

DECLARATION OF CONDOMINIUM
OF
ROYAL PALMS, A CONDOMINIUM

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DECLARATION OF CONDOMINIUM OF
ROYAL PALMS, A CONDOMINIUM

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DECLARATION OF CONDOMINIUM
OF
ROYAL PALMS, A CONDOMINIUM

THIS DECLARATION is made on this 9th day of December, 1999, by Royal Palms, L.L.C., G.P., an Alabama General Partnership comprised of Royal Palms, L.L.C., An Alabama Limited Liability Company, and CEMC III, L.P., a Tennessee Limited Partnership, herein called the "DEVELOPER", for itself, its successors, grantees and assigns.

RECITALS

1. The Developer is the fee simple Owner of that certain parcel of real property situated in Baldwin County, Alabama, more particularly described in EXHIBIT A attached hereto, and Developer intends to improve said Real Property in the manner set out herein.
2. The Developer proposes to establish a Condominium pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, Section 35-8A-101, et seq., Code of Alabama 1975, as amended. The Condominium shall be known as Royal Palms, a condominium.
3. The Developer proposes to develop the Condominium in one phase.
4. The Condominium consists of one (1) building containing a total of NINETY EIGHT (98) residential Units and ONE (1) commercial unit, together with access, parking, and appurtenant facilities herein described.

WHEREFORE, the premises considered, the Developer, hereby makes the following Declaration, to-wit:

I. DEFINITIONS

The terms used in this Declaration and in the By-Laws shall have the same meaning as stated in the Alabama Uniform Condominium Act of 1991, and as follows, unless the context otherwise requires, to-wit:

1.01. "ACT" means the Alabama Uniform Condominium Act of 1991, Code of Alabama (1975), Section 35-8A-101, et seq., as amended.

1.02. "ARTICLES" means the Articles of Incorporation of the Royal Palms Condominium Owners Association, Inc. and all amendments thereto, a copy of which is attached hereto as EXHIBIT C.

1.03. "ASSESSMENTS" means proportionate share of the funds required for the payment of the Common Element Expenses and maintenance which from time to time may be levied against each Unit Owner.

1.04. "ASSOCIATION" means Royal Palms Condominium Owner Association, Inc., an Alabama not for profit corporation, and its successors, organized under the ACT.

1.05. "BOARD" means the Board of Directors of the Association.

1.06. "BUILDING" means all structure or structural improvements located on the Real Property and forming part of the Condominium.

1.07. "BY-LAWS" means the duly adopted By-Laws of the Association, identified as EXHIBIT D attached hereto and made a part hereof as if set out fully herein.

1.08. "COMMON ELEMENTS" means all portions of the Condominium other than the Units.

1.09. "COMMON EXPENSES" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves, allocated to each Unit.

1.10. "COMMON SURPLUS" means the excess of all receipts of the Association arising out of the Common Elements over and above the amount of the Common Expenses.

1.11. "CONDOMINIUM" means Royal Palms, a condominium, and consists of the Condominium Property submitted to the condominium form of ownership by this Declaration.

1.12. "CONDOMINIUM DOCUMENTS" means the Declaration, By-Laws, Articles and all rules and regulations adopted by the Association and all exhibits attached thereto as the same may be amended from time to time.

1.13. "CONDOMINIUM PROPERTY" or "PROPERTY" means all property, both real, personal or mixed, which is submitted to the Condominium form of ownership as provided for herein and includes the Real Property and all improvements now existing or hereafter placed thereon and all easements, rights, interests or appurtenances thereto, and all personal property now or hereafter used in connection therewith.

1.14. "DECLARATION" means this Declaration of Condominium and all amendments thereto which may be made from time to time.

1.15. "DEVELOPER" means Royal Palms, L.L.C., G.P., an Alabama general partnership, and its successors and assigns.

1.16. "DEVELOPMENT" shall have the same meaning as "Condominium Property."

1.17. "DEVELOPMENT RIGHTS" shall have the same meaning as is defined in the ACT and as set out in the Declaration.

1.18. "LIMITED COMMON ELEMENT" shall have the same meaning as is defined in the ACT and as set out in the Declaration.

1.19. "MEMBER" means a member of the Association which is restricted to Unit Owners.

1.20. "MORTGAGEE" means any lender holding a mortgage or vendor's lien on any part or all of the Condominium Property.

1.21. "OCCUPANT" means a person or persons in possession of a Unit, regardless of whether that person is the Unit owner.

1.22. "PERSONS" means a natural person, corporation, association, partnership, limited partnership, limited liability company, trustee, or other legal entity.

1.23. "PLANS" mean the site plan, floor plans, and elevations of the Condominium prepared by an independent registered engineer or registered architect, which are marked herein as EXHIBIT B and attached hereto and expressly made a part hereof as though fully set out herein. The Plans contain a certificate of completion executed by an independent registered engineer or registered architect in accordance with the ACT, and contain a certification that the Plans contain all information required by the ACT.

1.24. "REAL PROPERTY" means the Real Property described in EXHIBIT A which is submitted to the Condominium form of ownership as provided for herein.

1.25. "SPECIAL DECLARANT RIGHTS" shall have the same meaning as is defined

in the ACT and as set out in the Declaration, and DECLARANT shall mean DEVELOPER.

1.26. "UNIT" or "PRIVATE ELEMENT" shall have the same meaning as "Unit" as is defined in the ACT and designated on the Plans and is a physical portion of the Condominium designated for separate ownership or private ownership or occupancy, the boundaries of which are described and set forth herein.

1.27. "UNIT BOUNDARIES" means the physical boundaries of a unit and shall also have the same meaning as is defined in the ACT.

1.28. "UNIT OWNER" means the owner of a Unit and shall also have the same meaning as "Unit Owner" as is defined in the ACT.

1.29. "UTILITY SERVICES" shall include, but not be limited to, electrical power, gas, garbage and sewage disposal.

1.30. When the context permits, use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

II. NAME AND ADDRESS OF THE CONDOMINIUM

2.01. The name by which this Condominium shall be known is Royal Palms, a condominium, and the Condominium is located along Alabama Highway 182 (East Beach Blvd.) in Gulf Shores, Baldwin County, Alabama.

III. THE REAL PROPERTY

3.01. The Real Property owned by the Developer which is herewith submitted to the Condominium form of ownership is the parcel of Real Property lying and being in Gulf Shores, Baldwin County, Alabama, subject to certain reservations and restrictions, all being more

particularly described in EXHIBIT A attached hereto and made a part hereof.

IV. PURPOSE

4.01. The Developer hereby submits the Real Property described in EXHIBIT A, together with all improvements, buildings, structures, and all other permanent fixtures thereon, and all rights and privileges belonging or in any way pertaining thereto, to the Condominium form of ownership and use in the manner provided for by the "Alabama Uniform Condominium Act of 1991," Section 35-8A-101, et seq., Code of Alabama (1975), as amended.

V. DEVELOPMENT PLANS

5.01 Plans. The improvements of the Condominium are substantially completed in accordance with the Plans, as evidenced by the Certificate of Occupancy executed by the City of Gulf Shores.

5.02. Amendment. The Developer shall have the right, privilege, and option from time to time and at any time, subject to the provisions of this Declaration, to unilaterally amend this Declaration without the consent of any Unit Owner, Mortgagee, or other person, in order to exercise any Development Rights or Special Declarant Rights, provided however, said amendment complies with the requirements of the Act and is in accordance with the Declaration.

5.03. Addition of Excluded Property.

A. Generally. Any property described in EXHIBIT A and in the Plans attached hereto as EXHIBIT B which has been specifically excluded and is not part of the Real Property described herein as comprising the Condominium which the Developer may or may not submit to the Condominium form of ownership and use, including, but not limited to, a small

storage area on each level of the condominium building, may hereafter, if the Developer so elects, be unilaterally subjected to the Condominium form of ownership at different times by amendment or amendments to this Declaration in accordance with the terms and provisions herein. The election by Developer to subject a portion of said excluded property or the exercise by the Developer of any Development Rights on any portion of the Real Estate does not obligate the Developer to exercise said right in all or any other portion of the Real Estate.

B. Effect. Upon submission of any portion of the said excluded property to the terms and provision of this Declaration, said property shall thereafter comprise a portion of the Condominium and shall be governed by and subject to all of the provisions of this Declaration and all of the Condominium Documents to the extent that said documents are not inconsistent with the provisions of any amendment to this Declaration.

5.04. Proviso. Notwithstanding anything contained herein to the contrary, Developer does not hereby commit, assure, or represent in any manner to submit all or any portion of said excluded property to the Condominium or this Declaration, and Developer shall have the right to develop the same in any manner and to any extent that Developer sees fit.

5.05. Agreement. Each person or entity who shall acquire any Unit in the Condominium or any interest therein or a lien upon such Unit, by accepting a conveyance of or otherwise acquiring such interest or lien, shall be deemed to have agreed and consented, within the meaning of this Declaration and of the ACT, to be bound by the terms and provisions hereof and to have further agreed and consented to the Developer's right to unilaterally amend this Declaration and that all such amendments shall be binding and effective regardless of whether

the undivided interest of the Unit Owners in the Common Elements will be changed thereby.

