

AMENDED & RESTATED
DECLARATION OF CONDOMINIUM
OF
San Carlos, A Condominium
Gulf Shores, Alabama

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STATE OF ALABAMA)
COUNTY OF BALDWIN)

AMENDED & RESTATED
DECLARATION OF CONDOMINIUM
OF
San Carlos, A Condominium

THIS Amended & Restated Declaration of Condominium of San Carlos, A Condominium, (hereinafter referred to as “Declaration” or “Amended & Restated Declaration”), is made on this the _____ day of _____, 2019, by San Carlos Condominium Association, Inc., (hereinafter referred to the “Declarant”), an Alabama Nonprofit Corporation, pursuant to the provisions of the ALABAMA UNIFORM CONDOMINIUM ACT OF 1991, CODE OF ALABAMA, 1975, §35-8A-101, et seq., as amended, (hereinafter referred to as the “Act”), for the purpose of forming a condominium and establishing certain rights, titles, easements, covenants and/or restrictions to run with the subject property.

RECITALS:

WHEREAS, Declarant represents all Unit Owners who hold title in fee simple to certain real estate described in Article II of this Amended & Restated Declaration of Condominium, as originally set forth in the original Declaration of Condominium of San Carlos, A Condominium, recorded at Instrument No. 997847, on August 30, 2006, in the Office of the Probate Judge of Baldwin County, Alabama, wherein San Carlos, A Condominium, was submitted to the provisions of the ALABAMA UNIFORM CONDOMINIUM ACT OF 1991, CODE OF ALABAMA, 1975, §35-8A-101, et seq., as amended, and which is hereby referenced and incorporated herein as if fully set out and which is located at 365 East Beach Boulevard, Gulf Shores, Baldwin County, Alabama, hereinafter referred to as the “Parcel”.

WHEREAS, Declarant does hereby resubmit the Parcel together with all the buildings, structures, improvements, and other permanent fixtures to be affixed thereon, and all rights and privileges belonging or in any way pertaining thereto, to the provisions of the ALABAMA UNIFORM CONDOMINIUM ACT OF 1991, CODE OF ALABAMA, 1975, §35-8A-101, et seq., as amended. The condominium shall be known as San Carlos, A Condominium.

WHEREAS, Declarant further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of 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 the parcel shall hold that interest subject to the certain rights, easements, and privileges in the Parcel, and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct, and maintenance of the property, as hereinafter set forth.

WHEREAS, notice of the subject matter of this proposed revision and amendment was included in a notice of Annual Meeting given to all unit owners to be held on the 24th day of August, 2019; and,

WHEREAS, the proposed revision and amendments were approved by the affirmative vote of not less than sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the members of San Carlos Condominium Association, Inc., cast in person or by proxy at said meeting;

NOW, THEREFORE, the Declaration of Condominium of San Carlos, A Condominium shall hereinafter read as follows:

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OF
SAN CARLOS, A CONDOMINIUM

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Article I
Definitions

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

A. “Act” or “ACT” shall mean the ALABAMA UNIFORM CONDOMINIUM ACT OF 1991, CODE OF ALABAMA, 1975, §35-8A-101 et seq., as the same may be amended from time to time.

B. “Association” shall mean San Carlos Condominium Association, Inc., a nonprofit corporation organized pursuant to the ALABAMA NONPROFIT CORPORATION ACT, CODE OF ALABAMA, 1975, §10-3A-1, et. seq.

C. “Board of Directors” or “Board” shall mean the Board of Directors of the Association, elected pursuant to the By-Laws of the Association.

D. “By-Laws” means the duly adopted Amended & Restated By-Laws of the Association recorded simultaneously herewith this Declaration, and made a part hereof for all purposes, providing for the self-government of the Condominium Property by the Association.

E. “Common Elements” or “Common Areas” shall mean:

i. all portions of the Condominium Property other than the Private Elements which are held or designed for the use and enjoyment of the Owners and shall include, but not be limited to, the following:

1. the Land
2. the foundations and footings, load bearing walls, perimetrical walls, structural slabs, columns, beams and supports;
3. the roofs, lobbies, mechanical equipment, and storage areas designed as common, ramps, handrails, sidewalks, stairways and entrances and exits or communication ways;
4. the compartments or installations of central services such as central air conditioning, ventilation, heating, power, light, electricity, telephone and telecommunications cable, gas, fire protection, security, cold and hot water, plumbing, reservoirs, water tanks and pumps, storm drains, sewer lines, flues, trash chutes, incinerators and the like, and all similar devices and installations

existing for common use, but excluding all compartments or installations of utilities, telephone and telecommunications cable and services which exist for private use in the Private Elements;

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

6. all common recreational facilities such as the swimming pool and grounds, gazebo, sun decks, activity and/or recreational centers, yards and walkways;

7. sidewalks, boardwalks, lawn areas, landscaping, beach areas, trees, curbs, roads, walkways, lobbies, elevators, streets and parking areas;

8. all easements, rights or appurtenances affecting or relating to the use of the Condominium Property unless specifically included in any Unit;

9. all other elements (other than Private Elements) desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Property.

F. “*Common Expenses*” shall mean the expenses arising out of the operations and ownership of the Common Elements and Limited Common Areas and shall include, but not be limited to, expenses of administration of the Common Elements of the Condominium Property; expenses of insurance; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and Limited Common Elements and any portion of a Unit maintained by the Association; any valid charge against the Condominium Property as a whole; 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.

G. “*Common Surplus*” shall mean the excess of all the receipts of the Association including, but not limited to, assessments, rents, profits and revenues over the amount of the Common Expenses.

H. “*Condominium Documents*” shall mean this Declaration and all exhibits hereto, the Rules and Regulations, the By-laws and the Articles of Incorporation of the Association, and the Plats and Plans as the same may be amended from time to time.

I. “*Covenants*” shall mean and refer to the Declaration of Condominium of San

Carlos, and all amendments thereto.

J. “*Declarant*” shall mean San Carlos Condominium Association, Inc., and its successors and assigns.

K. “*Declaration of Condominium*” or “*Declaration*” shall mean this Amended & Restated Declaration of Condominium of San Carlos, a condominium, as the same may be amended from time to time.

L. “*Governmental Authority*” shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property.

M. “*Institutional Mortgagee*” shall mean and refer to: (i) any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust or other recognized lending institution that normally and customarily engages in the business of making Mortgage loans; (ii) any institutional or governmental purchaser of Mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; and (iii) any pension or profit-sharing trust that makes Mortgage loans or that purchases Mortgage loans in the secondary market, that holds a first Mortgage on any Unit that has been duly and properly recorded in the Probate Office of Baldwin County, AL.

N. “*Land*” shall mean the parcel or tract of real estate described in the original Declaration of Condominium of San Carlos, A Condominium (as may be amended) submitted to the provisions of the Declaration and the Act.

O. “*Limited Common Elements*” or “*Limited Common Areas*” shall mean and include any area designated by this Declaration, including the Plats and Plans, as Limited Common Elements on the Plan and any amendment to the Plan 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, balconies or terraces, wires, conduits, bearing walls, bearing columns, or any other fixture serving only a specific Unit. Should any Limited Common Element ever be determined not to be a Limited Common Element under the Act, the same shall be part of the Common Elements with an exclusive easement of use appurtenant to the Private Elements to which it was assigned, allocated or re-allocated as a Limited Common Element.

