removed from the Common Elements, nor shall the Common Elements in any other way be altered without the prior written consent of the Association, and no Owner other than the Owner to whom a Limited Common Element is assigned shall obstruct such Limited Common Element or place, construct, plant, or remove any items on or from such Limited Common Element.

- (D) Improper Use. No improper, immoral, offensive, or unlawful use shall be made of any Unit, Common Elements or Limited Common Element, or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over the Condominium shall be observed.
- (E) Insurance Rate Increase. No Owner shall permit anything to be done or kept in an Owner's Unit, the Common Elements or the Limited Common Elements which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Condominium, or which would be in violation of any law.
- (F) Clean and Sanitary Conditions. All part of the Condominium shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. Each Owner agrees that all deliveries and all trash removal services, and other such services to that Owner or the Unit of the Owner shall be affected at a central location or locations designated by the Association from time to time for such purposes. The Owners shall not, and shall not permit the guests of the Owners, to litter. No burning of trash garbage of other waste materials will be permitted at the Condominium.
- (G) Waste. No waste shall be committed to the Common Elements or Limited Common Elements.
- (H) Nuisance. No noxious or offensive activities shall be carried on, nor shall any outside lighting or sound speakers or other sound producing devices be used, nor shall anything be done, on any part of the Condominium which, in the judgment of the Board of Directors, may be or become an unreasonable annoyance or nuisance to the other Owners.
- (I) Outdoor Drying. No clothes, sheets, blankets, towels, laundry of any kind or other articles shall be hung out or exposed on verandas, railings, furniture or on any part of the Common Elements or Limited Common Elements.
- (J) Animals or Pets. Only Unit Owners shall have the right to keep animals or pets in any Unit on the Condominium. No animals or pets of any kind shall be kept in any Unit on the Condominium except with the written consent of and subject to the Rules and Regulations adopted for keeping such pets by the Board of Directors of the Association; provided that such consent may be terminated without cause at any time by the Board of Directors of the Association. A total of no more than two (2) pets not exceeding a combined weight of one hundred (100) pounds may be kept by Unit Owners, visitors, guests, invitees and tenants of Unit Owners. No animals or pets shall be allowed to create or cause any disturbance or nuisance of any kind, and if an animal or pet does cause or create a nuisance or an unreasonable disturbance, said animal or pet shall be permanently removed from the Condominium

within three (3) days from the day the owner receives the written notice from the Board of Directors of the Association. The Unit Owner of any pet or animal shall be liable for any and all damage caused by such animal or pet to any part of the Condominium. Unit Owners, their guest, or renters of a Unit are prohibited from supporting the presence of feral or free-roaming cats by providing food, shelter, or any other life support elements. Dogs must always remain on a leash not greater than six (6) feet. Unit Owners must clean up after their pets.

- (K) Signs, etc. No Owner shall cause or permit anything to be placed or displayed to the public view on or from any part of the Condominium, including, but not limited to “For Sale” or “For Rent” signs nor permit anything to be placed on the outside walls of any Unit of said Owner, 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 or any part thereof, or in any Common Element or Limited Common Element without the prior written consent of the Board of Directors.

- (L) Alterations.

(1) An Owner of a Unit may not make any improvement or alteration to a Common Element, a Limited Common Element, or any Improvement or alteration to the Unit of said Owner that affects any Common Element, Limited Common Element, or any other Unit, without the prior written consent of the Association and then only in strict accordance with the terms and conditions of the Condominium Documents.

(2) Without limiting the generality of this Section 9.2, an Owner of a Unit may not without the prior written consent of the Association, install or erect any improvement, mechanical system or fixture that either:

(a) protrudes beyond the boundaries of a Unit; or

(b) is located wholly outside a Unit (even if located within a Limited Common Element that is assigned solely to that Unit if exposed to view to the outside).

- (M) No Structure, etc. No structure of a temporary character, trailer, tent, garage, barn or other outbuildings shall be permitted on the Condominium at any time temporarily or permanently, except with the prior written consent of the Board of Directors. Provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of any improvement.

- (N) Parking and Garage Doors. Parking of vehicles in driveways and parking areas shall be subject to the Rules and Regulations applicable to parking. The Association may or may not, in its sole discretion, assign the exclusive use of a parking space to a Unit (Limited Common Elements). A Unit Owner may not lease or otherwise grant a license or use right for the parking rights provided for in this Declaration.
- (O) Vehicles.
- (1) Motorcycles, motor bikes, motor scooters, recreational vehicles or other similar vehicles shall not be operated within the Condominium, except for the purpose of transportation, it being intended that said vehicles shall not be operated within the Condominium so as to annoy or disturb Persons or endanger Persons or property.
- (2) No motor vehicle classed by manufacturer rating as exceeding three-quarter ton and no mobile home, trailer, detached camper or camper shell, boat or other similar equipment or vehicle may be kept or parked at the Condominium unless approved in writing by the Board of Directors of the Association.
- (3) No motor vehicle shall be constructed, repaired or serviced at the Condominium except to the extent necessary to be able to remove the Vehicle from the Condominium.
- (4) An Owner shall not sell, lease or otherwise convey all or any part of the parking rights said Owner has by virtue of the Ownership of a Unit.
- (P) Planting, Gardening, Fences, Etc. Except within individual Units, no planting, transplanting, or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Condominium, except as approved by the Board of Directors.
- (Q) Fuel Burning Devices. Charcoal burners and other open-flame cooking devices shall not be operated on verandas, foyers, or within ten (10) feet of combustible construction. Open flame cooking is prohibited under the Unit. Hazardous smoke conditions are prohibited under the Unit. LP gas use or storage is prohibited unless approved by the City of Gulf Shores. The Association may have additional compliance requirements in accordance with the Rules and Regulations.
- (R) Window Specifications. The Board of Directors may from time to time establish laminated glass or window film specifications which comply with the applicable building code and which establish permitted color/tints, styles and materials for such laminated glass or indoor window film. The Association shall approve the installation or replacement of laminated glass

or window film as applicable, conforming with the specifications of the Board of Directors. All installed laminated glass or indoor window film shall be in accordance with the applicable building code and standards and shall be architecturally designed to serve as hurricane protection. The Board of Directors may, with the approval of a majority of those eligible votes of Owners of Units in Bayou Sunrise, A Condominium, install laminated glass or other indoor window film and may, without regard to approval of the Owners, maintain, repair or replace such approved glass whether on or within the Common Elements, Limited Common Elements or Units. Hurricane shutters shall not be allowed. A Unit Owner or Occupant who plans to be absent during all or any portion of the hurricane season must prepare a Unit prior to departure by designating a responsible firm or individual to care for the Unit should a hurricane threaten the Unit or should the Unit suffer hurricane damage and furnishing the Association with the names of such individuals or firms.

