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DECLARATION OF CONDOMINIUM

FOR

THE INDIES, A CONDOMINIUM

917757

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STATE OF ALABAMA
COUNTY OF BALDWIN

DECLARATION OF CONDOMINIUM

FOR

THE INDIES, A CONDOMINIUM

THIS DECLARATION is made on the date set forth below by The Dunes of GP, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant");

WITNESSETH

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereto, including the improvements thereof, to the provisions of this Declaration and to the Alabama Uniform Condominium Act of 1991;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" of this Declaration, including the improvements located thereon, is hereby submitted and made subject to the form of ownership set forth in the Alabama Uniform Condominium Act of 1991, and is hereby subjected to the provisions of this Declaration. By virtue of the recording of this Declaration, said property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to provisions of the Alabama Uniform Condominium Act of 1991 and the covenants, conditions, restrictions, easements, assessments, and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all persons having any right, title or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall be for the benefit of all owners of the property subject to this Declaration.

TABLE OF CONTENTS

1.	NAME	1
2.	DEFINITIONS.	1
3.	LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS	4
4.	UNITS AND BOUNDARIES	4
5.	COMMON ELEMENTS	5
6.	LIMITED COMMON ELEMENTS	6
7.	ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES	7
8.	ALLOCATION OF LIABILITY FOR COMMON EXPENSES	7
9.	ASSOCIATION RIGHTS AND RESTRICTIONS	7
10.	ASSESSMENTS	9
11.	INSURANCE	12
12.	REPAIR AND RECONSTRUCTION	15
13.	ARCHITECTURAL CONTROLS	16
14.	USE RESTRICTIONS	20
15.	LEASING	28
16.	SALE OF UNITS	31
17.	MAINTENANCE RESPONSIBILITY	32
18.	MORTGAGEE'S RIGHTS	35
19.	GENERAL PROVISIONS	36
20.	EMINENT DOMAIN	44
21.	EASEMENTS	44
22.	AMENDMENTS	45
23.	SEVERABILITY	47
24.	DECLARANT RIGHTS	47

EXHIBITS

DESCRIPTION OF SUBMITTED PROPERTY	"A"
UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS AND LIABILITIES FOR COMMON EXPENSES	"B"
FLOOR PLANS	"C"
SURVEY	"D"
PERMIT	"E"
BYLAWS	"F"

DECLARATION OF CONDOMINIUM

FOR

THE INDIES, A CONDOMINIUM

1. NAME.

The name of the condominium is The Indies, a Condominium (hereinafter sometimes called "The Indies" or the "Condominium," as further defined herein), which condominium is hereby submitted by Declarant to the Alabama Uniform Condominium Act of 1991, Ala. Code § 35-8A-101, *et seq.*

2. DEFINITIONS.

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings given in the Act or the Alabama Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws and the Articles of Incorporation shall be defined as follows:

(a) Act shall mean the Alabama Uniform Condominium Act of 1991, Ala. Code § 35-8A-101, *et seq.*, as such Act may be amended from time to time.

(b) Alabama Beach Mouse shall mean and refer to the Alabama Beach Mouse, *Peromyscus Polinatus Ammobates*, designated an endangered species in Title 50 Code of Federal Regulations Section 17.11(h).

(c) Alabama Beach Mouse Covenants or Beach Mouse Covenants shall mean the Declaration of Alabama Beach Mouse Protective Covenants for the Dunes, as recorded in Miscellaneous Book 89, page 113, *et seq.*, in the Office of the Judge of Probate, Baldwin County, Alabama.

(d) Architectural Control Committee or ACC shall mean the committee established to exercise the architectural review powers set forth in Paragraph 13 hereof, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Control Committee.

(e) Area of Common Responsibility shall mean and refer to the Common Elements, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other person or entity, become the responsibility of the Association.

(f) Articles or Articles of Incorporation shall mean the Articles of Incorporation of The Indies Condominium Association, Inc., which have been filed with the Judge of Probate of Baldwin County, Alabama.

(g) Association shall mean The Indies Condominium Association, Inc., a Alabama nonprofit corporation, its successors or assigns.