P. “*Limited Common Expenses*” shall mean the expenses arising out of the ownership of the 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.

Q. “*Member*” or “*Unit Owner*” means a member of the Association, membership in which is confined to all record owners of units at San Carlos, A Condominium, as set forth in the Declaration or amendments thereto.

R. “*Mortgage*” shall mean a first lien mortgage on one (1) or more Units.

S. “*Mortgagee*” or “*Eligible Mortgagee*” shall mean a holder of a Mortgage who has given written 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.

T. “*Occupant*” shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Unit within the Property. All actions or omissions of any Occupant are and shall be deemed the actions or omissions of the Owner of such Dwelling or Unit.

U. “*Owner*” or “*Unit Owner*” shall mean and refer to the record owner of fee simple title to any Unit, whether a corporate, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Unit at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Unit solely by virtue of a lease, contract, instalment contract or other agreement.

V. “*Plan*” or “*Plat*” shall mean the as-built Plan showing the Private Elements, the Common Elements and the Limited Common Elements of the Condominium Property as shown in the in the original Declaration of Condominium of San Carlos, A Condominium (as may be amended), and made a part hereof for all purposes, as such Plan may, from time to time, be amended.

W. “*Private Elements*” or “*Unit*” shall mean the parts of the Condominium Property as set forth in the Plan intended for the exclusive ownership and possession by an Owner. Each Private Element for Units 301, 302, 303, 307, 308, 309, Units 401 through 409 inclusive, Units 501 through 509 inclusive, Units 601 through 609 inclusive, Units 701 through 709 inclusive, Units 801 through 809 inclusive, Units 901 through 909 inclusive, Units 1001 through 1009

inclusive, Units 1101 through 1109 inclusive, Units 1201 through 1209 inclusive, Units 1401 through 1409 inclusive, Units 1501 through 1509 inclusive, Units 1601 through 1609 inclusive, Units 1701 through 1709 inclusive, Units 1802 through 1808 inclusive, Units 1902 through 1908 inclusive, Units PH-1 through Ph-5 inclusive and Unit C-300 (commercial Unit) are identified in a diagrammatic floor plan of the floor on which it is situated as shown on the Plan, and shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

i. Each Private Element is identified in a diagrammatic floor plan of the floor on which it is situated as shown on the Plan, 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. Upper and lower boundaries of Units: The upper and lower boundaries extended to their planer intersections with the perimetrical boundaries as follows:

a. the upper boundary shall be the plane of the lower unfinished surface of the ceiling;

b. the lower boundary shall be the plane of the upper surface of the concrete floor slab or wooden subflooring, which serves as the Unit's 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 exterior surfaces of the exterior windows, glass doors and entry doors, and the unfinished interior surfaces of the exterior walls and party walls, (excluding gypsum board, paint, wallpaper and light fixtures) extended to their planer intersection 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 all non-structural interior partition walls located within the boundaries of the Private Elements except such part as may comprise part of the Common Elements; the decorated surfaces of ail boundary walls, ceilings and floors, including wallpaper, paint, interior brick surface, gypsum board, lathe, 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; the storage area, if any, located on the balconies or terraces; or 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 even though such equipment may be located outside the boundaries of the Private Element, providing 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.

3. The Private Elements of the Commercial Unit shall also include and be described as including the area designated as reception and delineated on the Plats and Plans attached to the original Declaration of Condominium of San Carlos, A Condominium (as may be amended) as Exhibit "C" thereto.

X. "*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 amended from time to time.

Y. "*Rules and Regulations*" shall mean the Rules and Regulations concerning the use of San Carlos, A Condominium, adopted from time to time by the Board of Directors of the Association that are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Act, or the Condominium Documents.

Z. "*Unit*" or "*Condominium Unit*" shall mean the Private Elements as shown on the Plat and described in the Declaration and includes Residential Units and a Commercial Unit, together with the undivided interest in the Common Elements and Limited Common Elements, if any, assigned to each Unit as herein provided.

A Residential Unit is used as a single-family residence as provided for in this Declaration. The Residential Units shall be identified by using either a three digit number (floor levels 3 through 9 Inclusive) or a four digit number (floor levels 10 through 19 inclusive) or a one digit number preceded by the letter "PH" (floor level 20) and on floor level 20 the Units are designated PH1 through PH5, inclusive. The first digit indicating the floor level and/or building plan level of the Unit on floor level 3 through 9 and the last two digits indicating the location

of the Unit within that floor. The first and second digit indicating the floor level and/or building plan level of the Unit on floor level 10 through 19 and the last two digits indicating the location of the Unit within that floor. The last two digits which being with 01 being the Easternmost Unit and 09 being the Westernmost Unit, except on the first living level (3rd building plan/floor level) which only contains six Residential Units (from East to West being numbered 301, 302, 303, 307, 308 and 309) and on the eightieth and ninetieth floor levels (17th and 18th building plan level/floor levels 18 and 19) the Easternmost Unit on the twentieth floor level (19th building plan level/floor level 20) the Easternmost Unit last digit being 2 and the Westernmost Unit last digit being 8 and on the twentieth floor level (19th building plan level/floor level 20) the Easternmost Unit single digit being 1 and the Westernmost Unit single digit being 5. Unit numbering starts with the Easternmost Unit on each living level and goes in a Westerly direction. The Commercial Unit is located on the first living level (3rd building plan level/floor level 3) in the lobby area and is identified as Unit C-300.

The definitions of the Units enumerated above and other matters pertaining to the Units will be further defined and set out in this Declaration and the Plans.

Article II

Description of Improvements and Development Plans

2.01 Submission of Property. The Declarant represents the Owners of certain real property located in Baldwin County, Alabama, more particularly described as an exhibit to the original Declaration of Condominium of San Carlos, A Condominium (as may be amended) and made a part hereof for all purposes, (the "Property" or "Condominium Property") on which is located certain buildings and other improvements. The Condominium Property consist of one (1) building containing one hundred forty-two (142) residential Units and one (1) commercial Unit for a total of one hundred forty-three (143) Units together with the appurtenant facilities described herein.