- (S) Governmental Authority. Nothing shall be done or kept at the Condominium in violation of any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of Bayou Sunrise, A Condominium, shall be the same as the responsibility for the maintenance and repair of Bayou Sunrise, A Condominium, concerned.
- (T) Unlawful Discrimination. Neither the Board of Directors nor the Association shall take or permit to be taken any action that unlawfully discriminates against any Owner.
- (U) No Restriction on Transfer. Except as provided below, the right of an Owner to sell, transfer, or otherwise convey the Unit of said Owner shall not be subject to any right of a first refusal or similar restrictions reserved to the Declarant or Association.
- (V) Leases. Subject to the Development Rights and Special Declarant Rights reserved to the Declarant in this Declaration and in the Act, or except as otherwise expressly provided in the Declaration, each unit may be leased by the Owner. Provided, however, that such lease and the rights of any tenant under said lease are made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Units (including a minimum or maximum rental period) and to enforce the same directly against such tenant or other Occupant by the exercise of such remedies as the Board of Directors deems appropriate, including eviction. No individual rooms may be rented. Anything to the

contrary notwithstanding, the Declarant, and the successors and assigns of the Declarant, retain the right to maintain sales offices, management offices, leasing and operations offices and models on Bayou Sunrise, a Condominium, as provided in this Declaration.

Each Unit Owner who shall lease or rent the Unit of said Owner irrevocably empowers the Association or the managing agent of the Association to enforce the Rules and Regulations and to terminate the lease and evict any tenant or occupant who fails to comply with the Rules and Regulations. The Association, the Board of Directors, or any agent thereof, shall not become liable to any Unit Owner or any person who leases a Unit, or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this paragraph. Nothing to the contrary withstanding, a Unit Owner is primarily responsible for the acts or omissions of the family, tenants, guests, invitees or Occupants of the Unit of the Owner.

- (W) Board Approval. In all instances herein where such Board approval is required, the Board may withhold approval in its sole discretion.

9.3 Right of Access. Each Unit Owner grants an irrevocable right of access to such Owner's Unit to the Association, and to any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in an Owner's Unit and threatening other Units, Common Elements or Limited Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within an Owner's Unit, if any, or to correct any condition which violates the provisions of any Mortgage covering another Unit, or to enforce any provision of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. Each Unit Owner shall provide a key to his Unit to the Association for this access. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not. Each Unit Owner further grants a right of access to such Owner's Unit to the Developer and/or the Developer's agent for the purpose of making all repairs required by any warranty delivered to the Unit Owner at the closing of an Owner's Unit. To the extent damage is inflicted upon or to the Common Elements, Limited Common Elements or any Unit through which access is taken, the Unit Owner or the Association, whomever shall cause the same, shall be liable for the prompt repair thereof.

9.4 Limitation of Liability. The Association shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service to be obtained by the Association or paid for out of the Common Expense funds, or problems resulting from the operation or lack of operation of sewer lines servicing the Condominium Property, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, or ice which may leak or flow from any portion of the Common Elements, Limited Common Elements or from any wire, pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the Owner of any Unit for the loss or damage, by theft or

otherwise, of articles which may be stored upon any of the Common Elements or Limited Common Elements. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed or allowed for any reason, except by action taken by the Board of Directors in accordance with the Bylaws.

9.5 Abatement of Violations. The violation of any Rule or Regulation adopted by the Board of Directors or breach of the provisions of the Condominium Documents, shall give the Developer, the Association, or any Unit Owner the right, in addition to any other right or remedy elsewhere available, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting Unit Owner, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting Unit and Unit Owner, and the Association shall have a lien for all of the same upon the Unit of such defaulting Unit Owner, upon all of such defaulting Unit Owner's additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon all of such defaulting Unit Owner's personal property in such defaulting Owner's Unit or located elsewhere on the Condominium Property. Nothing herein contained shall prevent a Unit Owner from maintaining an action or proceeding against the Association, and the expense of any action to remedy a default of the Association shall be a Common Expense if a court of competent jurisdiction finds the Association to be in default as alleged in such action or proceeding.

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

ARTICLE X

RIGHTS OF MORTGAGEES

10.1 Notification of Mortgagees Required. Any Mortgagee shall have the right to be given written notification by the Association of (a) any thirty (30) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements or Limited Common Elements if such loss or taking exceeds Ten Thousand and No/100 Dollars (\$10,000.00); (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds Ten Thousand And No/100 Dollars (\$10,000.00); (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 which requires the consent of a specified percentage of Mortgagees.

10.2 Right of Inspection. Mortgagees shall have the right to examine the books and records of the Association and to receive annual reports, other financial data, and upon request, an annual audited statement, within ninety (90) days following the end of any fiscal year of the Association, all at the sole expense of the requesting Mortgagee.

10.3 Priority of Mortgagees.

(A) Any lien which is or may be created hereunder upon any Unit, including, but not limited to, the lien created for assessments herein and the right to foreclose the same is and shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to this Declaration on the interest of the Purchaser as a Unit Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein.

Notwithstanding the above, the lien 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 Certificate of Formation, the Bylaws or the Rules and Regulations of the Association shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the Mortgagees of the Units pursuant to their Mortgages 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, the Limited Common Elements or any portion thereof.

(C) As provided in the Act, all assessments, property taxes and other charges imposed by any taxing authority which may become Liens prior to a Mortgage, shall be separately assessed against and collected on each Unit as a single parcel, and not on the Condominium as a whole.

(D) 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, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Unit Owner whose title is derived through foreclosure or otherwise.

10.4 Request For Protection By Mortgagees. Whenever any Mortgagee desires the benefit of the provisions of this article to be applicable to such Mortgagee, the Mortgagee shall serve written notice of such fact upon the Association, by registered or certified mail, addressed to the Association, and actually mailed to the Association's address, identifying the Unit upon

which it holds a Mortgage or identifying any Unit owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by the Mortgagee. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee.