5.06. Easements.

A. Developer. Easements are reserved to the Developer throughout the Condominium and Common Elements as may be reasonably necessary for the purpose of discharging the Developer's obligation or exercising any Development Rights or Special Declarant Rights. Also, the Developer, its successors and assigns, hereby reserve a perpetual nonexclusive easement for access, ingress, egress and regress in, over, across and through all roads, access routes, parking areas, and other common areas for any guests, licensees, lessees, customers and employees of Developer to and from any adjacent, contiguous, and excluded property for the purpose of real estate sales or any other business operated by the developer on such property, and the Developer, its successors and assigns, hereby reserve and retain the exclusive right to use and control the storage areas and other excluded property located in or on the Condominium and Real Property.

B. Association. Each of the following easements are specifically reserved to the Association for the benefit of the Unit Owners, their guests and lessees, and said easements shall be a covenant running with the Real Property, to-wit:

1. Utilities and Drainage. Easements are reserved throughout the Condominium Property as may be required for Utility Services and drainage in order to adequately serve the Condominium; however, such easements to a Unit shall be only in accordance with the Plans or as the improvements are constructed, unless otherwise approved by the Unit Owner. Each Unit Owner shall have an easement in common with the Owners of all

other Units to use all pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements located in any of the other units and serving such Unit Owner's Unit. Each Unit shall be subject to an easement in favor of all other Unit Owners to use all pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Association shall have a right of access and entry to each Unit to inspect the same, to spray for pest control, to remove any violations from the Unit, and to maintain, repair or replace any common Elements contained therein or elsewhere on the Condominium Property; however, such right of access and entry, except in the event of an emergency, shall not be made without prior notice to the Unit Owner.

2. Encroachments. If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of the condominium Building or other improvement, a valid easement for the encroachment and for the maintenance of the same shall exist so long as such Building stands. Also, in the event any such Building, Unit, adjoining Unit, improvement, or adjoining Common Element shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceeding, and then same be rebuilt, any encroachment of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements caused by such rebuilding shall be permitted, and valid easements for such encroachments thereon and the maintenance thereof shall exist so long as such Building or Buildings shall stand.

3. Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and of necessity in favor of all other Units and the Common Elements.

4. Access. Each Unit shall have an easement for pedestrian traffic over, through and across sidewalks, paths, walks, lobbies, elevators, stairways, walkways and lanes, and passage ways, as the same may from time to time exist in the Common Elements, and each Unit Owner shall have an easement for ingress and egress over, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes; however, such easement shall not give or create in any Unit Owner or Person the right to park on any portion of the Condominium Property not designated as a parking area. Also, such easements shall not in any way give or create in any Unit Owner or Person the right to use or occupy a Limited Common Element designated for the exclusive use of others. All such easements shall be non-exclusive, and subject to the rules of the Association, such easements shall include the right of ingress and egress to a public street or highway upon, over and across the Common Elements which provide such access and shown on the Plans.

5.07. General Description of Improvements. The Condominium Property consists essentially of one (1) building, together with automobile parking areas, a pool, lawn and landscaping, and other facilities as more particularly set forth in the Plans. The Building contains ninety-eight (98) residential Units and one (1) commercial unit.

5.08. Unit Description. Each Unit is assigned a number or letter or a combination thereof, which is indicated on the Plans so that no Unit bears the same designation as any other

Unit. The legal description of each Unit shall consist of the identifying number or letter or a combination thereof as shown on the Plans, the name of the Condominium, the name of the office in which this Declaration is recorded, and the book and page number where the first page of this Declaration is recorded, the description and location of the particular Units and the appurtenances are described and shown in the Plans.

5.09. Unit Boundaries. The Unit boundaries are determined as follows, to-wit:

A. Horizontal Boundaries (Planes). The upper and lower boundaries of each Unit shall extend to their planer intersections with the vertical boundaries of each Unit as follows, to-wit:

(1) Upper Boundary. The horizontal plane of the unfinished lower interior surface of the uppermost ceiling.

(2) Lower Boundary. The horizontal plane of the unfinished upper interior surface of the floor.

B. Vertical Boundaries. (Planes). The vertical boundaries of each Unit shall be the vertical planes of the interior surfaces of exterior windows and glass doors bounding a Unit and the unfinished interior surfaces of the walls and entry doors bounding the Unit, excluding paint, wall paper, and light coverings, extended to their planer intersections with each other and with the upper and lower boundaries.

5.10. Alteration of Units. No Unit may be altered or changed in any way that would impair or otherwise compromise the structural integrity, mechanical systems, or lessen the support of any Common Element or the Condominium or any improvement thereto or other

Building situated thereon, and no change or alteration to the appearance of any Common Element or the exterior of any Unit or any other portion of the Condominium may be made without the consent of the Association.

5.11. Unit Floor Plans. The Condominium shall be comprised of six (6) basic floor plans, and one (1) commercial unit as follows, to-wit:

1. Basic Unit Type "A" is a two (2) bedroom, two (2) bath unit, containing a kitchen, dining and living areas, total 942 square feet, and a balcony containing 121 square feet serving the unit as a limited common element. There are two Type "A" units on each level for a total of twenty four (24).
2. Basic Unit Type "B" is a one (1) bedroom, two (2) bath unit, containing a kitchen, dining and living areas, totaling 676 square feet, and a balcony containing 135 square feet serving the unit as a limited common element. There are three Type "B" units on each level for a total of thirty-five (35).
3. Basic Unit Type "C" is a one (1) bedroom, two (2) bath unit, containing a kitchen, dining and living areas, totaling 676 square feet, and a balcony containing 121 square feet serving the unit as a limited common element. There are two Type "C" units on each level for a total of twenty-four (24).
4. Basic unit Type "D" is a two (2) bedroom, two (2) bath unit, containing a kitchen, dining and living areas, totaling 973 square feet, and a balcony containing 209 square feet serving the unit as a limited common element. There is one Type "D" unit on each level for a total of thirteen (13).

5. Basic Unit Type "E" is a two (2) bedroom, two and one-half (2.5) bath unit, containing a kitchen, dining and living areas, totaling 1384 square feet, and a balcony containing 914 square feet serving the unit as a limited common element. There is one Type "E" unit on the fourteenth level for a total of one (1).

6. Basic Unit Type "F" is a one (1) bedroom, two (2) bath unit, containing a kitchen, dining and living areas, total 676 square feet, and a balcony containing 564 square feet serving the unit as a limited common element. There is one Type "F" unit on the fourteenth level for a total of one (1).

7. Commercial Unit is one commercial and office unit located on the second floor of the condominium, consisting of approximately 216 square feet. There is one (1) such unit.

5.12. Unit Ownership. (Private Elements) Each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit, and each Unit Owner shall have the unrestricted right of ingress and egress to his Unit, which right shall be an appurtenance to his Unit. The private elements of each Unit shall be as follows, to-wit:

A. The air space of the area of the Building lying within the Unit Boundaries.

B. The surfacing materials on the interior of the exterior walls and on interior walls separating one Unit from another Unit; however, in no way shall this definition be intended to include the sheetrock on any common-party walls falling and situated between one or more Units. Such sheetrock shall be deemed a Common Element.

C. The structural components and surfacing materials of all interior walls located within the boundaries of the Unit.

D. The structural components and surfacing materials of the floors and ceilings of the Unit.

E. All bathtubs, toilets and sinks, the range, refrigerator, dishwasher, hot water heater, air conditioning and heating units, lighting fixtures and all hardware, and interior and exterior wall fixtures except those exterior lighting fixture assigned to the common use of the Condominium, and the power meter and its appurtenances.

F. All interior trim and finishing materials.

5.13. Surfaces. A Unit Owner shall not be deemed to own the structural components of the perimeter and/or load-bearing walls, nor the windows and doors bounding the Units; however, a Unit owner shall be deemed to own and shall have the exclusive right and duty to repair, maintain, paint, tile, wax, wallpaper, carpet, or otherwise finish and decorate the surfacing materials on the floor, the interior of exterior walls, and on the interior walls separating a Unit from other Units. In accordance with the terms of the ACT, a Unit Owner shall also be deemed to own the ceilings, partition walls, floors, window screens, and all appurtenant installations for utility and other services such as power, light, telephone, sewer, water, heat, and air conditioning, which are for the use of the Unit, including all pipes, ducts, wires, cables, and conduits used in connection therewith, whether located in the boundaries of the Unit or in common areas. A Unit Owner shall have the exclusive right and duty to wash and keep clean the interior and exterior surfaces of windows and doors bounding his Unit.

5.14. Changes. The Developer reserves the right to change the interior design and arrangement of any or all Units owned by the Developer, and the Developer further reserves the

right to alter the boundaries between such Units, which said change shall be reflected by an amendment to this Declaration which may be unilaterally executed by the Developer, notwithstanding the procedures for amendment described herein. No such change of boundaries, however, shall increase the number of Units or alter the boundaries of the Common Elements without proper amendment of this Declaration in the manner set forth herein. If the boundaries of more than one (1) Unit are altered, the Developer shall appropriately reapportion the shares of the Common Elements which are allocated to the altered Units; however, the Special Declarant Rights granted by this section must be exercised on or before ten (10) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama. Any Unit may be changed by the Developer, and no assurance or representation is made herein regarding the nature, character, or quality of said change. The exercise by the Developer of the Special Development Right to change a Unit does not obligate the Developer to exercise said right in any one or all of any other Unit in the Condominium.

5.15. Common Elements. Any right, title or interest in a Unit shall automatically include as an appurtenance to such Unit, without the necessity of specific reference thereto, an appropriate and respective undivided share of the Common Elements and the right to use the Common Elements in conjunction with the other Unit Owners. The Common Elements of the Condominium are all portions of the Condominium other than the Units and will include the common areas and facilities located substantially as shown on the Plans. Such common areas and facilities will include the following, to-wit:

- A. All of the Real Property.