2.02 Identification of Units. There are forty-six (46) Type "A" Units which consist of three bedrooms, three baths, kitchen, living/dining, and contains approximately 1,419 square feet of living area and one balcony; and thirty two (32) Type "A2" Units which consist of three bedrooms, three baths, kitchen, living/dining, and contains approximately 1,407 square feet of living area and one balcony; and thirty two (32) Type "B" Units which consist of two bedrooms, two baths, kitchen, living/dining, and contains approximately 1,229 square feet of living area and one balcony; and twenty eight (28) Type "C" Units which consist of three bedrooms, three baths, kitchen, living/dining, and contains approximately 1,568 square feet of living area and one balcony; and two (2) Type "P1" Units which consist of four bedrooms, four baths, kitchen, living/dining, and contains approximately 2,154 square feet of living area and two balconies; and two (2) Type "P2" Units which consist of three bedrooms, three baths, kitchen, living/dining, and contains approximately 1,965 square feet of living area and two balconies; and one (1) commercial Office Unit (Unit C-300) located on the first living level which

contains approximately 987 square feet of commercial space. The Units vary in size and layout, as more specifically set forth on the Plats and Plans attached as an exhibit to the original Declaration of Condominium of San Carlos, A Condominium (as may be amended), and made a part hereof. Type "A" Units are "mirror" images or "reverse" images of each other as designated on the Plats and Plans; and Type "A2" Units are "mirror" images or "reverse" images of each other as designated on the Plats and Plans; and Type "B" Units are "mirror" images or "reverse" images of each other as designated on the Plats and Plans; and Type "C" Units are "mirror" images or "reverse" images of each other as designated on the Plats and Plans; and the two Type "P1" Units are "mirror" images or "reverse" images of each other as designated on the Plats and Plans; and the two Type "P2" Units are "mirror" images or "reverse" images of each other as designated on the Plats and Plans.

The Units are in one building on seventeen living levels and are numbered and identified as 301, 302, 303, 307, 308, 309, 401, 402, 403, 404, 405, 406, 407, 408, 409, 501, 502, 503, 504, 505, 506, 507, 508, 509, 601, 602, 603, 604, 605, 606, 607, 608, 609, 701, 702, 703, 704, 705, 706, 707, 708, 709, 801, 802, 803, 804, 805, 806, 807, 808, 809, 901, 902, 903, 904, 905, 906, 907, 908, 909, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1902, 1903, 1904, 1905, 1906, 1907, 1908, PH-1, PH-2, PH-3, PH-4, PH-5 and C-300.

2.03 Plans. The Condominium Property consist of one hundred forty-three (143) Units in one (1) building primarily constructed of steel and concrete. The amenities are in the Common Elements of the Condominium and include parking areas (both covered and non-covered), outdoor swimming pool with decks, activity and/or recreational center, meeting (or conference) room, elevators, corridors, walkways, foyers, mechanical rooms, maintenance rooms, and service areas. The balconies or terraces located adjacent to a Unit are Limited Common Elements, as more specifically set forth in the Plats and Plans.

2.04 Balconies and Terraces. Exterior balconies or terraces which service only an individual Unit are Limited Common Areas as designated by the Plat and Plans and this Declaration. Exterior balconies or terraces 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 balcony directly accessible from such Owner's Unit, but such right shall not entitle an Owner to construct anything thereon nor to change any structural part thereof.

Article III Easements and Restrictions

3.01 Easements and Restrictions. 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 restrictions, easements, conditions and limitations now of record affecting the Condominium Property, which easements and restrictions are described in Exhibit "D" as attached to the original Declaration of Condominium of San Carlos, A Condominium (as may be amended) and made a part hereof for all purposes.

A. 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, telecommunications, and cable television) in order to adequately serve the Condominium Property.

B. 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 Association and the Owners of the appurtenant Unit; provided that no utility equipment shall be placed in any part of the Common Elements or Limited Common Elements other than its present location unless the written approval of the Association shall have first been obtained.

C. Telecommunications Easements. Telecommunications easements are reserved throughout the whole of the Property, including Units, as may be required for telecommunications services and equipment (including, without limitation, telephone, television, cable service, satellite dishes, tower antennas and similar type equipment) in order to adequately serve the Condominium Property. An easement is hereby reserved throughout the whole of the Property, including Units, for the purpose of placement, maintenance, repair and replacement of said telecommunications equipment by the Association.

D. Easements for Ingress and Egress. The Common Elements shall be, and the same here hereby declared to be, subject to a perpetual nonexclusive easement of way over all roads, parking areas, walkways, halls, stairways, elevators, and other Common Areas, in favor of all Owners and 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, 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.

E. 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 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.

F. Easements for Encroachments. To the extent that 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 any 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 an Owner of liability of such Owner's or such Owner's agent's negligence or intentional acts in case of willful and intentional misconduct by an Owner or an Owner's agents or employees. In the event any Unit, an 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.

G. 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 provide such support.

H. 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 specific reference to such easements and rights appear in such instrument. The Owners do hereby designate the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

3.02 Ownership of Common Elements and Limited Common Elements. Each Owner shall own an undivided interest in the Common Elements and Limited Common Elements with all other 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 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 A attached hereto and made a part hereof for all purposes, and shall remain constant, unless changed in accordance with the provisions hereof or by the unanimous approval of all Owners and Mortgagees. For purposes of percentage of ownership in the Common Elements, percentage of Common Expenses, and percentage of Common Surplus, and voting on all matters requiring action by the Owners, the percentage as set out on EXHIBIT A hereto, as amended, shall govern. The Owners of Units with Limited Common Elements which are appurtenant to such Unit as designated or described on the Plan attached hereto shall have the exclusive right to use such Limited Common Elements so designated or described as permitted herein. Each Owner of a Unit to which a Limited Common Element is attached 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 Owners, which rights shall be appurtenant to and run with the Units to which the Limited Common Elements are attached.

Article IV
Organization and Management

4.01 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 Nonprofit Corporation Act, Code of Alabama 1975, Section 10-3A-1 et seq., this Declaration, the Articles of Incorporation and the By-Laws.

4.02 Members. The Members of the Association shall constitute all record Owners of the Units. Change of membership in the Association shall be established by recording in the Probate records of Baldwin County, Alabama, the deed or other instrument establishing record title to a Unit of the Condominium Property, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a record Owner and a Member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners, tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. The votes shall be cast in the manner provided in the Articles and By-Laws of the Association. Each Unit shall be allocated one (1) vote, which vote is not divisible, the numerical value of which shall be the percentage of undivided interest in the Common Elements assigned to the Unit of which the member is the Owner, and as set forth in EXHIBIT A attached hereto and all amendments thereto.

4.03 By-Laws. The By-Laws of the Association shall mean the duly adopted Amended & Restated By-Laws of the Association recorded simultaneously herewith this Declaration, and made a

part hereof for all purposes, providing for the self-government of the Condominium Property by the Association.

Article V
Assessments

5.01 *Liability, Lien and Enforcement.* The Association is given the authority to administer the operation and the management of the Common Elements and the Condominium Property, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To provide the funds necessary for such proper operation, the Association is hereby granted the right to make, levy, and collect assessments against the Owners of all Units to pay Common Expenses and 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.

5.02 *Assessments.* All assessments for the payment Common Expenses shall be levied annually and paid monthly by the Owners of all Units, and unless specifically otherwise provided for in this Declaration, each Owner of a Unit and each Owner's Unit shall bear the same fractional share of such assessment as the fractional share of ownership for the undivided interest in the Common Elements and Limited Common Elements appurtenant to said Unit. The assessments for Common Expenses and Limited 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 Association's By-Laws.

5.03 *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 the next 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 ten percent (10%) of the total budget for reserves (optional). Said 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, copies 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 fourteen (14) nor more than thirty (30) days after mailing or delivering the budget to the Members. Unless at such meeting a majority of the Members present in person or by proxy reject the budget, the budget is ratified. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time as a new budget is ratified. If the budget is ratified, the assessment for said year shall be established based upon such budget.