ARTICLE XI

CASUALTY LOSS INSURANCE

11.1 Unit Owners: Responsibility for Separate Insurance Coverage. The Owner of each Unit may, at the Owner's expense, obtain insurance coverage for loss of or damage to the Private Elements, any furniture, furnishings, personal effects, and other property belong to such Unit Owner and may at the Unit Owner's expense obtain insurance coverage against personal liability for injury to the person or property of another while within such Owner's Unit or upon the Common Elements of Limited Common Elements. Risk of loss of or damage to any furniture, furnishings and personal property belong to or carried on the person of the Owner, or which may be stored in any Unit, or in or upon Common Elements or Limited Common Elements, shall be borne by the Owner of each Unit. All furniture, furnishings and personal property constituting a portion of the Common Elements and held for the joint use and benefit of all Owners of Units shall be covered by such insurance of the same shall be maintained in force and effect by the Association as hereinafter provided. Each Unit Owner shall be required to notify the Association of all improvements made by the Owner to the Owner's Unit, the value of which is in excess of Twenty-five Thousand and No/100 Dollars (\$25,000.00).

Any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium Property other than property belonging to such Unit Owner shall be required to file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance. In the event casualty insurance maintained by a Unit Owner causes a decrease in the amount of the insurance coverage maintained by the Association for the benefit of all Unit Owners arising from a casualty loss to the Condominium Property by reason of proration or otherwise, the Unit Owner maintaining such insurance shall be deemed to have assigned to the Association the proceeds collected on such policy for loss or damage to the Condominium Property and such proceeds shall be paid directly to the Association by the insurer. Any such insurance proceeds shall be applied and distributed by the Association in accordance with this article.

11.2 Insurance to be Maintained by the Association.

(A) Property and Casualty Insurance. The Association shall obtain and maintain at all times a policy or policies of multi-peril type property and casualty insurance required by the Act including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design, location and use, insuring the Condominium Property against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements. The amount of insurance coverage shall be in an amount not less than eighty percent (80%) of the then current actual cash value of the improvements, including fixtures, equipment and other personal property inside the Units in the

Condominium Property (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association or the Insurance Trustee (hereinafter defined), as trustee for the use and benefit of the individual Unit Owners (without naming them) in the proportionate shares equal to their respective percentage ownership of the Common Elements and Limited Common Elements. Periodically, prior to the renewal of any such policy or policies of insurance, the Association shall obtain an opinion or an appraisal from a qualified appraiser for the purpose of determining the actual cash value of the Common Elements, the Limited Common Elements and the Units for the amount of insurance to be obtained pursuant hereto. The cost of any such opinion or appraisal shall be a Common Expense. All such policies of insurance shall comply with the provisions of this article and shall (i) contain standard mortgagee loss payable clause endorsements in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interests may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Unit Owner.

(B) Public Liability and Property Damage Insurance. The Association shall obtain and maintain at all times a comprehensive policy or policies of public liability and property damage insurance required by the Act in such amount but not less than One Million Dollars (\$1,000,000.00), and in such form as shall be required by the Association to protect said Association and the Owners of all Units, which provides coverage for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Elements and Limited Common Elements and for legal liability resulting from employment contracts to which the Association is a party, and for claims against the Officers and Members of the Board of Directors for claims arising out of the negligent performance of their duties.

(C) Worker's Compensation Insurance. The Association shall obtain and maintain at all times a policy or policies of worker's compensation insurance if necessary to meet the requirements of the laws of the State of Alabama.

(D) Fidelity Bonds. The Association may obtain and maintain a fidelity bond for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the obligee.

(E) Other Insurance. The Association shall obtain and maintain such other insurance coverage as the Board of Directors, in its sole discretion, may determine from time to time to be in the best interest of the Association and the Owners of all Units (i.e., Officers and Directors errors and omissions coverage, etc.).

11.3 Governing Provisions. All insurance obtained and maintained by the Association as provided above shall be governed by the following provisions:

(A) All policies shall (i) comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association as they shall apply to condominium loans; and (ii) be written with a company authorized by the Alabama Insurance Commission to do business in the State of

Alabama. To the extent the provisions of this Declaration with respect to the maintenance of insurance shall conflict with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, then the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association shall control, and such requirements shall be complied with by the Association.

(B) Exclusive authority to adjust all claims under the policies hereafter in force on the Condominium Property shall be vested in the Association or its authorized representatives.

(C) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with the insurance purchased by the individual Unit Owners or their Mortgagees.

(D) The Association shall be required to utilize its best efforts to secure insurance policies that will provide for the following:

- (1) A waiver of subrogation by the insurer as to any claims against the Association, the Board of Directors, the Developer or the Unit Owners;
- (2) An agreement by the insurer that the insurance coverage cannot be terminated or materially changed without thirty (30) days prior written notice to the Association and the Mortgagee of each Unit;
- (3) The insurance coverage will be primary, even if a Unit Owner has other insurance that covers the same loss; and
- (4) 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.

11.4 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense by the Owner(s) of Units which have received Certificates of Occupancy except that the amount of increase over the usual premium occasioned by the use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Elements by a Unit Owner shall be assessed against that Unit Owner.

11.5 Insurance Trustee. The Association may engage the services of a bank or trust company authorized to do trust business in the State of Alabama and having a capital surplus of not less than Fifty Million Dollars (\$50,000,000.00) to act on its behalf as an insurance trustee ("**Insurance Trustee**") and to receive and disburse the insurance proceeds in accordance with the provisions of this Declaration. In the event the lowest of two (2) bids from reputable contractors for making all repairs required by any such loss should exceed Fifty Thousand And No/100 Dollars (\$50,000.00), the Association upon written demand of the Mortgagee of any Unit shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The

Association, as a Common Expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Whenever the Insurance Trustee may be required to make a distribution of insurance proceeds to Owners of Units and their Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee the name of the Owner of each Unit, the name of the Mortgagee who may hold a Mortgage encumbering each Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any Unit, and the Unit Owner's respective Mortgagee, as their respective interests may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Condominium Property. The rights of the Mortgagee of any Unit under any standard mortgagee clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property; provided, however, that if the Association or the Insurance Trustee fail to perform all the conditions precedent required by the policy or policies of insurance, and/or fail to collect the amount of the loss within the time required by law, and the Mortgagee or Mortgagees are required to avail themselves of their rights under the standard mortgagee clause to collect the proceeds of the policy or policies of insurance, any amount so collected through the efforts of said Mortgagee or Mortgagees shall be applied as directed by said Mortgagee or Mortgagees. No provision hereof shall entitle a Unit Owner or any other party to any priority over a Mortgagee with respect to the distribution of any insurance proceeds with respect to such Unit.