- B. All improvements and parts of the Real Property which are not a Unit or Private Element.
- C. All parking areas, driveways and other means of ingress and egress, created at the time of the execution of this Declaration, notwithstanding whether any specific parking area is subsequently assigned to the exclusive use of a Unit.
- D. The mechanical systems and installations providing service to a building, or to any Unit, including, but not limited to, electrical power, gas, light, hot and cold water, heating and air conditioning, fireplace, sanitary and storm sewer facilities, and cables, wires, and all other apparatus and installations in the Units, except when situated entirely within a Unit for service only of that Unit.
- E. All tangible personal property required for the maintenance and operation of the Condominium and for the common use and enjoyment of the Unit Owners.
- F. Recreation areas and facilities.
- G. All foundations, slabs, columns, beams and supports of the Building and such component parts of exterior walls and walls separating Units, roofs, floors and ceilings as are not described herein as Private Elements.
- H. Lawn areas, landscaping, walkways, sidewalks, curbs and steps.
- I. Exterior steps, ramps, handrails, stairs and stairwells.
- J. All tanks, pumps, pump houses, wells, motors, fans, compressors and control equipment, and garbage equipment which are not reserved for the use of certain Owners.
- K. All area outdoor and exterior lights not metered to individual Units and

supports and all entrance and related type signs.

L. The patios, balconies, terraces, porches, storage areas, and doorsteps or stoops affixed to each Unit, even if same are designated as a Limited Common Element.

M. All other parts of the Condominium Property existing for the common use or necessity of the existence, maintenance and safety of the Condominium.

N. All other items listed as such in the ACT.

5.16. Limited Common Elements. The Limited Common Elements located on the Property and the Unit to which they are assigned are as follows, to-wit:

A. The patio, balcony, terrace, or porch abutting each Condominium Residential Unit, including the storage closet or area, if any, located on said balcony.

B. Such Limited Common Elements shall be appurtenant to those Units to which they attach and whose use is restricted to Units they are appurtenant.

C. Doorsteps or stoops, if any, providing access to a patio, balcony, terrace, or porch are assigned as a Limited Common Element to the Unit to which the patio, balcony, terrace, or porch serves.

D. The maintenance, repair, upkeep, and replacement of each patio, balcony, terrace, porch, storage area, and the doorsteps or stoops, if any, providing access thereto shall be the exclusive responsibility of the Unit Owner to which that patio, balcony, terrace, or porch and storage area attached to a Unit are appurtenant. The boundary lines of each such patio, balcony, terrace, porch, or storage area attached to a Unit shall be the interior vertical surfaces thereof and the exterior unpainted finished surface of the perimeter baluster or railing abutting the patio,

balcony, terrace, or porch and shall include the interior of the storage area, if any.

VI. COMMON ELEMENTS

6.01. Ownership. A schedule setting forth the percentage of the undivided interest of each Unit in and to the Common Elements is attached hereto as EXHIBIT F and by reference is made a part hereof. Such percentage of undivided interest of each Unit in the Common Elements is determined by dividing the total number of square feet of interior area of each Unit by the total number of square feet of interior area in all Units. Upon the incorporation of any one or more additional phases into the Condominium by incremental increase as elsewhere provided, the percentage of undivided interest of each Unit in the Common Elements shall be recalculated in accordance with the schedule set forth in EXHIBIT F. For purposes of percentage of ownership in the Common Elements, and the percentage of Common Expenses, and the percentage of Common Surplus, and voting on all matters requiring action by the Owners, the percentages as set out in EXHIBIT F shall govern. The ownership interest in the Common Elements shall be an undivided interest, and except as provided in the ACT and this Declaration, such interest shall remain undivided. Also, no Unit Owner shall bring any action for partition or division of the Common Elements. The ownership interest in the Common Elements shall not be conveyed, transferred, encumbered or otherwise affected separate from the ownership of the Unit, and any agreement to the contrary shall be void. Each Unit Owner and the holder of any mortgage or lien or other interest in any Unit, shall be deemed by the acceptance of a conveyance of, title to, or mortgage or lien on such Unit, to have agreed and consented, within the meaning of this Declaration and the ACT, to such change or changes in the Unit's respective interest in the

Common Elements and Common Surplus and each Unit's share of the Common Expenses as may result from the addition, if any, of further phases, and to have so agreed and consented to any amendment of amendments to this Declaration effectuating the same.

6.02. Use. Use of the Common Elements shall be as follows, to-wit:

- A. Each Unit Owner shall have the right to use the Common Elements, except any portions thereof designated as a Limited Common Element and restricted to the exclusive use of and as an appurtenance to a Unit and subject to any leases made by or assigned to the Board and the exclusive and semi-exclusive parking spaces and areas, in conjunction with the Owners of other Units as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the Condominium Property.
- B. The right to use the Common Elements shall be subject to and governed by the provisions of the ACT, Condominium Documents, and the Rules and Regulations of the Association.
- C. The Association shall have the authority to convey, lease, grant concessions, or grant easements with respect to parts of the Common Elements subject to the provisions of the Declaration and By-Laws.
- D. In the event the Commercial Unit or any portion of the property described in EXHIBIT A which is not included in and made a part of the Condominium is used for business or commercial purposes, the owner of the Commercial Unit or such excluded property, and his or its guests, invites, licensees, patrons and occupants, shall not use or enjoy any recreational facility of the Common Area.

6.03. Share of Common Expenses and Limited Common Expenses.

A. Each Unit (residential and commercial) and its respective owner shall be assessed and is individually liable for a proportionate share of the Common Expenses, and the proportionate share of the Common Expenses shall be the same ratio as the Unit Owner's percentage ownership in the Common Elements as the case may be.

B. Each Unit (residential and commercial) and its owner shall be also assessed and is individually liable for the Limited Common Expenses in connection with the patio, balcony, terrace, porch, storage area, doorsteps or stoops, if any, as set out in Paragraph 5.16 above. Payment of Common Expenses and Limited Common Expenses shall be in such amounts and at such times as determined in the By-Laws.

C. Assessments shall be collected by the Association on a monthly basis, and no Unit Owner shall be exempt from payment of such Unit Owner's proportionate share of the Common Expenses or Limited Common Expenses by waiver, non-use or non-enjoyment of the Common Elements or Limited Common Elements, or by abandonment of his Unit.

D. Common Expenses and Limited Common Expenses shall include, but shall not necessarily be limited to, all expenditures made or liabilities incurred by the Association, together with payments or obligations to reserve accounts.

6.04. Late payment of Assessments. Assessments for Common Expenses and Limited Common Expenses, and installments thereon, paid on or before fifteen (15) days after the date when due shall bear no interest or charges; however, all sums not paid on or before fifteen (15) days after the date when due shall bear such late charges, penalties, interest and other

costs and expenses, at a rate set by the Board, but not to exceed the maximum legal rate, together with all expenses, including reasonable attorney's fees incurred by the Association in any undertaking to collect such unpaid Assessments and expenses. All payments shall be first applied to such late charges, penalties, interests and other costs and expenses, including reasonable attorney's fees, and then to the Assessment payment due. The Association may, in the manner provided for and as set forth in the By-Laws, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws, and Rules and Regulations of the Association.

6.05. Liens for Assessments. The Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements and upon the goods, furniture and effects belonging to the Unit Owner and located in such Unit, which lien shall secure and does secure the moneys due for all Assessments now or hereafter levied or subject to being levied against the Unit and the Unit Owner, and such lien shall also secure all late charges, penalties and interest, if any, which may be charged or levied and become due on the amount of any delinquent Assessment owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fees, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant undivided interest in the Common Elements.

6.06. Priority of Lien. The Association shall have a lien for nonpayment of the Common Expenses and Limited Common Expenses as is provided by and set forth in the ACT, and such lien may be foreclosed by the Association or its assigns as in the case and in accordance with the law of past due mortgages. 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 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 or Limited 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; 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 Expenses Assessments and Limited 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. Any such delinquent Assessments which were extinguished pursuant to such

foreclosure may be reallocated and assessed to all of the Units, including the Unit foreclosed, as a Common Expense. Any such sale or transfer pursuant to foreclosure or other transfer shall not relieve the purchaser or transferee of a Unit from liability for any Assessments made thereafter or relieve the Unit from the lien therefor.

6.07. Disposition of Surplus. Each Unit shall include with it a proportionate share of Common Surplus or Limited Common Surplus, as the case may be, and the proportionate share of Common Surplus or Limited 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 or the Limited Common Elements, as the case may be, at the sole discretion of the Association.

VII. THE ASSOCIATION

7.01. Powers and Duties. The operation and administration of the Condominium shall be by the Association of the Unit Owners, pursuant to the provisions of the ACT. The Association shall be a not for profit Alabama corporation incorporated by Articles of Incorporation recorded in the Office of the Judge of Probate of Baldwin County, Alabama. The Association shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or non-exercise of its powers. The Association shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of Unit Owners of the Condominium with reference to the Common Elements or the Limited Common Elements, the roof and structural components of a Building as Distinguished from mechanical

elements serving only a Unit, and with reference to any and all other matters in which all the Unit Owners have a common interest. The Association shall have all the powers and duties set forth in the ACT, as well as all the powers and duties granted to or imposed upon it under the By-Laws and other Condominium Documents as they may be amended from time to time. The Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other person or persons. The Association shall have a reasonable right of entry upon any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance, operation and safety of the Condominium. The Association shall further have the right to grant permits, licenses, and easements over the common areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium Property. The Association, by and through its Board, shall have the authority and duty to levy and enforce the collection of general and specific Assessments for Common Expenses and Limited Common Expenses and is further authorized to provide adequate remedies for failure to pay such Assessments.