- (h) Board or Board of Directors shall mean the body responsible for management and operation of the Association.
- (i) Bylaws shall mean the Bylaws of The Indies Condominium Association, Inc., attached to this Declaration as Exhibit "F" and incorporated herein by this reference.
- (j) Commercial Unit(s) shall mean any space shown on the Floor Plans for the Condominium recorded in the Baldwin County, Alabama records marked as "Commercial Unit" or "CU" (which may be followed by a number to distinguish one (1) Commercial Unit from another).
- (k) Common Elements shall mean those portions of the property subject to this Declaration, which are not included within the boundaries of a Unit, as more particularly described in this Declaration.
- (l) Common Expenses shall mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Condominium including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Elements.
- (m) Community-Wide Standard shall mean the standard of conduct, maintenance, or other activity generally prevailing within the Condominium. Such standard may be more specifically determined by the Board of Directors and the Architectural Control Committee.
- (n) Condominium shall mean all that property described in Exhibit "A" attached hereto and incorporated herein by this reference, submitted to the provisions of the Act by this Declaration.
- (o) Condominium Instruments shall mean this Declaration and all exhibits to this Declaration, including the Bylaws of the Association, and the Survey and Floor Plans, all as may be supplemented or amended from time to time.
- (p) Declarant shall mean The Dunes of GP, LLC, a Georgia limited liability company, its respective successors and assigns and any other Person or entity as further set forth in Section 35-8A-103(a) of the Act. The expiration of Declarant's right to appoint the directors and officers of the Association as provided in Article III, Part A, Section 2 of the Bylaws shall not alter the status of The Dunes of GP, LLC as the Declarant herein.
- (q) Domestic Partner shall mean any adult who cohabitates with an Owner and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's Secretary. A person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.
- (r) Electronic Document shall mean information created, transmitted, received or stored by electronic means and retrievable in human perceivable form, such as email, web pages, electronic documents, facsimile transmissions, etc.
- (s) Electronic Signature shall mean a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.
- (t) Eligible Mortgage Holder shall mean those holders of first Mortgages secured by Units in the Condominium who have requested notice of certain items as set forth in this Declaration.

- (u) Floor Plans shall mean the floor plans for The Indies, a Condominium, attached as Exhibit "C" and incorporated herein.
- (v) FWS shall mean and refer to the Department of the Interior, U.S. Fish and Wildlife Service, an instrumentality of the government of the United States of America.
- (w) HCP shall mean and refer to that habitat conservation plan developed by Sage Development, L.L.C., and submitted to FWS in connection with its application for the Permit, as approved in said Permit.
- (x) House Cat shall mean and refer to *Felis domesticus*.
- (y) House Mice shall mean and refer to *Mus musculus*.
- (z) Limited Common Elements shall mean a portion of the Common Elements reserved for the exclusive use of those entitled to occupy one (1) or more, but less than all, Units, as more particularly set forth in this Declaration.
- (aa) Majority shall mean those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.
- (bb) Master Association shall mean The Dunes Master Owners Association, Inc., an Alabama nonprofit corporation.
- (cc) Master Covenants shall mean that certain Declaration of Covenants, Conditions and Restrictions for The Dunes, dated June 27, 1996, and recorded in Miscellaneous Book 89, page 51, et seq., in the Office of the Judge Of Probate, Baldwin County, Alabama.
- (dd) Mortgage shall refer to any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.
- (ee) Mortgagee or Mortgage Holder shall mean the holder of any Mortgage.
- (ff) Occupant shall mean any Person (i) staying overnight in a Unit, regardless of whether such Person is a tenant or the Owner of such Unit, or (ii) regularly occupying a Commercial Unit for retail or business purposes as an owner or employer of such business.
- (gg) Owner shall mean the record titleholder of a Unit within the Condominium, but shall not include a Person who is only a Mortgage holder.
- (hh) Permit shall mean and refer to that certain permit from the Department of the Interior, U.S. Fish & Wildlife Service, under the authority of Title 16 U.S.C. Section 1539(a)(1)(b) and the Regulations promulgated thereunder set forth at Title 50 Code of Federal Regulations Section 17.22, of copy of which is attached hereto as Exhibit "E."
- (ii) Person shall mean any individual, corporation, firm, association, partnership, trust, or other legal entity.

(jj) Residential Unit shall mean all Units except for any Commercial Unit as defined above.

(kk) Secure Electronic Signature shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.

(ll) Survey shall mean the plat of survey for The Indies, a Condominium, attached as Exhibit "D" and incorporated herein.

(mm) Unit shall mean that portion of the Condominium intended for individual ownership and use as more particularly described in this Declaration and shall include the undivided ownership in the Common Elements assigned to the Unit by this Declaration.

3. LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS

The Condominium subject to this Declaration and the Act is located in Baldwin County, Alabama, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. The Survey and Floor Plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

So long as Declarant owns a Unit, Declarant reserves the right, but shall have no obligation, to make improvements and changes to all or part of the Common Elements and the Units owned by Declarant (other than changes to the location of Unit boundaries unless expressly permitted herein), including, without limitation, addition and realignment of parking spaces, addition and reconfiguration of storage spaces, renovation and installation of changes to utility systems and facilities, rearrangement and installation of security and refuse facilities, work relating to building exteriors, and extension of the drives and utility lines and pipes located on the Condominium.

4. UNITS AND BOUNDARIES

The Condominium will be divided into sixty-seven (67) separate Residential Units, Common Elements, Limited Common Elements, and one (1) Commercial Unit. Each Unit consists of a dwelling or commercial space, as applicable, and its appurtenant percentage of undivided interest in the Common Elements. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Condominium Instruments. The Units are depicted on the Survey and the Floor Plans. Each Unit includes that part of the structure, which lies within the following boundaries:

(a) Vertical Boundaries. The perimetrical or vertical boundaries of each Unit shall be the vertical planes formed by the outermost surface of the studs in the walls separating the Unit from the exterior wall of the Condominium building and the walls separating the Unit from the hallway of the floor on which the Unit is located in the Condominium building. With respect to common walls between the Units, the perimetrical or vertical boundary of the Units served thereby shall be the centerline of such wall.

(b) Horizontal Boundaries.

(i) If the Unit is on the top floor of the building, the upper horizontal boundary of such Unit is the centerline of the concrete slab between the ceiling of such Unit and the roof of the building. The lower horizontal boundary of such Unit is the centerline of the concrete slab between the flooring of the Unit and the ceiling of the Unit below it.

(ii) If the Unit is on the bottom floor of the building, the upper horizontal boundary of such Unit is the centerline of the concrete slab between the ceiling of such Unit and the flooring of the Unit above it. The lower horizontal boundary of each such Unit located in the Condominium is the upper surface of the concrete subflooring on which the Unit is constructed, with the flooring, if any, constituting part of the Unit and the concrete subflooring and building foundation not constituting part of the Unit.

(iii) If the Unit is not on the top or bottom floors of the building, the upper horizontal boundary of such Unit is the centerline of the concrete slab between the ceiling of such Unit and the flooring of the Unit above it. The lower horizontal boundary of such Unit is the centerline of the concrete slab between the flooring of the Unit and the ceiling of the Unit below it.

(c) Additional Information to Interpret Unit Boundaries. Entry doors and exterior glass surfaces, including, but not limited to, windows and glass doors, serving the Unit shall be included within the boundaries of the Unit. Heating and air conditioning systems serving a single Unit (including any part of any such system located outside the boundaries of the Unit), all duct work for heating and air conditioning systems and appliances and plumbing fixtures within a Unit shall be part of the Unit.

If any chutes, flues, ducts, conduits, wires, pipes or other apparatus lies partially within and partially outside of the designated boundaries of the Unit, any portion thereof which serves only that Unit shall be deemed to be a part of that Unit, while any portions thereof which serve more than one (1) Unit or any portion of the Common Elements shall be deemed a part of the Common Elements.

In interpreting deeds and Floor Plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Floor Plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or Floor Plan, regardless of settling or lateral movement of the building in which the Unit was located, and regardless of minor variance between the boundaries shown on the Floor Plans or in a deed and those of the Unit.

The ownership of each Unit shall include, and there shall pass with each Unit, whether or not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Elements attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association.

5. COMMON ELEMENTS.

The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit. The Common Elements include, without limitation, certain utility infrastructures, entry feature and lighting for same, paving, walls, retaining walls, the foundation, roof, roof deck amenity area, exterior walls of the building, landscape areas, outside parking area and lighting for same, underground parking facility and lighting for same, mail area, stairs, hallways, lobby, elevators, elevator shafts, elevator lobbies, mechanical rooms, maintenance room, game room, dumpster, trash bin, trash chutes, fitness facility, golf cart rental area, swimming pool, spa, and all other lighting in any Common Element of the Condominium building.

The percentage of undivided interest in and to the Common Elements attributable to each Unit is set forth in Exhibit "B" attached hereto and incorporated herein by this reference. Such percentages of

undivided interest may be altered only by the consent of all Owners and Mortgagees (or such lesser number of Owners and Mortgagees as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration.

The Common Elements shall remain undivided, and no Owner or any other person shall bring any action for partition or division of the whole or any part thereof except as provided in the Act. Except as provided for Limited Common Elements or as otherwise provided herein, each Owner and the Association may use the Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Owners.