11.6 Loss to Common Elements Only. In the event of the loss of or damage to only Common Elements, real or personal, by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or the insurance Trustee, as the case may be, to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such Common Elements, then such excess insurance proceeds shall be paid by the Insurance Trustee to the Owners of all Units, the distribution to be separately made to the Owner of each Unit and Unit Owner's respective Mortgagee, as their interests may appear, in such proportion that the share of excess insurance proceeds paid to the Owner of each Unit and each Unit Owner's Mortgagee shall bear the same ratio to the total excess insurance proceeds as the undivided interest in the Common Elements appurtenant to each Unit bears to the total undivided interest in the Common Elements appurtenant to all Units. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the insurance Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Association shall pay, or shall deposit sufficient funds with the Insurance Trustee to completely pay for the repair, replacement

or reconstruction of any loss or damage, as the case may be. The monies to be so paid, or deposited by the Association with the Insurance Trustee, may be paid by the Association out of its reserve or replacement fund and if the amount in such reserve or replacement fund is not sufficient, or if the Board of Directors determines not to use such fund for said purpose, then the Association shall levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction as a common expense.

11.7 Loss to Common Elements, Limited Common Elements and/or Private Elements. In the event of loss of or damage to Common Elements, Limited Common Elements and/or any Private Element of any Unit by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or Insurance Trustee, as the case may be, to cover such loss or damage, shall be first applied to the repair, replacement or reconstruction of the Common Elements, then to the repair, replacement or reconstruction of the Limited Common Elements and then to the Private Elements sustaining any loss or damage, and then to the extent of any excess, such excess insurance proceeds shall be paid and distributed by the insurance company or insurance Trustee to the Owners of all Units, and to their Mortgagees, as their respective interests may appear. Such distributions are to be made in the manner and in the proportions as are provided for the distribution of insurance proceeds under this article. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the insurance Trustee, as the case may be, are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Board of Directors shall, based on reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the Common Elements, the Limited Common Elements and the Private Elements of Units sustaining any loss or damage. If the proceeds of said fire and casualty insurance, if any, are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to the Common Elements, but are not sufficient to repair, replace or reconstruct any loss of or damage to the Limited Common Elements or the Private Elements of Units sustaining damage, then the Association shall levy and collect an assessment from the respective Owners of the Private Elements and/or the Owners to whom Limited Common Elements have been allocated which sustained any loss or damage, and the assessment so collected from said Owner shall be deposited with the Insurance Trustee, if any, so that the sum shall be on deposit for the repair, replacement or reconstruction of all Common Elements, Limited Common Elements, if any, and Private Elements of Units. In said latter event, the assessment to be levied and collected from the Owner of each Private Element sustaining loss or damage shall be apportioned between such Unit Owners in such manner that the assessment levied against each Owner, of a Private Element shall bear the same proportion to the total assessment levied against all of said Owners of Units sustaining loss or damage as the cost of repair, replacement or reconstruction of each Owner's Private Element bears to the cost applicable to all of said Private Elements sustaining loss or damage. If the fire and casualty insurance proceeds, if any, payable to the Association or the Insurance Trustee in the event of the loss of or damage to Common Elements, the Limited Common Elements and the Private Elements of Units are not in an amount which will pay for the complete repair, replacement or reconstruction of the Common Elements, it being recognized that such insurance proceeds are to be first applied to the payment for repair, replacement or reconstruction of said Common Elements

before being applied to the repair, replacement or reconstruction of any Limited Common Elements or Private Elements of a Unit sustaining loss or damage, then the cost to repair, replace, or reconstruct said Common Elements in excess of available fire and casualty insurance proceeds shall be levied and collected as an assessment from the Owners of all Units in the same manner as would be levied and collected had the loss or damage sustained been solely to the Common Elements and the fire and casualty insurance proceeds been not sufficient to cover the cost of repair, replacement or reconstruction. The cost of repair, replacement or reconstruction of the Limited Common Elements and the Private Elements of each Unit sustaining loss or damage shall then be levied and collected by assessment of the Owners of the Private Elements sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of Limited Common Elements and Private Elements sustaining loss or damage.

11.8 Estimates of Repair; Plans and Specifications; Payment of Assessments. In the event of loss or damage to Condominium Property, the Association shall, within sixty (60) days after any such occurrence, obtain reliable and detailed estimates of the cost of restoring damaged property to a condition as good as that which prevailed before such loss or damage. The estimate of repair shall be based upon the Plans, portions of which are appended hereto as Exhibit "D" to the Declaration and the specifications of the original building(s), as the same may be amended from time to time, or such other plans and specifications as may be approved by the Board of Directors, by all of the Owners of the damaged Units, and by not less than sixty-seven percent (67%) of the Members of the Association including the Owners of damaged Units. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Condominium Property. Such estimates are to contain and include the cost of any professional fees and premiums for such bonds as the Board of Directors may deem to be in the best interest of the membership of said Association. Whenever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of repair, replacement or reconstruction thereof, the additional money required to completely pay for such repair, replacement or reconstruction of said loss or damage whether to be paid by all of the Owners of Units or only by the Owners of Units sustaining loss or damage, or both, as herein provided, shall be paid to the Association and deposited with the Insurance Trustee, if any, not later than thirty (30) days from the date on which the Association or the Insurance Trustee, as the case may be, shall receive the monies payable from the policies of fire and casualty insurance.

ARTICLE XII **CONDEMNATION**

12.1 Condemnation Considered a Casualty Loss. The taking of a portion of a Unit or Private Element, the Common Elements or the Limited Common Elements by eminent domain shall be deemed to be a casualty loss, and except as otherwise provided below, the awards for such taking shall be deemed to be proceeds from insurance on account of the casualty and shall be applied and distributed by the Association in accordance with the provisions of Article XI. Even though the awards may be payable to the Unit Owner(s), the Unit Owner(s)

shall deposit the awards with the Association or Insurance Trustee, as the case may be. In the event of failure to do so, at the discretion of the Board of Directors, a special assessment shall be made against a defaulting Unit Owner in the amount of such defaulting Unit Owner's award, or the amount of such award shall be set off against the sums hereinafter made payable to such Unit Owner. If any Unit or portion thereof made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of such Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition as provided herein, and no provision hereof shall entitle the Owner of such Unit or other party to priority over such Mortgagee with respect to the distribution of any award or settlement to the Owner of the Unit.