7.02. Name. The name of the Association shall be Royal Palms Condominium Owners Association, Inc., An Alabama Not For Profit Corporation.

7.03. Members. Each Unit Owner shall be a Member of the Association as long as he is a Unit Owner, and a Unit Owner's membership shall immediately terminate when he ceases to be a Unit Owner. The membership of a Unit Owner cannot be assigned or transferred in any manner, except as an appurtenance to his Unit.

7.04. Voting Rights. Each Unit shall be entitled to 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. The vote for a Unit shall be cast by the Owner thereof or his proxy in the manner set forth herein and in the By-Laws. If the Association is a Unit Owner, the Association shall not have the voting right for that Unit.

7.05. Designation of Voting Representative. In the event a Unit is owned by one (1) person, his right to vote shall be established by the record title to his Unit. If a Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record Owners of the Unit and filed with the Secretary of the Association. If a Unit is owned by a corporation, partnership or limited partnership, the officer, employee or individual entitled to cast the vote for the Unit shall be designated by a certificate of appointment signed by the president or vice president and attested by the secretary of the Association. If such a certificate is not on file with the Secretary of the Association for a Unit owned by more than one (1) person or by a corporation, partnership or limited partnership, the membership or vote of the Unit concerned may be cast in accordance with the ACT. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned is effected. A certificate designating the person entitled to cast the vote of a Unit may be revoked by any Owner thereof.

7.06. Restraint Upon Assignment of Shares in Assets. The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, mortgaged, conveyed or otherwise transferred in any manner, except as an appurtenance to his Unit.

7.07. Board of Directors. The affairs of the Association shall be conducted by a

By-Laws of the Association. The initial By-Laws of the Association are attached hereto as EXHIBIT D and shall control until properly amended.

7.11. Proviso. In accordance with the ACT and subject to the provisions herein, until the earliest of either, (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Developer; or (ii) two (2) years after the Developer, its successors or assigns have ceased to offer units for sale in the ordinary course of business; or (iii) two (2) years after any Development Right to add new units was last exercised, the By-Laws and rules adopted by the Developer shall govern and the Developer shall have the exclusive right to appoint, remove, and designate the officers and members of the Board of Directors, and the Unit Owners, the Association, and the use of the Condominium Property by Unit Occupants shall not interfere with the completion of the contemplated improvements and the sale of the Units. The Developer may voluntarily surrender the right to appoint and remove officers and members of the Board; however, in that event, the Developer may require for the duration of the period of Developer control, certain specified actions of the Association or Board as described in a recorded instrument executed by the Developer, be approved by the Developer before they become effective; however, not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Owners other than the Developer, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than the Developer, and not later than ninety (90) days after conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than the Developer, not less than thirty three and one-third percent (33 1/3%) of the

Board of Directors which shall consist of such number not less than three (3) nor more than seven (7) members who shall, from time to time, be determined and fixed by a vote of a majority of the voting rights present at any annual meeting of the Members.

7.08. Indemnification. Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including reasonable attorney's fees, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such director or officer may be made a party or otherwise become involved, by reason of such director or officer having been or served as a director or officer of the Association, notwithstanding whether such director or officer is or was a director or officer at the time such expenses were incurred; however, in any case where a director or officer is adjudged guilty of willful malfeasance, misfeasance, or other wrong doing in the performance of his or her duties, such indemnification herein shall not apply unless the Board of Directors approves such indemnification as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to any and all other rights to which a director or officer may be entitled at law or equity or otherwise.

7.09. Limitation of Liability. Notwithstanding the liability of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage caused by a latent condition of the Condominium Property to be maintained and repaired by the Association nor for any injury or damage caused by Act of God, inclement weather, the elements, or other Owners or persons.

7.10. By-Laws. The Association and all of its Members shall be governed by the

members of the Board must be elected by Unit Owners other than the Developer. Except as provided and set forth in the Act, not later than the termination of any period of Developer control, the Unit Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Unit Owners other than the Developer.

7.12. Unsold Units. The Developer may make such use of the unsold Units and of the common areas and facilities as may facilitate such completion and sale, including, but not limited to, showing of the Condominium Property and the display of signs. The Developer may also maintain sales offices, and models in any Unit of the Condominium or on Common Elements in the Condominium without restriction as to the number, size, or location of said sales offices, management offices, leasing and operations offices, and models from one Unit location to another or from one area of the Common Elements in the Condominium. The Developer may maintain signs on the Common Elements advertising the Condominium. The rights of the Developer as reserved and provided for in this paragraph shall cease and terminate ten (10) years from the date of the recording hereof in the Office of the Judge of Probate of Baldwin County, Alabama.

7.13. Contracts. Any management contract, employment contract, or lease of recreational or parking areas or facilities and any other contract or lease between the Association and the Developer which is entered into before the Board elected by the Unit Owners pursuant to the ACT takes office, may be terminated without penalty and upon not less than ninety (90) days notice to the other party by the Association at any time after the Board elected by the Unit Owners pursuant to the Act takes office.

7.14. Availability of Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the ACT. The Association shall make such records reasonably available in the county where the Condominium is located for examination by Unit Owners, prospective purchasers, first mortgagees of any Unit, or their authorized agents, including, but not limited to, current copies of the Declaration, By-Laws, Rules and Regulations and other books, records, financial statements and the most recent annual financial statement of the Association. Reasonably available shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

7.15. Reserves for Replacements. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and Limited Common Elements. The fund shall be maintained out of regular Assessments for Common Expenses and Limited Common Expenses.

VIII. MAINTENANCE

8.01 Maintenance by the Association. The Association is responsible for the continued maintenance, repair, and replacement of the Common Elements.

8.02. Maintenance by Unit Owner. Each Unit Owner is responsible for the Maintenance, repair, and replacement of his Unit. Each Unit Owner is also responsible for the maintenance, repair, and replacement of the Limited Common Elements, if any, attached to his unit as provided in Paragraph 5.16 above.

8.03. Addition, Alteration and Improvement of the Common Elements. Except as may be prohibited by the ACT, and except as to the Development Rights and Special Declarant Rights

provided for in this Declaration, after the completion of the improvements included in the Common Elements or Limited Common Elements which are contemplated by this Declaration, there shall be no addition, alteration, or change, without prior approval of the Association.

8.04. Unit Owner's Covenants. Each Unit Owner (residential and commercial) covenants and agrees as follows, to-wit:

- A. To perform all maintenance, repairs, and replacements which are the Unit Owner's obligations under this Declaration and the ACT.
- B. To pay for all the Unit Owner's utilities, including electricity, gas, and telephone used within the Unit and all taxes levied against the Unit Owner's Unit.
- C. Not to make, or cause to be made, any repairs, to any plumbing, heating, ventilation or air conditioning systems located outside the Unit Owner's Unit but required to be maintained by the Unit owner pursuant to the provisions hereof, except by licensed plumbers or electricians authorized to do such work by the Association or its agent.
- D. Not to make any addition or alteration to a Unit or to the Common Elements or to the Limited Common Elements or to do any act that would damage or otherwise impair the structural soundness or safety of any part of the Condominium Property. Structural alterations within a Unit may be made only with the written consent of the Association.
- E. To make no alterations, additions, improvements, repairs, replacements, or change to the Common Elements or the Limited Common Elements or to any outside or exterior portion of any Building, specifically including, but not limited to, screening or enclosing balconies, installing garage or other exterior doors, or affixing shutters to windows, without the

prior written consent of the Association. If consent is granted, the Unit Owner shall use only a licensed contractor who shall comply with the Rules and Regulations with respect to the work which may be adopted by the Association. The Unit Owner shall be liable for all damages to another Unit and to the Common Elements or Limited Common Elements caused by any contractor employed by such Unit or by the subcontractor or employees or such contractor, notwithstanding whether said damages are caused by negligence, accident, or otherwise.

F. To allow the Association, its delegates, agents, or employees at all reasonable times to enter into any Unit or Limited Common Element for the purpose of maintaining, inspecting, repairing, or replacing the Common Elements or Limited Common Elements or for repairing, maintaining or replacing any plumbing, heating, ventilation or air conditioning system located within such Unit, but serving other parts of the Condominium Property, or to determine, in case of emergency or safety of the Condominium, the circumstances threatening other Units or Common Elements or Limited Common Elements and to correct the same; or to determine compliance with the provisions of the Condominium Documents.

G. To promptly report to the Association any defects or needed repairs for which the Association is responsible.

H. To reimburse the Association for any repairs or replacements which are made necessary because of abuse or negligent use by a Unit Owner of the Condominium Property, and the cost of such repair or replacement may be assessed against such Unit Owner.

I. To comply with all of the obligations of a Unit Owner under the ACT.

8.05. Contracts for Maintenance. The Association may enter into a contract with any

firm, Person or corporation, or may join with other entities in contracting for the maintenance and repair of the Condominium Property, and may delegate to such agent all or any portion of the powers and duties of the Association, except such as are specifically required by the Condominium Documents to have the approval of the Members of the Association. This paragraph shall be subject to the provisions of Paragraph 7.13 above.