Should the Board of Directors at any time 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 non-payment of any Owner's assessment, the Board of Directors shall have the authority to levy such additional assessment as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents and the Act.

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

5.05 Detailed Records. The Association shall keep detailed, accurate records of the receipts and expenditures affecting the Common Elements and the Limited Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements, Limited Common Elements and any other expenses incurred. Records and vouchers 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.

5.06 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. No Unit Owner may be exempted from liability for such Unit Owner's contribution toward Common Expenses 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 Owner's 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 up to the time of conveyance without prejudice to the purchaser's right to recover from the selling Unit Owner the amounts paid by the purchaser thereof. Whenever any Unit may be sold or mortgaged by the Owner thereof, which sale shall be concluded only upon compliance with the other provisions of this Declaration, the Association, upon written request of the Owner or purchaser of such Unit, shall furnish to the Owner, the purchaser or any proposed Mortgagee (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 proposed Mortgagee may rely upon such statement in concluding the proposed purchase or mortgage transaction and the Association shall be bound by such statement, in the event that a Unit is to be sold or mortgaged when any assessment is 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.

5.07 Default in Payment of Assessments. The payment of any assessment or installment thereof due the Association shall be in default if such Assessment or any 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 of the Association not exceeding eighteen percent (18%) per annum until such delinquent assessment or installment and all interest due thereon has been paid in full. In addition, the Board of Directors, in its sole discretion, may impose a monthly late fee for said delinquency, as well. The Association shall have a lien against Units for all 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 and late fees, 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 and/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, which contain a power of sale. 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, but not be limited to, 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.

5.08 Election of Remedies. Institution of a suit at law to collect payment of any delinquent assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection by foreclosure of any sums remaining owing to it, nor shall proceeding by foreclosure to effect such collection be deemed to be an election precluding the institution of 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.

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

5.10 Priority of Lien. The Association shall have a lien for nonpayment of Common Expenses as is provided by the Act. In any suit for the foreclosure of a lien for Assessments, the Association shall be entitled to rental from the Unit Owner from the date on which the payment of any Assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said Unit, without notice to the Unit Owner. The rental required to be paid shall be equal to the rental charged on comparable type of dwelling Units in the area in which the Condominium is located. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at a rate set by the Board of the Association but in no case shall said interest exceed the maximum legal rate on any such advances made for such purposes. All Persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien granted to the Association. A lien for Common Expenses shall not be affected by any sale or transfer of a Unit, except as herein provided. A sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall extinguish a subordinate lien for Assessments which became payable prior to such sale or transfer; provided, however, a sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall not extinguish the lien of the Association to the extent of the Common Expense Assessments based on the periodic budget adopted by the Association pursuant to the Act which would have become due in the absence of acceleration during the six (6) months immediately preceding the institution of an action to enforce the lien. However, any such delinquent Assessments, which were extinguished pursuant to the foregoing provision, may be reallocated and assessed to all of the Units as a Common Expense. Any such sale or transfer pursuant to foreclosure does not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any Assessments made thereafter.

5.11 Disposition of Surplus. Each Unit shall carry with it a proportionate share of Common Surplus and the proportionate share of Common Surplus shall be the same ratio as that Unit Owner's percentage ownership of the Common Elements; or in the alternative, such surplus, or any portion thereof, may be added to a reserve fund for maintenance, repair and replacement of the Common

Elements, as the case may be, at the sole discretion of the Board.

5.12 *Assignment of Future Income.* The Association may assign its right to future income, including the right to receive common expense assessments.

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

5.14 *Suspension of Members' Rights.* If any Unit Owner is delinquent of any financial obligation for more than sixty (60) days, the Unit Owner may **not**: (i) vote at any meeting of the Unit Owners, if the amount necessary to bring the account current has not been paid at the time of such meeting; (ii) be elected to serve on the Board of Directors, if the amount necessary to bring the account current has not been paid at the time of such election; and, (iii) continue to serve on the Board of Directors while delinquent; and, said Unit Owner, their guests, renters or invitees, may not use the common area amenities of the Association. In addition, if any Unit Owner is delinquent of any financial obligation for more than sixty (60) days, the Association, by and through its Board and agents, shall have the right to disconnect any utilities paid for by the Association, including, but not limited to, television, telephone and/or internet services to the condominium unit, after providing ten (10) days notice of said disconnection by U.S. First-Class Mail at the last known address of said Unit Owner.

Article VI
Maintenance and Operation of the Condominium Property

6.01 *The Association's Obligation to Repair.* The Association acting through the Board of Directors shall be responsible for the maintenance, repair, up-keep 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 exclude the surfaces of all interior walls, floors, ceilings, entrance doors, and windows (except the painting of the exterior faces of the exterior doors and window frames which 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, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such person. The cost of repair for any damage so caused by the Unit Owner, the Unit Owner's family, members, guests, invitees, lessees or licensees shall be a special assessment against the Unit Owner responsible therefor.

6.02 Each Owner's Obligation to Repair or Maintain.

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

i. 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 frames, screening and window glass; all exterior doors and windows (except the painting of the exterior faces of the exterior doors and exterior windows which shall be the responsibility of the Association); all wall coverings including paint, wallpaper and light fixtures; and all flooring including carpeting, vinyl and ceramic tile within a Unit. In the event an exterior door or exterior window, or a portion thereof requires repair, maintenance or replacement and the same is not promptly done by the Unit Owner, the Association may perform the same, and the cost thereof shall constitute an assessment against the Unit Owner responsible therefor.

ii. plumbing, heating, air conditioning and electrical systems serving only that Unit, including the fuse 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 thereof, shall be performed by the Association, and the cost thereof shall constitute an assessment against the Unit Owner responsible therefor.

B. Each Unit Owner agrees as follows:

i. to perform all maintenance, repairs and replacements which are the Unit Owner's obligations under subparagraph (A) of this Section;

ii. to pay all utilities as herein provided and all taxes levied against the Owner's Unit;

iii. not to make or cause to be made repairs to any plumbing, heating, ventilation or air conditioning system located outside the Owner's Unit, but required to be maintained by such Unit Owner elsewhere herein except by licensed plumbers or electricians;

iv. 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 act that 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 without the prior written consent of the Association and all Unit Owners affected thereby.