12.2 Partial Condemnation. In the event the Condominium is not to be terminated and one or more Units are taken in part, the taking shall have the following effects:

(A) If the taking reduces the size of a Unit and the remaining portion of Unit can be made tenantable, the award for the taking for a portion of the Unit shall be used for the following purposes in the order stated, and the following changes shall be affected in the Condominium Property:

- (1) The Unit shall be made tenantable.
- (2) The balance of the award, if any, shall be distributed to the Owner of the Unit and the Mortgagee of the Unit, as their respective interests may appear.
- (3) If there is a balance of the award distributed to the Owner and the Mortgagee, the share of the Common Elements or Limited Common Elements, if any, appurtenant to the Unit shall be equitably reduced. This shall be done by reducing such share by the proportion which the balance of the award so distributed bears to the market value of the Unit immediately prior to the taking, and then re-computing the shares of all Owners in the Common Elements and the Limited Common Elements as percentages of the total of their shares as reduced by the taking.
- (4) If the taking destroys or so reduces the size of a Unit so that it may not be made tenantable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be affected in the Condominium Property:
 - (a) The market value of such Unit immediately prior to the taking, shall be paid to the Owner of the Unit and to each Mortgagee of the Unit, as their respective interest may appear.
 - (b) The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of

the Unit Owners, in the manner approved by the Board of Directors; provided, however, that if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner required for further improvement of the Common Elements as provided herein.

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

(d) If the amount of the award for taking is not sufficient to pay the market value of the condemned Unit to the Unit Owner and to restore the remaining portion of the Unit in condition for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by assessing Units against all of the Unit Owners who will continue as Owners of the Units after the changes in the Condominium Property effected by the taking. Such assessment shall be made in proportion to the share of such Unit Owners in the Common Elements after the changes effected by the taking.

(B) If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner, the Mortgagee and the Association within thirty (30) days after notice by any such party that an agreement cannot be reached, such value shall be determined by three (3) independent qualified appraisers with one (1) appraiser to be selected by the Association, one (1) appraiser to be selected by the Unit Owner and Mortgagee, and the third appraiser to be selected by the two (2) appraisers so appointed, and the fair market value of the Unit shall be deemed to be the average of the two (2) appraisals of the fair market value of the Unit made by said appraisers having the least difference in amount. The cost of such appraisal shall be assessed against all Unit Owners in the shares of the Unit Owners in the Common Elements as they existed prior to the changes effected by the taking.

(C) Changes in the Units, in the Common Elements and/or Limited Common Elements, in the ownership of the Common Elements and/or Limited Common Elements and/or in the shares of liability for Common Expenses and/or Limited Common Expenses which are affected by eminent domain, shall be evidenced by an amendment of this Declaration which is approved by the Board of Directors in accordance with this Declaration and the Association's Bylaws.

12.3 Association Appointed as Attorney-in-Fact for Unit Owners. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the condemnation or taking by eminent domain of the Condominium Property or any portion thereof.

ARTICLE XIII
TERMINATION

13.1 **Destruction of the Condominium Property.**

(A) Notwithstanding anything to the contrary contained in this Declaration, if the Board of Directors shall determine that either of the following conditions exist:

- (1) two-thirds (2/3) or more of the Units in the Condominium shall have been destroyed or substantially damaged by fire, wind, water, or other natural causes, or a combination of such (including condemnation); or
- (2) substantially all of the Units in the structure have substantially deteriorated and have been rendered substantially obsolete;

then the Board of Directors may call a meeting of the Members of the Association to consider and vote upon whether to restore, repair and/or rebuild the Condominium Property, and if not, whether to terminate the Declaration and remove the Condominium from the provisions of the Act if approved by the affirmative vote of at least eighty percent (80%) of the Owners of all Units (based upon one vote for each Unit) and by at least eighty percent (80%) of all Mortgagees (based upon one vote for each Mortgage owned) after notice given as provided herein, the Declaration and plan of condominium ownership established herein shall be subject to termination as provided in the Act and the Association shall be authorized to file on behalf of and in the name of the Unit Owners and shall file a petition for such termination and removal with the Circuit Court of Baldwin County, Alabama. If less than eighty percent (80%) of the Owners of all Units and/or less than eighty percent (80%) of the Mortgagees vote in favor of terminating the Condominium as herein required, the Condominium Property shall be restored, repaired and/or rebuilt in accordance with these provisions.

(B) In the event that the Circuit Court of Baldwin County, Alabama, shall grant the petition for termination of this Declaration and the plan of condominium ownership as provided in subparagraph (A) above, all of the Owners of Units shall be and become tenants in common as to interest in the Leasehold and any then remaining improvements thereon. The undivided interest in the Leasehold and remaining improvements held by the Owner of each Unit shall be the same as the undivided interest in the Common Elements which were formerly appurtenant to such Unit, and the lien of any Mortgage or other encumbrance upon each Unit shall attach to the percentage of undivided interest of the Owner of a Unit in the Condominium and then remaining improvements as above provided. The Owners of Units to which Limited Common Elements have been allocated in this Declaration shall own each such Limited Common Element appurtenant to each Owner's Unit, and the lien of any Mortgage or other encumbrance upon such Units shall attach to the Limited Common Elements of each respective Owner's Unit. Upon termination of this Declaration and the plan of condominium ownership established hereto, the Owners of all Units still inhabitable shall within sixty (60) days from the date of the granting of the petition, deliver possession of their respective Units to the Association. Upon such delivery of possession, the Owners of inhabitable Units and their

respective Mortgagees, as their interests may appear, shall become entitled to participate proportionately together with all Owners of uninhabitable Units in the distribution of proceeds in the possession of the Association or the Insurance Trustee. Upon such termination of this Declaration and the plan of condominium ownership established hereto, the Association or the Insurance Trustee, as the case may be, shall distribute any insurance indemnity which may be due under any policy or casualty insurance to the Owners of the Units and their Mortgagees as their respective interests may appear, such distribution to be made to the Owner of each Unit in accordance with such Owner's then undivided interest in the Land and remaining improvements as herein provided. The Leasehold and any remaining improvements thereon shall be subject to all easements of record, except the easements created in the Condominium Documents. The assets of the Association upon termination of the plan of condominium ownership created by this Declaration shall be distributed to the Owner of each Unit and Unit Owner's Mortgagee, as their respective interests may appear, in the same manner as is above provided for the distribution of any final insurance indemnity.