8.06. Exterior Surface. The Developer shall determine the initial exterior color scheme of the Condominium Property, and thereafter, the Association shall determine such color scheme and shall be responsible for the maintenance thereof. No Unit Owner shall paint any exterior surface or make any changes thereto without the approval of the Association.

IX. INSURANCE

9.01. Purchase of Insurance. Commencing not later than the time of the first conveyance of a Unit to a person other than the Developer, the Association shall maintain insurance upon the Condominium Property to the extent reasonably available as provided for in the ACT and as set forth herein and in the Condominium Documents.

9.02. Location of Policies. The Association shall retain the original of all insurance policies in a place of safe keeping such as a safe or a safety deposit box.

9.03. Copies to Mortgagees. One copy of each insurance policy and all endorsements thereto shall be furnished by the Association to any first mortgagee requesting a copy.

9.04. Authorization to do Business. All policies of insurance must be issued by companies specifically authorized by the laws of the state of Alabama to transact such business.

9.05. Coverage. The Association must obtain, maintain, and pay the premiums upon,

as a Common Expense, the property insurance required by the ACT and as set forth herein. The type of policy shall be a "master" or "blanket" type policy of property insurance covering all of the Common Elements, except land, foundation, excavation, and other items usually excluded from coverage, including fixtures, to the extent they are part of the Common Elements of the Condominium Property, building service equipment and supplies, and other personal property belonging to the Association. All references herein to a "master" or "blanket" type of policy of property insurance are intended to denote single entity Condominium insurance coverage. In addition, any fixtures, equipment, or other property within the Units which are to be financed by a first Mortgagee (regardless of whether such Property is a part of the Common Elements) must be covered by such "master" or "blanket" policy, if required by said first Mortgagee. The policy shall be in an amount deemed appropriate by the Association, but not less than the greater of eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased or such greater percentage of such actual cash value as may be necessary to prevent the applicability of any coinsurance provision at any renewal date, exclusive of land, excavation, foundation, and other items normally excluded from property policies. The policy shall include an "Agreed Amount Endorsement" or its equivalent and, if available, an "Inflation Guard Endorsement." If an applicable construction code provision exists which requires changes to undamaged portions of the Condominium Property regardless if only part of the project is damaged or destroyed by an insured hazard, such policies shall include construction code endorsements. The property insurance policy shall provide, as a minimum coverage and protection against the following, to-wit:

A. Property and Casualty.

(1) Loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement; and,

(2) All other perils which are customarily covered with respect to other condominiums in the area similar in construction and to meet the requirements of the ACT.

B. Liability Insurance. The Association must, as required by the Act, obtain, maintain, and pay the premiums therefor, as a Common Expense, a comprehensive general liability insurance policy, including medical payments insurance, covering all the Common Elements, commercial space owned and leased by the Association, if any, and public ways of the Condominium. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects in the area similar in construction, location, and use; however, such coverage shall be, if reasonably available, for at least one million dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, if reasonably available, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of legal actions or proceedings related to employment contracts of the Association. The policy shall also include, if reasonably available, coverage for protection against water damage liability, and if applicable and necessary, elevator collision and garage keepers liability. If required by any first mortgage holder, and if reasonably available, the policy shall include protection against such other risks as are customarily covered with respect to other

Condominiums in the area similar in construction, location and use, including, but not limited to, host liquor liability, employers liability insurance, contractual and all written contract insurance and comprehensive automobile liability insurance.

C. Flood Insurance. If any part of the Condominium Property shall be deemed to be in a special flood hazard area, as defined by the Federal Emergency Management Agency or other governmental agency, the Association shall, if reasonably available, obtain, maintain, and pay the premiums therefor, as a Common Expense, a "master" or "blanket" type of flood insurance policy. The policy shall cover the Common Elements falling within the designated flood area, and shall be in a form which meets the criteria set forth in the most current guidelines issued on the subject by the Federal Government. The insurance shall be in an amount deemed appropriate by the Association, but shall not be less than an amount equal to the lesser of the following, to-wit:

(1) Eighty percent (80%) of the actual cash value of the insured property located within the flood hazard area; or,

(2) The maximum coverage available for the Property under the National Flood Insurance Program.

D. Personnel Coverage. Should the Association employ personnel, all coverages required by law, including workman's compensation, shall be obtained and shall meet all of the requirements of the law.

E. Fidelity Bonds. The Association, if reasonably available, shall obtain, maintain and pay the premiums therefor, as a Common Expense, a fidelity bond to protect

against loss of money by dishonest acts of all officers, directors and employees of the Association and all other persons handling, or responsible for, funds of the Association or funds administered by the Association. Where a management agent has the responsibility of handling or administering funds of the Association, the management agent at its own expense shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for the funds of, or administered on behalf of, the Association. The fidelity bond shall name the Association as the obligee or insured and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond; however, in no event may the aggregate amount of such bonds be less than one hundred fifty percent (150%) of the estimated annual Common Expenses. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The premiums on all bonds required herein to be maintained by the management agent shall be paid by the management agent. The bond shall require any first mortgagee to receive notice of cancellation or modification of the bond.

F. Other Insurance. The Association shall obtain other insurance required by the ACT and shall have authority to obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable. The premiums for such insurance shall be a Common Expense. If the insurance described above which is required to be maintained is not reasonably available, the Association promptly shall

give notice of that fact to be hand delivered or sent prepaid by U.S. Mail to all Unit Owners.

9.06. Individual Insurance. Nothing contained herein shall be construed to prevent a Unit Owner from obtaining insurance for his own benefit.

9.07. Provisions. Insurance coverage, if reasonably available, must comply with the requirements of the ACT and this Declaration and such coverage shall also comply in substance and effect as follows, to-wit:

- A. Provide that the policy shall be primary, even if the Unit Owner has other insurance which covers the same loss, and further provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of, any other insurance obtained by or for any Unit Owner.
- B. Contain no provision relieving the insurer from liability for a loss occurring because the hazard to the building is increased, regardless of whether it is within the knowledge or control of the Association, or because of any breach of warranty or condition or any other act or neglect by the Association or any Unit Owner or any other persons under either of them.
- C. Provide that such policy may not be canceled or substantially modified and the insurer may not refuse to renew said policy, notwithstanding whether requested by the Association, except by the insurer giving at least thirty (30) days prior written notice thereof to the Association, and the Unit Owner, and each holder of a first mortgage on an individual Unit, and every other person in interest who shall have requested such notice of the insurer.

D. Contain a waiver by the insurer of any right of subrogation to any right of the Association, or against either the Owner or lessee of any Unit.

E. Contain a standard Mortgagee clause which shall:

(1) Provide that any reference to a Mortgagee in such policy shall mean and include all holders of mortgages of any Unit, whether or not named herein; and

(2) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Association or Unit Owners or any persons under any of them; and

(3) Waive any provisions invalidating such mortgage clause by reason of the failure of the Mortgagee to notify the insurer of any hazardous use or conveyance, or any requirement that the Mortgagee pay any premium thereon, and any contribution clause.

9.08 Liabilities and Responsibilities of Unit Owner. A Unit Owner shall be liable for any claim, damage, or judgment entered as a result of the use or operation of the Unit Owner's Unit caused by the conduct of the Unit Owner or his guests, invitees or licensees. Each Unit Owner shall be responsible for obtaining insurance for the Unit Owner's own benefit.

9.09 Insurance Premiums. Insurance premiums maintained by the Association shall be paid by the Association as a Common Expense. If the Association fails to pay such insurance premiums when due, or if the Association fails to comply with other insurance requirements of a Mortgagee, the Mortgagee shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance. To the extent of any money so advanced, the Mortgagee shall be subrogated to the Assessment and the lien rights of

the Association as against the individual Unit Owners for the payment of all Common Expenses.

9.10. Insurance Trustee. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their Mortgagees as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Association, as Insurance Trustee for each of the Unit Owners in the percentages as established by the Declaration, which said Association, for the purpose of these provisions, is herein referred to as the Insurance Trustee. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purpose elsewhere stated herein and for the benefit of the Unit Owners and their Mortgagees. The Insurance Trustee shall the power to adjust all claims arising under insurance policies purchased by the Association; to bring suit thereon in its name and/or in the name of other insured; to deliver releases on payment of claims; to compromise and settle such claims; and to otherwise exercise all the rights, powers and privileges of the Association, each Unit Owner, and any other holder of an insured interest in the Condominium Property under such insurance policies; however, the actions of the Insurance Trustee shall be subject to the approval of any first Mortgagee if the claim shall involve more than one Unit, and if only one Unit is involved, such actions shall be subject to approval of any first Mortgagee holding a mortgage and encumbering such Unit.

9.11. Share of Proceeds. The Association as Insurance Trustee shall receive such insurance proceeds as are paid to it and shall hold the same in trust for the purposes stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares, to-wit:

A. Common Elements. An undivided share of the proceeds for damage to

Common Elements shall be held for each Unit Owner, with such Unit Owner's portion of the total proceeds being the same percentage as the Unit Owner's share of the Common Elements appurtenant to his Unit.