6. LIMITED COMMON ELEMENTS.

(a) The Limited Common Elements located on the Condominium and the Unit(s) to which they are assigned are:

(i) the portion of the Common Elements on which there is located any portion of the air conditioning or heating system exclusively serving a particular Unit or Units is assigned as a Limited Common Element to the Unit or Units so served;

(ii) any utility meter which serves only one (1) Unit is assigned as a Limited Common Element to the Unit so served;

(iii) a Unit may be assigned one (1) or more storage spaces, which are shown on the Floor Plans as Limited Common Elements. Storage spaces may be initially assigned or reassigned by amendment to this Declaration as provided in subparagraphs (b) and (c) below;

(iv) any balcony attached to and serving only one (1) Unit is assigned as a Limited Common Element to the Unit to which it is attached and which it serves;

(v) each Unit is assigned one (1) mailbox or mail slot, to be initially assigned in the sole discretion of the Declarant.

(b) The Association's Board of Directors, without need for a membership vote, is hereby authorized to allocate Common Elements not previously allocated as Limited Common Elements, provided that any such allocation shall be made in accordance with the provisions of Section 35-8A-208(c) of the Act. A Common Element not previously allocated as a Limited Common Element may be so allocated, without the need for a vote of the Association, upon written application to the Association by the Unit Owner or Owners for whose exclusive use such Common Element is requested. Upon such application, the Association shall prepare and execute an amendment to the Declaration allocating the Common Element as a Limited Common Element, which amendment shall be executed by the Owner or Owners making such application, who shall bear the costs of executing and recording the amendment. The Board has the right to approve or disapprove any request made by any Person, other than the Declarant, to allocate Common Elements not previously allocated as Limited Common Elements.

(c) A Limited Common Element may be reallocated by an amendment to the Declaration executed by the Owners among whose Units the reallocation is to be made in accordance with the provisions of Section 35-8A-208(b) of the Act. The Owners executing the amendment shall provide it to the Association, which shall record it and the cost shall be borne by the Owners executing the Amendment. The Board has the right to approve or disapprove any request made by any Person, except the Declarant, to reallocate Limited Common Elements.

(d) For so long as Declarant owns any Unit primarily for the purpose of sale, Declarant shall have the right to sell to Unit Owners one (1) or more storage spaces to be assigned as Limited Common Elements pursuant to subparagraphs (a) and (b) above. The proceeds of the sale of storage spaces as Limited Common Elements shall belong to Declarant.

7. ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES.

All Unit Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit in the Condominium, excluding Persons holding such interest under a Mortgage, are members of The Indies Condominium Association, Inc., and, except as otherwise provided herein or in the Bylaws, shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Bylaws. Subject to the provisions of the Condominium Instruments, the Owner or collective Owners shall be entitled to one (1) equally weighted vote for such Unit.

8. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

(a) Except as provided below or elsewhere in the Act or Condominium Instruments, the amount of all Common Expenses shall be assessed against all the Units in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit as set forth in Exhibit "B" attached hereto and incorporated herein by this reference.

(b) The Board of Directors shall have the power to levy special assessments against Units pursuant to this Paragraph and to Section 35-8A-315 of the Act as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph.

(i) Any Common Expenses benefiting less than all of the Units or significantly disproportionately benefiting all Units may be specially assessed equitably among all of the Units that are benefited according to the benefit received. Except for expenses for maintenance, repair or replacement of Limited Common Elements, which may be specially assessed, expenses incurred for the maintenance, repair or replacement of the Area of Common Responsibility, shall not be specially assessed.

(ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or invitees of any such Unit or Units may be specially assessed against such Unit or Units.

In the event the Condominium is served by a common water meter, the Board shall have the authority to install submeters and assess individual Unit utilities usage charges as special assessments as provided in subparagraph (b)(i) above. This shall include the right to add a charge for the cost of overhead for such submetering, against individual Units and/or to install separate utility meters for the Units.