13.2 Termination by Consent. Except in the event of this Declaration and plan of condominium ownership established herein being terminated as provided above, this Declaration and said plan of condominium ownership may only be otherwise terminated by the consent of eighty percent (80%) of the Owners of all Units and all parties holding Mortgages, liens or other encumbrances against any of said Units, in which event the termination of the Condominium Property shall be by such plans as may be then unanimously adopted by said Unit Owners and parties holding any Mortgages, liens or other encumbrances. Such election to terminate this Declaration and the plan of condominium ownership established therein shall be evidenced by a termination agreement in the same manner as a deed in recordable form, by the requisite number of unit owners in accordance with the Act.

ARTICLE XIV **AMENDMENT**

14.1 Amendments by Developer. Without limiting the rights of the Developer to alter the Plans as described hereinabove in this Declaration, and notwithstanding any other provision herein contained, the following provisions shall be deemed to be in full force and effect, none of which shall be construed as to relieve the Developer from any obligations as a Unit Owner to pay assessments as to Units owned by it in accordance with the Condominium Documents.

(A) The Developer reserves the right to amend the Certificate of Formation and Bylaws of the Association until such time as Developer relinquishes control of the Association as provided below.

(B) The Developer reserves the Right to amend this Declaration and the Condominium Documents until such time as Developer relinquishes control of the Association as provided below.

(C) The Developer reserves the right at any time to amend this Declaration without the consent of other Unit Owners if required by any Mortgagee as a condition of making a loan secured

by an interest in a Unit in order to meet the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; provided that any such changes or amendments requested by a Mortgagee shall not materially affect the rights of the Unit Owners or the value of the Unit or the undivided interest in the Common Elements or Limited Common Elements, if any, assigned to a Unit Owner.

14.2 Amendments by Unit Owners. At such time as Developer relinquishes control of the Association, then, in addition to the amendments permitted above, the Declaration may be amended in the following manner:

(A) A proposal to amend this Declaration may be considered at any meeting of the Members of the Association called for that purpose in accordance with the provisions of the Bylaws; provided that the Association provides prior written notice of such meeting to the Mortgagees as provided above. The proposal to amend the Declaration must be approved by the affirmative vote of the members representing not less than sixty-six and 2/3 percent (66 2/3%) of the total allocated votes of the Association; or

(B) By unanimous consent or agreement of the Unit Owners as evidenced by their signatures to the amendment.

Notwithstanding the foregoing, no amendment to the Declaration under this Section shall:

- (1) change a Unit (including the ownership in Common Elements), responsibility for Common Expenses and voting rights, without the prior written approval of the Unit Owner(s) so affected and prior written approval of the holders of record of any mortgage or other liens on the Unit or Units so affected; or
- (2) change, impair or prejudice the rights of Developer or change the provisions of this Declaration with respect to the Developer's rights hereunder without Developer's prior written approval.

14.3 Effectiveness of Amendments. A copy of each amendment so adopted shall be certified by the President or a Vice President and Secretary or Assistant Secretary of the Association as having been fully adopted and shall be effective when recorded in the records of the Judge of Probate of Baldwin County, Alabama.

ARTICLE XV **CONTROL OF THE ASSOCIATION**

15.1 Election of Board of Directors. The Developer, its successors or assigns, may appoint and remove the members of the Board of Directors, and in the event of vacancies, the Developer shall fill the vacancies, until no later than the earlier of either (i) sixty (60) days after seventy-five percent (75%) of the total number of Units that may be created hereunder have been conveyed to purchasers of Units, or (ii) two (2) years have elapsed from the date the Developer has

ceased to offer Units for sale in the ordinary course of business, or (iii) two years after any development right to add new Units was last exercised; provided that the Developer may, at its option, terminate its control of the Association at an earlier date. Notwithstanding the foregoing, within ninety (90) days after conveyance of twenty-five percent (25%) of the Units that may be created hereunder, the Unit Owners other than Developer shall be entitled to elect twenty-five percent (25%) of the members of the Board of Directors. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units that may be created hereunder to Unit Owners other than Developer, not less than thirty-three and one-third (33 1/3%) of the members of the Board shall be elected by the Unit Owners. The Developer shall be entitled to elect at least one (1) member of the Board of Directors as long as the Developer holds a Unit for sale in the ordinary course of business, and such right is not contrary to the other provisions hereof.

15.2 Notice of Meeting. Within sixty (60) days before the date of termination of control of the Association by the Developer, the Association shall call, with not less than ten (10) days nor more than thirty (30) days' notice, a meeting of the Unit Owners for the purpose of electing the members of the Board of Directors. Such meeting shall be called, and the notice given in accordance with the Bylaws.

15.3 Status of Unsold Units.

(A) The Developer shall be deemed to be the Owner of each Unit which has not been conveyed to a person or entity other than the Developer. Unless otherwise provided in the Condominium Documents, the Developer 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 Condominium Documents.

(B) Any person having a first mortgage lien against any Unit which has not been conveyed to a person or entity other than the Developer, whether under a blanket Mortgage affecting the Condominium Property generally or under a Mortgage on one or more specific Units, shall be deemed to be a Mortgagee with respect to any such Unit, and shall be entitled to all rights and privileges available to a Mortgagee of any such Unit under the Condominium Documents.

(C) Notwithstanding the provisions above, no assessments shall be imposed by the Association against the Developer as the Owner of an unsold or undeveloped Units until the date sixty (60) days after the Developer or the Association as the case may be makes a Common Expense assessment. Until such date, Developer shall be responsible for the Common Expenses and Limited Common Expenses of the entire Condominium Property. The Developer shall be solely responsible for the maintenance, repair and operation of the Private Elements of the unsold Units, and for the pro rata share of Common Expenses and Limited Common Expenses assessed to any unsold Units.

15.4 Professional Management and Other Contracts. Any agreement made by the Association prior to the passage of control of the Association from the Developer (including contracts for professional management of the Condominium Property, whether by the Developer, its successors and assigns, or any other person or entity) shall provide the following:

(A) The Association shall have the right of termination which is exercisable without penalty any time upon not more than ninety (90) days' written notice to the other party thereto; and

(B) The Association shall have a right of termination for cause which is exercisable without penalty at any time upon not more than thirty (30) days' written notice to the other party thereto.