v. 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 the Unit, excluding any alteration or addition made pursuant to the procedure described in Subparagraph 6.02(b)(iv) 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 a licensed contractor who shall comply with all Rules and Regulations with respect to the work which may be adopted by the Association and the 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 such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and

vi. to promptly report, in writing, to the Association any defects or needed repairs for which the Association is responsible. In the event the Unit Owner fails to promptly notify the Association of any such known defects which need to be repaired, the Unit Owner shall be responsible for the cost of any subsequent repairs which are created due to the initial repairs not being reported; and,

vii. to maintain a controlled climate in the Unit at all times which will prohibit or deter the development or infestation of mold or other types of fungus in the Unit and

to promptly report, in writing, to the Association any water leakage or infestation of mold or other types of fungus. In the event the Unit Owner fails to promptly notify the Association of any such known defects which need to be repaired, the Unit Owner shall be responsible for the cost of any subsequent repairs which are created due to the initial repairs not being reported. In addition to the foregoing, each Unit Owner shall keep his or her Unit clean, and take necessary measures to retard and prevent mold from accumulating in the Unit. Each Purchaser or Occupant shall be required to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces as soon as reasonably possible and must not block or cover any heating, ventilation or air-conditioning ducts. Unit owners will to report Immediately in writing to the Association; (i) any evidence of water leak or water Infiltration or excessive moisture in the Unit, common hallways and any other Common Elements; (ii) any evidence of mold that cannot be removed with a common household cleaner; (iii) any failure or malfunction in heating, ventilation or air conditioning, and (iv) any inoperable doors or windows and each Unit Owner shall be responsible for damage to the Unit and personal property as well as any injury to the Occupants of the Unit resulting from the Unit Owner's failure to comply with these terms. Each Purchaser is fully responsible and liable for the entire amount of all cleaning expenses and remediation costs incurred by the Association to remove mold from the Unit if the Unit Owner fails to remedy same and each Unit Owner shall be responsible for the repair and remediation of all damages to the Unit caused by mold.

C. The Association shall be obligated to answer any request by a Unit Owner for any required approval of a proposed addition, alteration or improvement (by painting or otherwise) within forty-five (45) days after such request, but its failure to do so within the stipulated time shall not constitute a 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 an Unit shall be executed by the Association, without, however, its incurring any liability on the part of the Board of Directors or any one (1) 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 by any Unit Owner. Rather, such review is for purposes of aesthetics and control only.

6.03 *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 Article IX or Article XI of 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 which is in accordance with this Declaration and which does not require an expenditure of more than One Hundred Thousand and No/100 (\$100,000.00) Dollars, exclusive of any funds applied from the reserves maintained hereunder) unless the same is authorized by the Board of Directors and ratified by the affirmative vote of the voting members casting not less than sixty percent (60%) of the total votes of the Members of the Association present at any regular or special meeting of the Members called for that purpose at which a quorum is present and approved by a majority of the Mortgagees eligible to vote therefor. 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 exclusively, or substantially exclusively, benefitting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors. 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.

6.04 Utilities. Each Unit Owner shall be required to pay all charges for utilities not paid through the Association that are used or consumed in an Owner's Unit. The utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association shall be responsible for the payment of the common water and sewage used in the Units and the Common Elements. The Association shall have authority to pay the cost of the 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 VII

Restrictions on Use of Units, Common Elements and Limited Common Elements

7.01 Rules and Regulations of the Association. The Association is authorized to promulgate, amend and enforce the Rules and Regulations concerning the operation and use of the Condominium provided that such Rules and Regulations are not contrary to or inconsistent with the Act and the Condominium Documents. 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 person who uses 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 one (1) 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 Land 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 an Owner, Occupant, or an Owner's family members, guests, Invitees, lessees or renters, including the payment of penalties for such violations.

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

A. Each Unit, except any Commercial Unit, is restricted to residential use and the parking spaces located on the Common Elements, shall be used in accordance with the Rules and Regulations of the Association. The restriction that a Unit can only be used as for residential usage shall not preclude a Unit Owner or Occupant from maintaining a personal professional library in his Unit, nor preclude him from keeping his personal business records or handling his personal business telephone calls or correspondence, or from renting or leasing his Unit.

B. There shall be no obstruction of the Common Elements or Limited Common Elements, nor shall anything be kept or stored in the Common Elements or stored in the Limited Common Elements except in approved storage areas, nor shall anything be constructed on or planted in or removed from the Common Elements or Limited Common Elements, nor shall the Common Elements in any other way be altered without the prior written consent of the Association,

C. No immoral, Improper, offensive or unlawful use shall be made of any Unit, or Common Elements or Limited Common Elements, or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over the Condominium Property shall be observed.

D. No owner shall permit anything to be done or kept in an Owner's Unit or in the Common Elements or Limited Common Elements which will result in any increase of fire, liability or hazard insurance premiums or the cancellation of insurance on any part of the Condominium Property, or which would be in violation of any law. No waste shall be committed to the Common Elements or Limited Common Elements.

E. No "For Sale" or "For Rent" or similar type sign of any kind shall be displayed to the public view on or from any part of the Condominium Property including, but not limited to Units, all other signs must have prior written consent of the Board of Directors.

F. 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 Property which, in the judgment of the Board of Directors, may be or become an unreasonable annoyance or nuisance to the other owners.

G. No Owner (except the Owner of the Commercial Unit, which is the Association) shall cause or permit anything to be placed on the outside walls of any Owner's Unit, 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, without the prior written consent of the Board of Directors. The Association shall be allowed to place signs on the outside walls of the Commercial Unit that do not exceed eight (8) square feet in area. The Association shall have the right to place directional and informational signs throughout the Common Areas, which do not exceed six (6) square feet in area. No electrical signs are allowed without the prior written consent of the Board of Directors.

H. No clothes, sheets, towels, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements or Limited Common Elements. The Common Elements and Limited Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

I. No animals or pets of any kind shall be kept in any Unit or on any portion of the Condominium Property except for Units Owners' pets and shall be subject to the rules and regulations of the Association governing the keeping of pets. No animal shall be kept for commercial purposes nor 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 Property within seven (7) days from the day the owner receives the written notice to remove the animal or pet. The Owner of any pet or animal shall be liable for any and all damage caused by such pet or animal to any part of the Condominium Property. Having a pet on the Condominium Property is a privilege, and not a right, and may be revoked by the Board of Directors for rules violations.

J. Motorcycles, motor bikes, motor scooters, recreational vehicles or other similar vehicles shall not be operated within the Condominium Property except for the purpose of ingress or egress or transportation, it being intended that said vehicles shall not be operated so as to annoy or disturb persons or endanger persons or property.

K. All persons using the swimming pool does so at their own risk and the Association is not responsible for any accident or injury in connection with use of the pools or for any loss or damage to personal property. Persons using the pool areas agree not to hold the Association, its officers, employees or agents liable for any actions of whatever nature occurring within the pool areas. The pool areas shall be used in accordance with such rules and regulations as shall from time to time, be promulgated by the Board of Health of Baldwin County, Alabama, and/or by the Board of Directors of the Association.

L. The Association shall have the right to promulgate rules and regulations

concerning the use and enjoyment of the Common Areas and Limited Common Areas.

M. Units may be leased or rented by the Unit Owners; and the rights of any tenant is hereby made subject to the power of the Association to prescribe reasonable rules and regulations relating to the leasing or rental of a Unit and to enforce the same directly against a tenant or other occupant by the exercise of such remedies as the Board of Directors deems appropriate, including eviction. Each Unit Owner who shall lease or rent his Unit irrevocable empowers the Association or its managing agent 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 sublets 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 its family, tenants, quests, invitees, or occupants. Individual rooms located within a Unit shall not be leased or rented. The minimum rental or leasing period is three (3) day.

7.03 Right of Access. Each Unit Owner grants a right of access to such Owner's Unit to the Association, and to any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in an Owner's Unit and threatening other Units, Common Elements or Limited Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within an Owner's Unit, if any, or to correct any conditions which violates the provisions of any Mortgage covering another Unit or to enforce any provisions of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency such right of entry shall be immediate whether the Unit Owner is present at the time or not.