B. Units and Limited Common Elements. Except as provided elsewhere in this Declaration, the following shall apply, to-wit:

(1) When the Condominium Property is to be restored, the proceeds shall be held for the Unit Owners of damaged Units and damaged Limited Common Elements, with the share of each Unit Owner in the total proceeds being in the amount of the proportion that the cost of repairing the damage suffered by such Unit Owner bears to the total cost of repair, which cost shall be determined by the Board; and,

(2) When the Condominium Property is not to be restored, the proceeds shall be held for the Unit Owners in the undivided shares that are the same as their respective ownership interest in the Common Elements.

C. Mortgagees. In the event a Mortgagee endorsement has been issued with respect to a Unit, the share of the Owner of that Unit shall be held in trust for the Mortgagee and the Unit Owner as their interest may appear; however, no Mortgagee shall have any right to determine or participate in the determination of whether any damaged property shall be reconstructed or repaired except as may be specifically provided to the contrary herein.

9.12. Distribution of Proceeds. Proceeds of insurance policies received by the Association as Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners as follows, to-wit:

A. Reconstruction or Repair. If when such proceeds are paid, the damage is to be repaired or reconstructed, such proceeds shall first be paid to reduce the cost thereof, and any proceeds remaining thereafter shall be distributed to the beneficial Owners, and made payable to the Unit Owners and their respective Mortgagee jointly. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by and such Mortgagee.

B. Failure to Repair. If it is determined the damage for which the proceeds are paid shall not be reconstructed or repaired, such proceeds shall be distributed to the beneficial Owners and made payable to the Unit Owners and their Mortgagee jointly. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by any such Mortgagee.

X. RECONSTRUCTION OR REPAIR AFTER CASUALTY

10.01. Determination to Reconstruct or Repair. If any portion of the Condominium Property required to be insured under this Declaration is damaged or destroyed, such property must be repaired or replaced promptly by the Association, and the cost of such repair or replacement of a Common Element in excess of insurance proceeds in reserves shall be a Common Expense as provided in this Declaration, unless the following applies, to-wit:

- A. The Condominium is terminated in accordance with the ACT; or
- B. Repair or replacement would be illegal under any state or local statute or ordinance covering health or safety; or
- C. Eighty percent (80%) of the Unit Owners, including every owner of a Unit or assigned Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of a Common Element in excess of insurance proceeds in reserves is a

Common Expense as provided in this Declaration.

10.02. Plans. Any reconstruction or repair must be substantially in accordance with the ACT and in accordance with the plans for the original improvements or as the Condominium Property was last constructed; or if not, then according to Plans approved by the Board of Directors of the Association and by one hundred percent (100%) of the Unit Owners.

10.03. Responsibility. If the damage is only to those parts of a Unit or Limited Common Elements for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

10.04. Estimate of Cost. Immediately after a casualty causing damage to the Condominium Property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimated of the cost to rebuild or repair.

10.05. Assessments. If the proceeds of insurance are not sufficient to reduce the estimated costs of reconstruction and repair of the Unit and Limited Common Elements by the Association, Assessments shall be made against the Unit Owners who own the damaged property or have the exclusive right to use the Limited Common Element attached to his Unit, and against all Unit Owners in the case of damage to common areas and facilities, in sufficient amounts to provide funds to pay the estimated costs. If any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the Unit Owners who own the damaged Unit and

have exclusive right to use the Limited Common Elements attached to his Unit, and against all Unit Owners in the case of damage to common areas and facilities in sufficient amounts to provide funds for the payment of such costs. Such Assessments against Unit Owners for reconstruction and/or repair of damage to Units and Limited Common Elements shall be in proportion to the cost of reconstruction and repair of their respective Units or Limited Common Elements. Such Assessments for reconstruction and/or repair of damage to common areas and facilities shall be in proportion to the Unit Owner's share in the Common Elements.

Assessments for reconstruction and repair may be collected, and the collection enforced in the same manner as provided for Assessments elsewhere herein.

10.06. Construction Funds. All funds for payment of costs of reconstruction and repair after casualty for which the Association is responsible, which shall consist of proceeds of insurance held by the Association as Insurance Trustee and collected and held by the Association from Assessment against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the following manner and order, to-wit:

A. Disbursement. The construction fund shall be disbursed as payment of such costs upon the order and in the manner provided by the Board of the Association.

B. Unit Owner. If a balance of said insurance proceeds remains after the payment of the cost of reconstruction and repair which are the responsibility of the Association, such remaining balance shall be distributed to the Unit Owners of damaged Units or damaged Limited Common Elements who are responsible for the reconstruction and repair of the damaged

portions of their Units or Limited Common Elements. The distribution to each Unit Owner shall be made in the proportion that the estimated cost or reconstruction and repair of such damage to his Unit or Limited Common Element bears to the total of such estimated costs in all damaged Units and Limited Common Elements; however, no Unit Owner shall be paid an amount in excess of such estimated cost for his unit or Limited Common Element. If there is a first Mortgagee, the distribution shall be paid to the Unit Owner and to the first Mortgagee jointly.

C. Surplus. A presumption shall be made that the first money distributed in payment of costs of reconstruction and repair shall be from insurance proceeds. If a balance in a construction fund remains after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund.

XI. EMINENT DOMAIN

11.01. Proceeds. The taking of a portion of a Unit or of the Common Elements by eminent domain shall be deemed to be a casualty and the determination as to whether the Condominium will be reconstructed or repaired or continued after such condemnation will be determined in the manner provided for in the ACT and under reconstruction or repair after casualty and the awards for such taking shall be deemed proceeds from insurance on account of the casualty and shall be deposited with the Association as Insurance Trustee notwithstanding whether the awards may be payable to a Unit Owner, the Unit Owner shall deposit the awards with the Association as Insurance Trustee, and in the event of failure to do so, in the discretion of the Board of Directors of the Association, an Assessment shall be made against a defaulting Unit

Owner in the amount of his award, or the amount of such award shall be set off against the sums hereafter made payable to such Unit Owner.

11.02. Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the condemnation awards will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in this Declaration for the distribution of insurance proceeds if the Condominium is terminated after damage to the Common Elements. If the Condominium is not terminated after condemnation, the size of the Condominium Property will be reduced and the property damaged by the taking will be made usable in the manner provided by the ACT and as provided below. The proceeds of such awards shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Association after damage to the Common Elements.

11.03. Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the award for the taking of 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, to-wit:

A. Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, and the Unit Owner does not within a reasonable period of time provide the additional funds required for restoration, such additional funds may, in the discretion of the Board of Directors, be extended for restoration by the Association and be assessed against the Unit Owner as an Assessment.

B. Distribution of Surplus. The balance of the award, if any, shall be

distributed to the Owner of the Unit and to any first Mortgagee of a Unit, the remittance being made payable jointly to the Unit Owner and any such first Mortgagee.

C. Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in Common Elements, the Common Expenses and the Common Surplus appertaining to the Unit shall be reduced in accordance with the ACT.

11.04. Unit Made Uninhabitable. If the taking is of the entire unit, or so reduces the size of the Unit that it cannot be used practically or lawfully for any purpose permitted by the Declaration, 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, to-wit:

A. Payment of Award. The award shall first be paid to any first Mortgagee in an amount sufficient to pay off its mortgage on such Unit, and then jointly to the Unit Owner and other Mortgagees of the Unit in an amount not to exceed the market value of the Condominium parcel immediately prior to the taking as diminished by any sums from the award previously reserved for any first Mortgagee, and then the balance, if any, to the repairing and replacing of the Common Elements damaged by the taking.

B. Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in condition for use by all of the Unit Owners in the manner approved by the Board of Directors; provided, however, that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner elsewhere required in this Declaration for further improvement

of the Common Elements.

C. Adjustment of Shares in Common Elements, Common Expenses, and Common Surplus. The shares in the Common Elements, the Common Expenses, and the Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the other shares among the reduced number of Unit Owners. This adjustment shall be done by restating said share of the continuing Unit Owners as percentages aggregating one hundred percent (100%) so that the shares appurtenant to the Units of the continuing Owners shall be in the same proportions to each other as before the adjustment.

D. Assessments. If the balance of the award, after payments to the Unit Owner and such Owners' Mortgagees as above provided, for the taking is not sufficient to finance the alteration of the remaining portion of the Unit for use as part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. Such Assessments shall be made in proportion to the shares of those Unit Owners in the Common Elements after the changes effected by the taking.

11.05. Taking of Common Elements. Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board of Directors; provided, however, that if the cost of the work shall exceed the balance of the awards for the taking, the work shall be approved in the manner required elsewhere in this Declaration for further improvement of the Common Elements. The balance of the funds from the awards for the taking of the Common Elements, if any, shall be distributed to

the Unit Owners in the shares in which they own the Common Elements, after adjustment of these shares on account of the condemnation, except that if a Condominium parcel is encumbered by a first mortgage, the distribution shall be paid jointly to the Owner and the first Mortgagee of the Condominium parcel.

11.06. Conflict with Act. If there is any conflict with the provisions of this article and the ACT, the provisions of the ACT shall control.

XII. USE RESTRICTIONS

12.01. Uses.

A. Each Condominium Residential Unit shall be occupied and used by a single family and their guests only as a residence and for the furnishing of services and facilities herein provided for the enjoyment of such residence; however, the foregoing restrictions shall not be construed in such manner as to prohibit a Unit Owner from the following, to-wit:

- (1) Maintaining his personal professional libraries;
- (2) Keeping his personal business or professional records or accounts;
- (3) Handling his personal business or professional telephone calls or correspondence.

Such uses are declared expressly customarily incidental to the principal residential use and not in violation of said restrictions.