ARTICLE XVI **ALLEGED DEFECTS**

16.1 Developer's Right to Cure Alleged Defects. Due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the Declarant's responsibility therefor. It is the Declarant's intent to resolve all disputes and claims regarding any Alleged Defect (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association and all Unit Owners shall be bound by the following claim resolution procedure with respect to Alleged Defects:

(A) Developer's Right to Cure. In the event that the Association, Board or any Unit Owner or Unit Owners' (a "**Complaining Party**") claim, contend or allege that any portion of the Condominium, including, without limitation, the Common Elements, the Limited Common Elements, any Unit, and/or any improvements constructed on the Condominium Property, are defective or that the Developer or its agents, consultants, contractors or subcontractors (collectively, the "**Developer's Agents**") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively an "**Alleged Defect**"), the Developer hereby reserves the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

(B) Notice to Developer. In the event that a Complaining Party discovers any Alleged Defect, such Complaining Party shall, within a reasonable time after discovery, notify the Developer, in writing, at the address and in the manner in accordance with Article XX Section 20.07 hereafter or at such address as the Developer may from time to time provide to the Association, or such other address at which the Developer maintains its principal place of business, of the specific nature of such Alleged Defect ("**Notice of Alleged Defect**").

(C) Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Developer of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by the Developer, the Developer shall have the right, upon reasonable notice to the Complaining Party and during normal business hours, to enter onto or into, as applicable, the Common Elements, the Limited Common Elements, any Unit, and/or any improvements or other portion of the Condominium Property for the purposes of inspecting and, if deemed necessary by the Developer, repairing and/or replacing such Alleged Defect. In conducting such inspection,

repairs and/or replacement, the Developer shall be entitled to take any action as it shall deem reasonable and necessary under the circumstances.

(D) Legal Actions. No Complaining Party shall initiate any legal action, cause of action, or proceeding against the Developer alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, (2) or for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any damages resulting from such Alleged Defect unless and until the Complaining Party has (i) delivered to the Developer a Notice of Alleged Defect and (ii) the Developer has, within ninety (90) days after its receipt of such Notice of Alleged Defect, either (a) failed to repair or replace such Alleged Defect or (b) if such Alleged Defect cannot reasonably be repaired or replaced within such ninety (90) day period, failed to commence such repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion. In no event shall Developer be liable for special, punitive, consequential, indirect or other damages of any kind or nature whatsoever other than for actual, direct damages.

(E) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section 16.01 shall be construed to impose any obligation on the Developer to inspect, repair, or replace or pay for any item or Alleged Defect for which the Developer is not otherwise obligated to do under applicable law or other agreement to which the Developer is a party. The right of the Developer to enter, inspect, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Developer in the Office of the Judge of Probate of Baldwin County. This provision does not create any warranties, express or implied, on the part of the Developer or the Association.

(E) Litigation. Any disagreement between an Owner, Owners, the Board, and/or the Association, on the one hand, and the Developer on the other, concerning Developer's efforts to remedy or repair any Alleged Defect (a "**Dispute**"), after compliance with the foregoing provisions of this Section 16.01, shall be resolved in the Courts of Baldwin County, Alabama, Non-Jury. The prevailing party shall be entitled to all its reasonable expenses, including but not limited to, reasonable attorneys' fees, court costs, costs of discovery, accountants' fees, investigation expenses, and experts' fees. All expenses incurred shall be reasonable in nature, in no event shall the Developer or the Association, its members, employees, agents, or managers be liable for special, punitive, consequential or indirect damages or other damages of any kind or nature whatsoever other than for actual, direct damages.

ARTICLE XVII

RESOLUTION OF DISPUTES WITHOUT LITIGATION

17.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(A) Developer, the Association and its officers, directors, and committee members, all Owners, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Party**"), as it is in the best

interest of all concerned to encourage the amicable resolution of disputes involving the Condominium, the Association and/or the Owners without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim (hereinafter defined), unless and until it has first submitted such Claim to the dispute resolution procedures set forth in Article XVIII hereinafter in a good faith effort to resolve such Claim.

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

- (1) the interpretation, application, or enforcement of the Condominium Documents; or
- (2) the rights, obligations and duties of any Bound Party under the Condominium Documents;

except that the following shall not be considered a "**Claim**" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Article XVIII hereinafter:

- (i) any suit by the Association to collect Assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a restraining order or for injunctive relief or equitable relief and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;
- (iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Condominium Documents;
- (iv) any suit in which any indispensable party is not a Bound Party;
- (v) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the required Notice in accordance with Article XX subsection 20.07 hereinafter, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article; and
- (vi) any suit relating to or arising out of any Alleged Defect (hereinafter defined).

ARTICLE XVIII
DISPUTE RESOLUTION PROCEDURES.

18.1. Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") in the manner and in accordance herein to each Respondent and to the Board of Directors stating plainly and concisely:

- (1) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;
- (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (3) the Claimant's proposed resolution or remedy; and,
- (4) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

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

18.3. Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice in the manner as described herein (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency or individual providing dispute resolution services in the State of Alabama. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of the mediation, including reasonable attorneys' fees, and each Party shall share equally all fees charged by the mediator.

18.4. Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one

non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, reasonable attorneys' fees and court costs. All costs incurred in enforcing such agreement or award shall be reasonable in nature.

18.5. Litigation. After compliance with the foregoing provisions of this Article XVIII and the parties have not resolved the Claim, the Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Such Claim shall be resolved in the Courts of Baldwin County, Alabama Non-Jury. The prevailing party shall be entitled to all its expenses, including but not limited to, attorneys' fees, court costs, cost of discovery, accounts' fees, investigation expenses, and experts' fees. In no event shall the Declarant or the Association, its officers, directors, employees, agents, or manager be liable for punitive, special, consequential, or indirect damages or any other type of damages whatsoever other than for actual, direct damages.

ARTICLE XIX **GENERAL PROVISIONS**

19.1 Covenant Against Partition. There shall be no judicial or other partition of the Condominium or any part thereof, nor shall any person acquiring any interest in the Condominium or any part thereof seek any such partition unless the Condominium has been removed from the provisions of the Act.

19.2 Disclosures. Each Owner and each Owner's family, tenants, guests, employees, invitees, lessees or licensees acknowledge the following:

(A) The Condominium is located adjacent to a thoroughfare that is affected by traffic and noise from time to time and may be improved and/or widened in the future.

(B) The views from an Owner's Unit may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.

(C) No representations are made regarding the zoning of adjacent property, or that the category to which the Condominium or the adjacent property is zoned may not change in the future.