7.04 Limitation of Liability. The Association shall not be liable for any failure of water or power supply, telephone, telecommunications, 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, water or other types of lines servicing the Condominium Property, or for injury or damage to a person or property caused by the natural elements, or resulting from electricity, gas, water, snow 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 of the Association in accordance with the By-Laws.

7.05 Sex Offenders. Unit owners shall not allow convicted sex offenders to rent, occupy, visit or use an owner's unit. Owners who rent their unit through any rental agency or who allow any third person to provide access to a unit shall instruct such persons of this restriction and require them to be bound thereby. In the event that an owner is notified by the police, sheriff's department, the Association's property manager or by the Board of Directors that a sex offender is occupying or otherwise using an owner's unit, such owner shall, at owner's expense, cause such person to be evicted from the owner's unit. In the event that the owner fails to do so, the Association may undertake any and all necessary legal action to cause the removal of such convicted sex offender from the owner's unit and the owner shall reimburse the Association of all attorneys fees, costs and related expenses of the legal proceedings.

7.06 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 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 Owner, and the Association shall have a lien for all of the same upon the Unit of such defaulting Owner, upon all of such defaulting Owner's additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon all of such defaulting Owner's personal property in such defaulting Owner's Unit or located elsewhere on the Condominium Property. Nothing herein contained shall prevent an Owner from maintaining such 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.

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

Article VIII
Rights of Eligible Mortgagees

8.01 Notification of Eligible Mortgagees Required. Any Eligible Mortgagee shall have the right to be given written notification by the Association of (a) any ninety (90) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements or Limited Common Elements if such loss or taking exceeds One Hundred Thousand and No/100 (\$100,000.00) Dollars; (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds Thirty Thousand and No/100 (\$30,000.00) Dollars; (d) any condemnation of all or a portion of the Condominium Property; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

8.02 Right of Inspection. Eligible Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property 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. Any cost associated with providing a Eligible Mortgagee with requested information shall be paid by the Eligible Mortgagee requesting the information.

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

8.04 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 First 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 an 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 Articles, the By-Laws or the Rules and Regulations shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the Mortgagees 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 or 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 First Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or otherwise.

8.05 Request for Protection by Eligible Mortgagees. Whenever any Eligible Mortgagee desires the benefit of the provisions of this Article VIII 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 Units 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 IX Casualty Loss and Insurance

9.01 Responsibility of Owners; Separate Insurance Coverage.

A. The Owner of each Unit may, at the Unit Owner's expense, obtain insurance coverage for loss of or damage to the Private Elements, any furniture, furnishings, personal effects, and other property belonging to such 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 or Limited Common Elements. Risk of loss of or damage to any furniture, furnishings and personal property belonging 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 as the same shall be maintained in force and effect by the Association as hereinafter

provided. All insurance obtained by the Owner of each Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association and their respective servants, agents, employees and guests. The Association shall not be responsible for providing insurance coverage on any Private Elements.

B. Any Owner who obtains an individual insurance policy covering any portion of the Condominium Property other than property belonging to such 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 an Owner causes a decrease in the amount of the insurance coverage maintained by the Association for the benefit of all Owners on a casualty loss to the Condominium Property by reason of proration or otherwise, the Owner so 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.

9.02 Insurance to be Maintained by the Association.

A. Hazard Insurance. The Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, 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, malicious mischief, building ordinances, or loss resulting from the enforcement of ordinances or laws that regulate construction, demolition, repair or use of the Condominium Property. If the Condominium Property is located in an area which is governed by construction, zoning or other governmental codes or regulations that would limit or restrict reconstruction after damage to all or a portion of the Condominium Property, the Board shall, to the extent obtainable, include construction code endorsement or building ordinance endorsement to the insurance policies. If the Condominium Property is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Board shall, to the extent obtainable, insure the insurable property included in the Condominium Property against the perils of flood under the National Flood Insurance Act of 1968 and acts appurtenant thereto. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than one hundred percent (100%) of the then current replacement cost of the improvements, including fixtures and equipment 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 Owners (without naming them) in the proportionate shares equal to their respective percentage ownership of the Common Elements and their Limited Common Elements. Periodically, but not less than once every three years, the Association will obtain an opinion or an appraisal from a qualified appraiser for the purpose of determining the full replacement cost of the Common Elements, the Limited Common Elements and the Units for the amount of insurance to be obtained pursuant thereto. 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 endorsement 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 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 in such amount, but not less than Two Million (\$2,000,000.00) Dollars, and in such form as shall be required by the Association to protect said Association and the Owners of all Units, which provide 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 to meet the requirements of the laws of the State of Alabama.

D. Fidelity Bonds. The Association shall obtain and maintain, if available, fidelity bonds for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the obliged. The amount of the fidelity bond should cover the maximum funds that will be in the custody of the Association, but not less than the sum of three (3) months' assessments on all Units plus the reserve funds of the Association, if any.

E. Other Insurance. The Association shall obtain and maintain such other insurance coverage as required by the ACT or as the Board of Directors of the Association, in its sole discretion, may determine from time to time to be in the best interest of the Association and the Owners of all Units.

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

A. All policies shall be written with a company licensed to do business in the State of Alabama and holding a financial rating of "A" or better by Best's Insurance Reports or other then comparable rating.

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 Owners or their Mortgagees.

D. The Association shall be required to make every effort to secure insurance policies that will provide for the following:

i. A waiver of subrogation by the insurer as to any claims against the Association, the Board of Directors, or the Owners;

ii. 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;

iii. The insurance coverage will be primary, even if a Unit Owner has other insurance that covers the same loss;

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

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

9.04 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense; 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 an Owner shall be assessed against that Owner.

9.05 Insurance Trustee. The Association may engage the services of a bank, trust company authorized to do trust business in the State of Alabama or licensed professional (attorney, CPA, etc.) 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. 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 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 interest 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 shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provision 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 fails to perform all the conditions precedent required by the policy or policies of insurance, and fails 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 an 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.

9.06 Loss to Common Elements Only or Limited Common Areas. In the event of the loss of or damage to only Common Elements, real or personal, by reason of fire or other casualties, 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 Association or Insurance Trustee, as the case may be, 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 such excess insurance proceeds paid to the Owner of each Unit and 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.

9.07 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, storm, governmental regulation or other casualty, which loss or damage is covered by fire, hazard 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 Private Elements and the Limited Common Elements sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed by the Association or the 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 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 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. Nothing to the contrary withstanding, damage or destruction of a portion of a Unit or Private Element, the Common Elements or the Limited Common Elements which cannot be rebuilt, repaired, or reconstructed due to the enforcement of ordinances or laws regulating construction or repair shall be treated as if it was a condemnation and deemed to be an insurance casualty loss, and shall be applied and distributed by the Association in accordance with the provisions of this Declaration.

9.08 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 and specifications of the original buildings, portions of which are attached as Exhibit "C" to the original Declaration of Condominium of San Carlos, A Condominium (as may be amended), 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 percent (60%) 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 X
Condemnation

10.01 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 this Declaration and the ACT. Even though the awards may be payable to the Owners, the Owners 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 Owner in the amount of such defaulting Owner's award, or the amount of such award shall be set off against the sums hereinafter made payable to such Owner. If any Unit or portion thereof is 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.