B. The Condominium Commercial Unit may be occupied as a business or commercial establishment or residence by the record holder's agents, servants, invitees,

licensees, and patrons. The use of the Condominium Commercial Unit shall at all times comply with the various ordinances and zoning regulations promulgated by the governmental authority having proper jurisdiction and the various rules and regulations promulgated by the Board of Directors of the Association. As long as the Condominium Commercial Unit shall be used for business or commercial purposes, the Unit Owner of the Condominium Commercial Unit and his (its) guests, invitees, and patrons and occupants, shall not use or enjoy any recreational facility of the Common Area. This paragraph shall not prohibit a Condominium Commercial Unit Owner from leasing his Unit; provided however, the Unit Owner complies with this Declaration, and the restrictions contained in this Declaration pertaining to the Condominium Commercial Unit shall not in any way prohibit the owner of the Condominium Commercial Unit from using the Unit as a Residential Unit and for residential purposes in the same manner as Condominium Residential Unit Owners.

12.02. Miscellaneous Restrictions.

A. Nothing shall be stored in or upon the Common Elements or Limited Common Elements without prior consent of the Board except in storage closets or areas or as otherwise herein expressly provided.

B. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the property without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or on the Common Elements which will result in the cancellation of insurance of any Unit or any part of the Common Elements or which will be in violation of any law.

- C. No waste shall be committed in or on the Common Elements.
- D. Each Unit Owner shall provide and maintain garbage and trash receptacles as may be directed by the Board, and all garbage and trash shall be kept in said receptacles.
- E. No Unit Owner or occupant shall disturb or annoy other occupants of the Condominium Property nor shall any occupant or Unit Owner commit or permit any nuisance, noxious, offensive, immoral or illegal act in his Unit or on the Condominium Property.
- F. Subject to Development Rights under this Declaration, no sign of any kind shall be displayed to the public view on or from any Unit or the Common Elements without prior written consent of the Managing Agent acting in accordance with the Board's direction; provided, however, the Owner of the Condominium Commercial Unit may display a sign adjacent of his Unit so long as said sign complies with reasonable rules and regulations imposed by the Association and complies with all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof.
- G. Except as expressly provided hereinabove, nothing shall be altered or constructed in or removed from the Common Elements, without the written consent of the Board.
- H. No mobile home, camper, trailer, tent, shack, garage, barn, or other outbuildings, or any other structure of a temporary nature shall be permitted on any portion of the Condominium Property without the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the Buildings or Common Elements, or any portion thereof.
- I. Outdoor drying of clothes, bedding, or similar items is not permitted.

J. Parking of vehicles in driveways and parking areas shall be subject to the rules and regulations of the Board applicable thereto.

K. Except within individual Units, no planting, transplanting, or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the Condominium Property, except as approved by the Board.

L. Motorcycles, motor bikes, motor scooter, or other similar vehicles shall not be operated on or within the property except for the purposes of transportation, it being intended that said vehicles shall not be operated within the property so as to annoy or disturb persons or endanger persons or property.

M. All parts of the property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist.

N. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the Condominium Property concerned.

O. Neither the Board nor the Association shall take or permit to be taken any action that unlawfully discriminates against one or more Unit Owners.

12.03. Pets. No animals or pets of any kind shall be kept in any Unit or property of the Condominium, except those of the Unit Owner, without the written consent of and subject to the rules and regulations adopted for keeping such pets by the Board of Directors of the Association,

and such consent may be terminated without cause at any time by the Board of Directors of the Association. No Animals or pets shall be kept for commercial purposes or be allowed to create or cause any disturbance or nuisance of any kind, and if any animal or pet does cause or create a nuisance or an unreasonable disturbance, said animal or pet shall be permanently removed from the property within three (3) days from the day the owner receives the written notice from the Board of Directors of the Association. The Owner of any pet or animal shall be liable for any nuisance and any and all damage caused by such animal or pet to any part of the Condominium Property or to any other property operated by the Association.

12.04. Employees. No employee, customer, or patron of a Unit Owner shall be allowed to use any of the facilities which are Common Elements of the Condominium Property or any of the property owned or operated by the Association.

12.05. Use of Common Elements. The Common Elements shall be used in accordance with this Declaration and only by the Unit Owners and their tenants, family members, invitees, and licensees for access, ingress to, and egress from the respective Units and for such other purposes incidental to the use of the Units; however, other areas designated for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession, or easement, currently existing or entered into by the Board at some future time, affecting any part or all of said Common Elements.

12.06. Unrestricted Right of Transfer. The right of a Unit Owner to sell, transfer, or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

12.07. Leases. Entire Units may be leased by the Unit Owners; provided, however, that such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Units, including a minimum or maximum rental period, and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including eviction. No lease shall be to more than one family and no individual rooms may be rented without Board approval. Anything contained herein to the contrary notwithstanding, the Developer, and its assigns, retain the right to maintain sales offices, management offices, leasing and operations offices and models on the Condominium Property pursuant to the terms, conditions, provisions and rights set forth herein.

12.08. Regulations. Reasonable rules and regulations concerning the use of the Condominium Property may be made by the Developer and amended from time to time by the Board of Directors of the Association; provided, however, that all such amendments shall be approved by not less than a majority of the votes of the Association before such amendment shall become effective. Members not present at meetings considering such regulations or amendments may express their approval or disapproval in writing. Copies of such regulations, rules, and amendments shall be furnished by the Association to all Unit Owners and residents of the Condominium upon request.

12.09. No Restrictions on Mortgaging Units. Nothing contained in any of the Condominium Documents shall be construed to place any restrictions on the right of a Unit Owner to mortgage his Unit.

12.10. No Time Share. No Time Share or other similar form of ownership will be permitted.

XIII. AMENDMENT

13.01. This Declaration and the Articles of Incorporations and By-Laws of the Association may be amended in accordance with the ACT; however, no amendment may be adopted that would eliminate, modify, prejudice or otherwise adversely affect any right, benefit, privilege, or priority granted to the Developer without the consent of the Developer, and no amendment may be adopted that is in conflict with this Declaration, the Articles, or the ACT.

XIV. PURCHASE OF CONDOMINIUM UNIT BY ASSOCIATION

14.01. Decision. The decision of the Association to purchase a Condominium Unit shall be made by the Board of Directors without the approval of the Members, except as provided in this Article.

14.02. Limitation. If at any time the Association is already the Owner of or has agreed to purchase one or more Condominium Units, the Association may not purchase any additional Condominium Units without the prior written approval of Members holding seventy-five (75%) percent of the votes of those Members eligible to vote thereon, except as provided in this Article. A Member whose Condominium Unit is the subject matter of the proposed purchase shall be ineligible to vote thereon. Notwithstanding the foregoing, however, the foregoing limitations shall not apply to a Condominium Unit either to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent Assessments, Special Assessments, or both where the bid of the Association does not exceed the amount owed to the Association, or to be

acquired by the Association in lieu of foreclosure of such lien, if the consideration therefor does not exceed the cancellation of such lien. In any event, the Board or its designee, acting on behalf of the Association; may only purchase a Condominium Unit in accordance with this Article, or as the result of a sale pursuant to the foreclosure of the following, to-wit:

- (1) A lien on the Condominium Unit for unpaid taxes; or
- (2) A lien of a mortgage; or
- (3) The lien for unpaid Assessments; or
- (4) Any other judgment or lien attaching to such Condominium Unit by operation of law.

XV. NOTICE OF LIEN OR UNIT

15.01. Notice of Lien. A Unit Owner shall give notice in writing to the Secretary of the Association of every lien on his Condominium Unit, other than liens for mortgages and special Assessments, within five (5) days after he has knowledge of the attaching of the lien.

15.02. Notice of Suit. A Unit Owner shall give notice in writing to the Secretary of the Association of every suit or other proceeding that may affect the title to his Condominium Unit within five (5) after the Unit Owner obtains knowledge thereof.

15.03. Failure to Comply. Failure to Comply with this section will not affect the validity of any judicial proceeding.

XVI. RULES AND REGULATIONS

16.01. Compliance. Each Unit Owner and the Association shall be governed by and shall comply with the terms of the Condominium Documents and the rules and regulations

applicable to the Condominium Property. Ownership of a Unit subjects the Unit Owner to compliance with provisions of the Declaration, the Articles, the By-Laws, the Rules and Regulations of the Association, and any contracts to which the Association is a party, as well as to any amendments to any of the foregoing. Failure of the Unit Owner to comply therewith shall entitle the Association or other Unit Owners to an action for damages or injunctive relief, or both, in addition to other remedies provided in the Condominium Documents and the Act.

16.02. Enforcement. The Association, through the Board of Directors, is hereby empowered to enforce the Condominium Documents and all rules and regulations of the Association by such means as are provided by the Act, including the imposition of reasonable fines, after reasonable notice and opportunity to be heard, from time to time as set forth in the By-Laws. In the event a Unit Owner fails to maintain his Unit in the manner required in the Condominium Documents and any rules and regulations of the Association, the Association, through the Board of Directors, shall have the right to assess the Unit Owner and the Unit for the sums necessary to do the work required to effect compliance and to collect, and enforce the collection of, any regular or special Assessment therefor as provided in this Declaration. In addition, the Association shall have the right, for itself and its employees and agents, to enter such Owner's Unit and perform the necessary work to effect compliance.

16.03. Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or by that of any member of his family, his lessees, or his or their guests, invitees, employees, or agents, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

Such liability shall include any increase in fire and casualty insurance rates occasioned by the use, misuse, occupancy or abandonment of a Unit, or the Common Elements. The liability for such increases in insurance rates shall equal five (5) times the first resulting increase in the annual premium rate for such insurance.