(D) No representations are made regarding the schools that currently or may in the future serve the Unit.

(E) Since in every neighborhood, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Condominium that an Owner may find objectionable and that it shall be the sole responsibility of the Owners to become acquainted with neighborhood conditions that could affect the Unit.

(F) No representations are made that sound may not be transmitted from one Unit to another.

(G) The dimensions and square footage calculations shown on the Plat, if any, are only approximations. Any Unit Owner who is concerned about any representations regarding the Site Plan should perform his own investigation as to the dimensions, measurements and square footage of his Unit.

(H) The Declarant will be constructing portions of the Condominium and engaging in other construction activities related to the construction of Common Elements, the Limited Common Elements and improvement of Units on the Condominium Property. Structures and Amenities. Such construction activities may, from time to time, produce certain conditions on the Condominium Property, including, without limitation: (1) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (2) smoke; (3) noxious, toxic, or corrosive fumes or gases; (4) obnoxious odors; (5) dust, dirt or flying ash; (6) unusual fire or explosion hazards; (7) temporary interruption of utilities; and/or (8) other conditions that may threaten the security or safety of persons on the Condominium Property. Notwithstanding the foregoing, all Owners agree that such conditions on the Condominium Property resulting from construction activities shall not be deemed a nuisance and shall not cause the Declarant and its agents to be deemed in violation of any provision of this Declaration.

(I) Exposed concrete surfaces in portions of the Condominium which are not heated and cooled are subject to cracking due to water penetration, expansion and contraction of the concrete with temperature changes, building settlement or other reasons.

(J) Concrete surfaces in heated and cooled portions of the Condominium are subject to cracking due to building settlement.

(K) Mold and/or mildew can grow in any portion of the Condominium that is exposed to elevated levels of moisture. The Association and each Unit Owner agree to: (1) regularly inspect the parts of the Condominium that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion and/or damage; (2) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that they respectively maintain; (3) remediate or replace any building material located in the parts of the Condominium that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (4) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that they respectively maintain in accordance with current industry accepted methods. In addition, each Unit Owner agrees to immediately notify the Association and the Declarant of the discovery of mold, mildew, and/or water intrusion and/or damage in their respective Units.

(L) The Condominium is situated in a location that is subject to hurricanes, tornadoes, strong winds, tropical storms, erosion, flooding, and other forces of nature that may cause damage or casualty losses to the Condominium Property.

ARTICLE XX MISCELLANEOUS

20.1 Rights and Powers of Successors and Assignees. The rights and powers reserved to or exercisable by the Developer under the Condominium Documents or the Act may be exercised by any successor assignee of the Developer (i) who acquires title from the Developer by foreclosure or other judicial sale or deed in lieu of foreclosure, or (ii) to whom the Developer specifically assigns such rights and powers.

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

20.3 Gender/Number. Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

20.4 Exhibits. The Exhibits appended to this Declaration are an integral part of this Declaration.

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

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

20.7 Notice. The following provisions shall govern the construction of the Condominium Documents, except as may be specifically provided to the contrary in the Act or in this Declaration. All notices required or desired under the Condominium Documents to be sent to the Association shall be sent certified mail, return receipt requested, or by hand delivery, by a recognized overnight courier who maintains verification of delivery, to the Secretary of the Association, at such address as the Association may designate from time to time by notice in writing to all Owners. Except as specifically provided to the contrary in the Act, all notices to any Owner shall be delivered by hand delivery, by a recognized overnight courier who maintains verification of delivery in person or sent by first (1st) class mail to the address of such Owner at Bayou Sunrise, A Condominium, or to such other address as said Owner may have designated from time to time, in writing duly received, to the Association. Proof of such mailing or personal delivery to an Owner by the Association may be provided by the affidavit of the Person or by a post office certificate of mailing. All notices to the Association or an Owner shall be deemed to have been given when delivered to the addressee in person or by a post office certificate of mailing.

20.8 Governing Law. This Declaration shall be governed by, and is to be construed according to, the laws of the State of Alabama.

20.9 Conflict Between Documents. If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Certificate of Formation, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Certificate of Formation and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Certificate of Formation shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

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**Developer/Declarant Bayou Sunrise, LLC,
an Alabama Limited Liability Company**

James M. Brown
As Its: Managing Member

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned notary public in and for said state and county, hereby certify that James M. Brown whose name as Managing Member of Sunrise Bayou, LLC,, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in his capacity as aforesaid and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day set forth below.

GIVEN under my hand and seal this _____ day of _____, 202_____.

My commission expires _____

This Instrument Prepared By:

Daniel H. Craven, Esq.

Craven & Perry, PLLC

Post Office Drawer 4489

Gulf Shores, AL 36547

Voice: 251.968.8170

Fax: 251.968.4837

Email: danielhcraven@gmail.com

EXHIBITS TO DECLARATION

FOR

BAYOU SUNRISE, A CONDOMINIUM

<u>Exhibit “A”</u>	Legal Description of the Land (Please refer to <u>Exhibit “A”</u> attached to the Offering Statement.)
<u>Exhibit “B”</u>	Bylaws (Please refer to <u>Exhibit “G”</u> attached to the Offering Statement.)
<u>Exhibit “C”</u>	Certificate of Formation for Bayou Sunrise Condominium Owners’ Association (Please refer to <u>Exhibit “E-1”</u> attached to the Offering Statement.)
<u>Exhibit “D”</u>	Plans (Please refer to <u>Exhibit “H”</u> attached to the Offering Statement.)
<u>Exhibit “D-1”</u>	Plat (Please refer to <u>Exhibit “H”</u> attached to the Offering Statement.)
<u>Exhibit “E”</u>	Rules and Regulations (Please refer to <u>Exhibit “K”</u> attached to the Offering Statement.)
<u>Exhibit “F”</u>	Easements, Restrictions, Conditions and Limitations (Please refer to <u>Exhibit “D”</u> attached to the Offering Statement labeled Encumbrances, Easements, Restrictions, Conditions and Limitations.)
<u>Exhibit “G”</u>	Owner’s Interest in the Common Elements and Limited Common Elements (Please refer to <u>Exhibit “I”</u> attached to the Offering Statement labeled Owners’ Interest in Common Elements, Limited Common Elements, Votes and Common Expenses).

**NOTE: EXHIBITS TO BE ATTACHED UPON RECORDING
OF THE DECLARATION WITH CERTIFICATION BY
ENGINEER REQUIRED BY ALA. CODE § 35-8A-209.**