10.02 Partial Condemnation. In the event that the Condominium Property 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 that 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 effected in the Condominium Property:

- i. The Unit shall be made tenantable.
- ii. The balance of the award, if any, shall be distributed to the Owner of the Unit and the Mortgagee of the Unit, as their respective Interests may appear.
- iii. If there is a balance of the award distributed to the Owner and the Mortgagee, the share of the Common Elements or Limited Common Elements, if any, appurtenant to the 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 percentage Interest of all Owners in the Common Elements and the Limited Common Elements as percentages of the total of their shares as reduced by the taking.

iv. If the taking destroys or 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 effected in the Condominium Property:

1. 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.

2. The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be place in condition for use by all of the 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.

3. 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 Owners. This shall be done by re-computing the shares of such continuing Owners in the Common Elements as percentages of the total of the shares of such Owners as they exist prior to the adjustment.

4. If the amount of the award for taking is not sufficient to pay the market value of the condemned Unit to the 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 assessments against all of the 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 Owners in the Common Elements after the changes effected by the taking.

B. If the Market value of a Unit prior to the taking cannot be determined by agreement between the Owner and the Mortgagee and the Association within thirty (30) days after notice by any such party that agreement cannot be reached, such value shall be determined

by three (3) Independent qualified appraisers with one (1) appraiser to be selected by the Association, one (1) appraiser to be selected by the Owner and Mortgagee, and the third (3rd) appraiser to be selected by the two (2) appraisers so appointed, and the fair market value of the Unit shall be deemed to be the average of the two (2) appraisals of the fair market value of the Unit made by said appraisers having the least difference in amount. The cost of such appraisal shall be assessed against all Owners in the shares of the Owners in the Common Elements as they existed prior to the changes effected by the taking.

C. Changes in the Units, in the Common Elements and/or Limited Common Elements, in the ownership of the Common Elements and/or Limited Common Elements and in the shares of liability for Common Expenses and/or Limited Common Expenses which are effected 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 By-Laws.

10.03 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 XI
Termination

The termination of the Condominium may be effected in accordance with the provisions of the Act and by agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. The agreement shall be evidenced by a written instrument executed in the manner required for a deed and recorded in the public records of Baldwin County, Alabama. After termination of the Condominium the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares.

Article XII
Amendment

12.01 Amendments. 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 By-Laws. The proposal to amend the Declaration must be approved by the affirmative vote of the members representing not less than sixty-six and two-thirds 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 article shall change a Unit, including the ownership in Common Elements, responsibility for Common Expenses and voting rights without the prior written approval, or vote, of the Unit Owner or Unit Owners and approval of Eligible Mortgagees.

12.02 Effectiveness of Amendments. Each amendment 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 Probate Court of Baldwin County, Alabama.

Article XIII
Miscellaneous

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

13.02 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.

13.03 Invalidity and Severability. It is the intention of the Declarant 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.

13.04 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.

13.05 Conflict or Ambiguity. If any conflict or ambiguity in the terms and provisions of Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

IN WITNESS WHEREOF, the Declarant has caused this Amended & Restated Declaration of Condominium for San Carlos, A Condominium, to be executed this _____day of _____, 2019.

SAN CARLOS CONDOMINIUM
ASSOCIATION, INC.

BY: _____, Its President

ATTESTED:

BY: _____, Its Secretary

STATE OF _____)
COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certifies that _____, whose name as President of San Carlos Condominium Association, Inc., an Alabama Nonprofit Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 2019.

Notary Public

My Commission Expires: _____

STATE OF _____)
COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certifies that _____, whose name as Secretary of San Carlos Condominium Association, Inc., an Alabama Nonprofit Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 2019.

Notary Public

My Commission Expires: _____

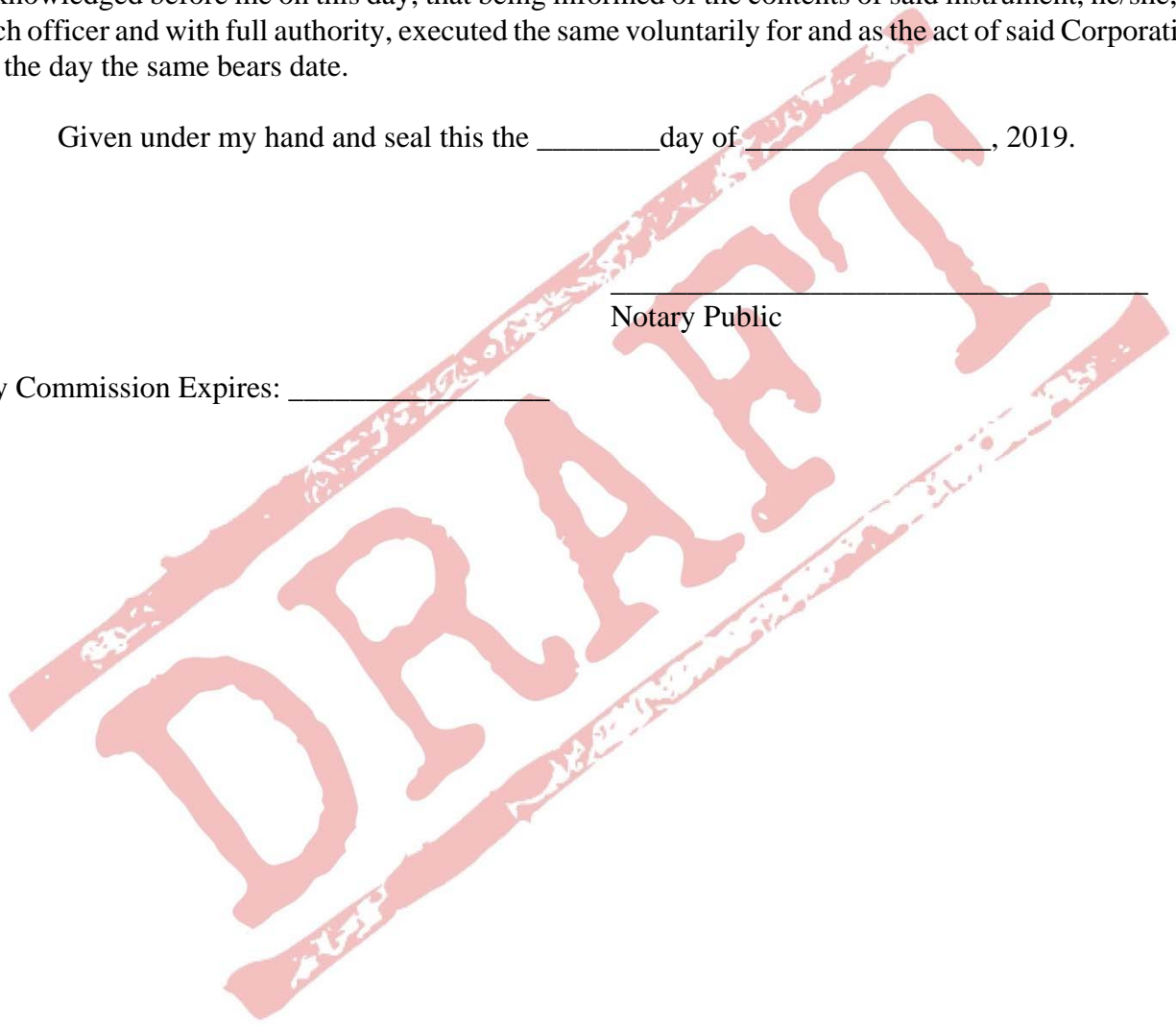


EXHIBIT A

FRACTIONAL OWNERSHIP INTEREST IN COMMON ELEMENTS (RESPECTIVE SHARE OF EACH UNIT) AND NUMERICAL VALUE OF VOTE TO WHICH EACH UNIT IS ENTITLED