9. ASSOCIATION RIGHTS AND RESTRICTIONS.

In addition to and not in limitation of all other rights it may have, the Association, acting through its Board of Directors, shall have the right and authority:

(a) to enter into Units for maintenance, emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit. For the purposes of this Paragraph, an emergency justifying immediate entry into a Unit shall include, but not be limited to, the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Unit shall exist;

(b) to make and to enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements, and Common Elements;

(c) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges as provided in Section 35-8A-302 of the Act, as amended;

(d) to grant and accept permits, licenses, utility easements, leases, and other easements;

(e) to control, manage, operate, maintain, improve and replace all portions of the Area of Common Responsibility;

(f) to represent and act on behalf of the Unit Owners in the event of damage or destruction as a result of casualty loss in accordance with the provisions of the Act and Paragraph 12 of this Declaration;

(g) to represent and act on behalf of the Unit Owners in the event of any loss resulting from condemnation or eminent domain in accordance with the provisions of the Act and Paragraph 20 of this Declaration;

(h) to acquire, hold, and dispose of tangible and intangible personal property and real property;

(i) to collect security deposits in reasonable amounts, as determined by the Board of Directors in its sole discretion, to protect against any damage to the Condominium, including, without limitation, damage resulting from: moving in or out of a Unit; the transportation and use of construction materials in the Condominium; and the alteration, modification, or addition to a Unit and any Limited Common Element appurtenant thereto. Costs for repair of such damage may be deductible from the security deposit and any additional expenses may be specifically assessed against the Unit under Paragraph 8(b)(ii) above;

(j) to approve contractors or subcontractors who have access to the Condominium for the purpose of making repairs or improvements to Units based on rules and regulations promulgated and adopted by the Board which may include, without limitation: financial stability of the contractors and/or subcontractors; history of compliance with the Condominium Instruments and rules and regulations of the Association; and other factors that may be reflective of quality and ability. The Board may also impose insurance requirements and collect other non-refundable fees for use of elevators and the trash receptacle;

(k) at the sole expense of the Association, without need for a membership vote, and without the consent of any affected Unit Owner, to relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust or electrical system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Unit Owner as existed prior to the relocation; and

(l) to close permanently or temporarily any portion of the Common Elements (excluding the Limited Common Elements, and any Common Elements the use of which is reasonably necessary for access to or from a Unit or any portion of the Common Elements over, on, upon or which the Declarant or the Owner(s) of any Commercial Unit have an easement) with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open closed Common Elements by a majority vote of the total Association vote, cast at a duly called special or annual meeting; and

(m) to enter into joint agreements and contracts with other condominium or homeowners associations for the provision of services, including, without limitation, management, landscaping, property monitoring services, and trash removal services.

10. ASSESSMENTS.

(a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Units in the Condominium as may be more specifically authorized from time to time by the Board.

(b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Unit which are established pursuant to the terms of this Declaration, including but not limited to reasonable fines imposed in accordance with the terms of this Declaration.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted by the Act, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month. No Owner may exempt him or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Elements, the Association's failure to perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties. The lien provided for herein shall have priority as provided in the Act.

The Board of Directors shall have the right to (i) delete any particular line item in the budget; (ii) specify any amount budgeted for any particular line item; and (iii) shift revenues within the budget from one line to another.

(c) Delinquent Assessments. Any assessment due on or before the due date shall be delinquent, and the Owner shall

(i) If any monthly installment is not paid in full by the tenth (10th) day of the month following the due date, a late charge equal to the amount not paid, or such higher amount as may be determined by further notice or warning to the delinquent Owner, plus five percent (5%) per annum or such higher rate as may be determined by the Board of Directors.

(ii) If part payment of a delinquent assessment may be applied first to costs and then to interest, then to principal.

(iii) If assessments remain delinquent and unpaid for more than ten (10) days after the date of delinquency may be given to the delinquent Owner. The Board of Directors may accelerate and declare due the entire annual assessment and of any special assessment against the delinquent Owner. Upon acceleration, the annual assessment in monthly installments shall be due from an Owner.

(iv) If assessments are not paid within thirty (30) days after they become delinquent, the Board of Directors may institute a suit to collect all amounts due pursuant to the provisions of Alabama law, including reasonable attorney's fees and/or Occupant's right to use the Common Elements or the Common Areas. However, the Board may not limit the right of emergency vehicle ingress or egress to the Common Elements or the Common Areas. Properly identified handicapped vehicles shall be given priority under the Fair Housing Amendments Act of 1988. The Board shall provide the delinquent Owner with a written notice by certified mail not less than ten (10) days before the date of the hearing.