16.04. No waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction, or other provision of the Act, the Condominium Documents, or any rules and regulations adopted pursuant thereto shall not be deemed or constitute a waiver of the right to do so.

XVII. GENERAL PROVISIONS PERTAINING TO MORTGAGES

17.01. Lender's Notices. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of the following, to-wit:

- A. Any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage.
- B. Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the mortgage.
- C. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- D. Any proposed action that requires the consent of a specified percentage of mortgage holders.

17.02. Blanket Mortgages. The entire Condominium Property, or some or all of the

Units included therein, may be subjected to a single or blanket mortgage constituting a first lien thereon created by a recordable instrument executed by all of the Owners of the property or Units covered thereby. Any Unit included under the lien of such mortgage may be sold or otherwise conveyed or transferred subject thereto. Any such mortgage shall provide a method whereby any unit Owner may obtain a release of his Unit from the lien of such mortgage and a satisfaction and discharge in recordable form upon payment to the holder of the mortgage of a sum equal to the reasonable proportionate share attributable to his Unit of the then outstanding balance of unpaid principal and accrued interest, and any other charges then due and unpaid. The proportionate share of the mortgage required to be paid for release shall be determined by provisions pertaining thereto stated in the mortgage, or, if the mortgage contains no such provisions, then according to the proportionate share of the Common Elements of the Condominium attributable to such Unit.

XVIII. TERMINATION

18.01. 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 ninety percent (90%) 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.

XIX. COVENANT AGAINST PARTITION

19.01. No judicial or other partition of the Condominium Property or any part thereof

shall be made, and Developer or any person acquiring any interest in the property or any part thereof shall not seek any such partition unless the property has been properly removed from the provisions of the Act.

X. MISCELLANEOUS

20.01. Intent. The intent of the Developer is to create a condominium pursuant to the Act. In the event the condominium created by this Declaration shall fail in any respect to comply with the Act, then the common law as the same exists on the filing date of this Declaration shall control, and the condominium hereby created shall be governed in accordance with the laws of the State of Alabama, the By-Laws, the Articles, and all other instruments and exhibits attached to or made a part of this Declaration.

20.02. Covenants, Conditions and Restrictions. All provisions of the Condominium Documents shall, to the extent applicable and unless otherwise expressly therein provided to the contrary, be perpetual and be construed to be covenants running with the land and with every part thereof and interest therein, and all of the provisions of the Condominium Documents shall be binding on and inure to the benefit of any Owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representative, successors, and assigns, but said provisions are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All Unit Owners and Occupants shall be subject to and shall comply with the provisions of the Condominium Documents and any amendments, rules and regulations promulgated thereunder or pursuant thereto.

20.03. Severability. The invalidity in whole or in part of any covenant or restriction or

any paragraph, subparagraph, sentence, clause, phrase, word or other provision of this Declaration, the Articles, the By-Laws, any rules and regulation of the Association promulgated pursuant thereto, and any exhibits attached hereto, as the same may be amended from time to time, or the Act, or the invalidity in whole or in part of the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase, word or other provision shall not affect the remaining portion thereof.

20.04. Notice. The following provision shall govern the construction of the Condominium Documents, except as may be specifically provided to the contrary herein, to-wit: All notices required or desired under the Condominium Documents to be sent to the Association shall be sent certified mail, return receipt requested, to the Secretary of the Association, at such other address as the Association may designate from time to time by notice in writing to all Unit Owners. Except as provided specifically to the contrary in the Act, all notices to any Unit Owner shall be delivered in person or sent by first-class mail to the address of such Unit Owner at the Condominium, or to such other address as he may have designated from time to time, in a writing, duly receipted for, to the Association. Proof of such mailing or personal delivery to a Unit Owner by the Association may be provided by the affidavit of the person personally delivering said notice or by a post office certificate of mailing. All notices to the Association or a Unit Owner shall be deemed to have been given when delivered to the addressee in person in accordance with the provisions of this Declaration, or when mailed in a postage-paid, sealed envelope, except notices of address changes, or by a post office certificate of mailing.

20.05. Governing Law. Should any dispute or litigation arising between any of the parties whose rights or duties are affected or determined by the Condominium Documents, such dispute or litigation shall be governed by the laws of the State of Alabama.

20.06. Waiver. No provisions contained in the Condominium Documents shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

20.07. Ratification. Each Unit Owner, by reason of having acquired ownership of his Condominium parcel, whether by purchase, gift, operation of law, or otherwise, shall be deemed to have acknowledged and agreed that all the provisions of the Condominium Documents and any rules and regulations promulgated thereunder are fair and reasonable in all material respects.

20.08. Captions. The captions used in the Condominium Documents are inserted solely as a matter of convenience and reference and shall not be relied on or used in construing the effect or meaning of any of the text of the Condominium Documents.

20.09. Costs and Attorney's fees. In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be awarded by the Court.

IN WITNESS WHEREOF, ROYAL PALMS, L.L.C., G.P. has caused this instrument to be duly executed on this the 9 day of Dec, 19 99

ROYAL PALMS, L.L.C., G.P.,
An Alabama General Partnership,

BY: ROYAL PALMS, L.L.C.,
An Alabama Limited Liability Company
As Its General Partner

By: 

CLIFFORD B. HARBOUR, HI
Its Member and Manager

This Document Prepared By:
Timothy D. Garner
Attorney at Law
Post Office Box 3304
Gulf Shores, Alabama 36547-3304
(334) 968-5540

EXHIBIT A

LEGAL DESCRIPTION

PARCEL ONE: Lots 1 and 2, Block 2, Unit 5, Gulf Shores, Alabama, according to map or plat thereof recorded in Map Book 3, Page 121, in the Office of the Judge of Probate of Baldwin County, Alabama.

PARCEL TWO: Lot 10 of Our Point of view Subdivision, being a repartition of Lots 3 and 4 of Block 2, Unit 5, Gulf Shores, Alabama, according to map or plat thereof recorded in Map Book 11, Page 21, in the Office of the Judge of Probate of Baldwin County, Alabama.

THE REAL PROPERTY IS SUBJECT TO THE FOLLOWING, TO-WIT:

- a) Lien of taxes and assessments currently and hereafter falling due.
- b) Any future change, adjustment, reappraisal, reassessment, roll back, or escape taxes changed, assessed, or made come due by action of either the Office of the Tax Assessor or Collector or the Board of Equalization.
- c) Any prior reservation of oil, gas or other minerals, in, on, and under said realty, together with all rights and easements in connection therewith, as may have been previously conveyed or reserved by or to others and presently of record.
- d) All zoning, planning, subdivision, environmental, wetland, coastal barrier or management areas, building, construction and other setback requirements, and covenants, reservations, restrictions, regulations, rules, and other limitations upon the use of the Real Property presently of record and as may hereafter be imposed by the City of Gulf Shores, State of Alabama, United States of America, Corp of Engineers, ADEM, EPA, FEMA, or any other municipal, environmental, or other governmental agency, department or authority having jurisdiction over the Real Property.
- e) All covenants, reservations, restrictions, rights-of-way, roadways, building, coastal, and other setback requirements, and drainage, utility, access and other easements of record and as shown and noted on plat of Block 2, Unit 5, Gulf Shores, and Our Point of View Subdivision, and in the Declaration.
- f) Reservation of all oil, gas, and other minerals, and all rights and easements in connection therewith, as contained in deed from G.M. McLeod, Katie McLeod, and Judith McLeod, to David W. Thompson, Wannah B. Thompson, and Leslie T. Barnett, dated July 29, 1991 and recorded in Real Property Book 430, Page 783.

EXHIBIT A - CONTINUED

g) Rights of others in and to a twenty-four (24) foot private drive along a portion of the West line of said realty as described and shown on said plat of Our Point of View Subdivision.

h) Ten (10) foot easement for ingress and egress to the beach along a portion of the West line of said realty as described and shown on said plat of Our Point of View Subdivision.

i) Development Rights and Special Declarant Rights granted Developer by the Condominium documents and by the Act.

j) The rights of eminent domain and other governmental rights of police power.

k) Encroachments, easements, overlaps, boundary line disputes, and any other matter which would be disclosed by an accurate survey and personal inspection of the Real Property.

l) Rights of the United States of America, State of Alabama, and other parties, in and to the bed, shore, and waters of the Gulf of Mexico, together with all littoral or riparian rights to the said property described above which lies adjacent to the Gulf of Mexico.

m) Any claim arising by reason of any portion of the above described property lying below mean high tide, or some portion of said realty is tide or submerged land or has been created by artificial means or has accreted to such portion so created.

n) The rights, if any, of the public to use a public beach or recreation area any part of the above described property lying between the Gulf of Mexico and the natural line of vegetation, dunes, extreme high water line or other apparent boundary lines separating the publicly used area from the upland private area.

o) Dune Enhancement Management plan and wetland areas, and all restrictions, regulations, rules, fines and assessments in connection therewith, as promulgated and set forth by Alabama Department of Environmental Management (ADEM) and other governmental agencies having jurisdiction over said realty.

p) Rights of others in and to the use of any common areas and facilities of said Condominium as same are described and set forth in said Declaration of Condominium.

q) Rights of others in and to the use of any common areas and facilities of Our Point of View Subdivision as same are shown and noted on said map or plat of Our Point of View.