FORMULA:

The formula for arriving at the Percentage (Fractional) Ownership Interest in the Common Elements (respective share of each Unit) shall be a percentage interest, which shall be determined by dividing the interior square footage of a Unit by the total interior square footage of all the Units (both residential and commercial). The total percentage interest shall never exceed one hundred percent (100%). Each Unit shall be entitled to one vote the numerical value of which shall be expressed as one (1) and be equal to its percentage of undivided interest in the Common Elements as set forth on this EXHIBIT A. Each unit shall be entitled to one vote which is equal to its percentage interest. The Common Expenses shall be charged to Unit Owners according to the percentage undivided interest of the respective Units in the Common Elements. For the purpose of this EXHIBIT A, the total number of square feet of interior area in any Unit shall be conclusively presumed to be as shown on the Plans or Plats to the original Declaration of Condominium, or as amended hereto.

<u>Unit Number</u>	<u>Unit Type</u>	<u>Percentage Ownership Interest & Value of Vote</u>	<u>Value of Vote to Which Unit is Entitled to Vote</u>
301	C	0.77713%	1
302	B	0.60912%	1
303	A2	0.69734%	1
307	A2	0.69734%	1
308	B	0.60912%	1
309	C	0.77713%	1
401	C	0.77713%	1
402	B	0.60912%	1
403	A2	0.69734%	1
404	A	0.70328%	1
405	A	0.70328%	1
406	A	0.70328%	1
407	A2	0.69734%	1
408	B	0.60912%	1

409	C	0.77713%	1
501	C	0.77713%	1
502	B	0.60912%	1
503	A2	0.69734%	1
504	A	0.70328%	1
505	A	0.70328%	1
506	A	0.70328%	1
507	A2	0.69734%	1
508	B	0.60912%	1
509	C	0.77713%	1
601	C	0.77713%	1
602	B	0.60912%	1
603	A2	0.69734%	1
604	A	0.70328%	1
605	A	0.70328%	1
606	A	0.70328%	1
607	A2	0.69734%	1
608	B	0.60912%	1
609	C	0.77713%	1
701	C	0.77713%	1
702	B	0.60912%	1
703	A2	0.69734%	1
704	A	0.70328%	1
705	A	0.70328%	1
706	A	0.70328%	1
707	A2	0.69734%	1
708	B	0.60912%	1
709	C	0.77713%	1
801	C	0.77713%	1
802	B	0.60912%	1
803	A2	0.69734%	1
804	A	0.70328%	1
805	A	0.70328%	1
806	A	0.70328%	1
807	A2	0.69734%	1

808	B	0.60912%	1
809	C	0.77713%	1
901	C	0.77713%	1
902	B	0.60912%	1
903	A2	0.69734%	1
904	A	0.70328%	1
905	A	0.70328%	1
906	A	0.70328%	1
907	A2	0.69734%	1
908	B	0.60912%	1
909	C	0.77713%	1
1001	C	0.77713%	1
1002	B	0.60912%	1
1003	A2	0.69734%	1
1004	A	0.70328%	1
1005	A	0.70328%	1
1006	A	0.70328%	1
1007	A2	0.69734%	1
1008	B	0.60912%	1
1009	C	0.77713%	1
1101	C	0.77713%	1
1102	B	0.60912%	1
1103	A2	0.69734%	1
1104	A	0.70328%	1
1105	A	0.70328%	1
1106	A	0.70328%	1
1107	A2	0.69734%	1
1108	B	0.60912%	1
1109	C	0.77713%	1
1201	C	0.77713%	1
1202	B	0.60912%	1
1203	A2	0.69734%	1
1204	A	0.70328%	1
1205	A	0.70328%	1
1206	A	0.70328%	1

1207	A2	0.69734%	1
1208	B	0.60912%	1
1209	C	0.77713%	1
1401	C	0.77713%	1
1402	B	0.60912%	1
1403	A2	0.69734%	1
1404	A	0.70328%	1
1405	A	0.70328%	1
1406	A	0.70328%	1
1407	A2	0.69734%	1
1408	B	0.60912%	1
1409	C	0.77713%	1
1501	C	0.77713%	1
1502	B	0.60912%	1
1503	A2	0.69734%	1
1504	A	0.70328%	1
1505	A	0.70328%	1
1506	A	0.70328%	1
1507	A2	0.69734%	1
1508	B	0.60912%	1
1509	C	0.77713%	1
1601	C	0.77713%	1
1602	B	0.60912%	1
1603	A2	0.69734%	1
1604	A	0.70328%	1
1605	A	0.70328%	1
1606	A	0.70328%	1
1607	A2	0.69734%	1
1608	B	0.60912%	1
1609	C	0.77713%	1
1701	C	0.77713%	1
1702	B	0.60912%	1
1703	A2	0.69734%	1
1704	A	0.70328%	1
1705	A	0.70328%	1

1706	A	0.70328%	1
1707	A2	0.69734%	1
1708	B	0.60912%	1
1709	C	0.77713%	1
1802	B	0.60912%	1
1803	A2	0.69734%	1
1804	A	0.70328%	1
1805	A	0.70328%	1
1806	A	0.70328%	1
1807	A2	0.69734%	1
1808	B	0.60912%	1
1902	B	0.60912%	1
1903	A2	0.69734%	1
1904	A	0.70328%	1
1905	A	0.70328%	1
1906	A	0.70328%	1
1907	A2	0.69734%	1
1908	B	0.60912%	1
PH-1	P2	0.97389%	1
PH-2	P1	1.06756%	1
PH-3	A	0.70328%	1
PH-4	P1	1.06756%	1
PH-5	P2	0.97389%	1
C-300	Commercial	Association	1
143		100%	143

EXHIBIT B

ADOPTION OF ORIGINAL EXHIBITS

TO THE EXTENT that this EXHIBIT B does not conflict with this Amended & Restated Declaration of Condominium of San Carlos, A Condominium, this EXHIBIT B hereby adopts all previously recorded filings, exhibits and amendments, including, but not limited to, all drawings, Plats and Plans of the Condominium Property as recorded in the records of the Office of the Judge of Probate, Baldwin County, Alabama, with exception to EXHIBIT A hereto, which contains revised and updated *Fractional Ownership Interest in Common Elements* at San Carlos, A Condominium.

DRAFT