If any assessment or other charge is not paid in full by the due date, in addition to all other rights provided herein, the Board of Directors shall have the right, in its discretion, to suspend the Unit paid for as a Common Element or the Common Areas in discontinuing and/or reconnecting any utility service to the Unit. If the assessment or other charge is an assessment against the Unit, the Unit shall not be entitled to use any such utility service until the judgment(s) is(are) paid in full. If the assessment or other charge is a fine or penalty, the Unit shall not be entitled to use any such utility service until the fine or penalty is paid in full. If the assessment or other charge is a fee, the Unit shall not be entitled to use any such utility service until the fee is paid in full. If the assessment or other charge is a charge for the use of any such unauthorized

Notwithstanding the above, if cable television service or any other service not constituting a utility is provided by the Association as a Common Expense, that service may be suspended upon ten (10) days written notice to the delinquent Owner, without obtaining any judgment against the Owner or encumbering the Unit. Enforcement under this subparagraph is not dependent upon or related to other restrictions and/or other actions.

(d) Computation of Operating Budget and Assessment. It shall be the duty of the Board at least fourteen (14) days prior to the Association's annual meeting to prepare and deliver to each member a budget covering the estimated costs of operating the Condominium during the coming year and a notice of the assessments to be levied against each Unit for the following year. The budget and the assessment shall become effective unless disapproved at a duly called and constituted annual meeting of the Association by a vote of a majority of the total Association vote; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and assessment shall be delivered to the members at least fourteen (14) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

(e) Special Assessments. In addition to the annual assessment provided for in subparagraph (b) above, the Board may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners, notice of which shall be sent to all Owners.

(f) Capital Reserve Budget and Contribution. The Board of Directors shall annually prepare a capital reserve budget that shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in subparagraph (d) of this Paragraph. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

Notwithstanding any other provisions of this Declaration, during the time the Declarant appoints the directors and officers of the Association pursuant to Article III, Part A, Section 2 of the Bylaws Declarant shall not be required to prepare a capital reserve budget, set any other capital reserve contribution, or otherwise collect amounts for capital reserves.

(g) Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Unit. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding Ten and No/100 Dollars (\$10.00), or such higher amount as may be authorized by the Act, as a prerequisite to the issuance of such a statement. Such

written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein.

(h) Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, either be distributed to the Owners or credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit, or added to the Association's capital reserve account as set forth in (f) above.

If the Board of Directors reasonably determines that during a fiscal year there will likely be a surplus of funds at the end of such fiscal year (excluding amounts designated for reserves), the Board may, but shall not be required to, reduce the amount of the annual assessment to be collected from the Owners for the remainder of that fiscal year. Any Owner who has already paid the entire annual assessment at the time of such reduction shall, in the discretion of the Owner, either receive a refund of the overpayment or a credit of the amount of the overpayment towards the annual assessment of the Association for the following fiscal year. Notwithstanding the above, the Association may first apply the amount of any overpayment toward any other amount the Owner may owe to the Association.

(i) Working Capital Fund. The Declarant, on behalf of the Association, shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services. A non-refundable contribution to the working capital fund of the Association shall be paid by the purchaser of a Unit at the closing of each sale or resale of a Unit in the amount of two (2) months of the general assessment charged to such Unit. The Declarant shall not use the working capital funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. Notwithstanding anything to the contrary herein, the contribution to the working capital fund shall not be due from: (i) any grantee who is the Domestic Partner, spouse or former spouse of the grantor; (ii) any grantee that is a wholly-owned entity of the grantor; (iii) any grantee to whom a Unit is conveyed by a will or through the law of intestacy; or (iv) any grantee of a Unit who obtains title pursuant to judicial or nonjudicial foreclosure of any first Mortgage of record or secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Unit).

11. INSURANCE.

The Association shall obtain and maintain at all times, as a Common Expense, insurance as required by Section 35-8A-313 of the Act, as amended, and as required herein. In accordance with the Act, the property insurance shall, at a minimum, afford coverage for and in an amount not less than the minimum amount required under the Act for the replacement value of the buildings and other structures on the Condominium. Such coverage shall include all of the Units and the fixtures initially installed therein by Declarant and replacements thereof up to the value of those initially installed by Declarant, but shall not include any improvements or additions (including wall coverings and fixtures) made by or on behalf of any Unit Owner and shall exclude furnishings and other personal property within a Unit.

All insurance purchased by the Association pursuant to this Paragraph shall run to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Unit Owners and their respective Mortgagees, and all other persons entitled to occupy any Unit as their interests may appear. The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs and each Owner shall have the right to obtain additional coverage at his or her own expense.

All insurance coverage for the Association shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees of Owners, if any. It shall be the duty of the Board of Directors at least every two (2) years to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of Section 35-8A-313 of the Act, as amended. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of Section 35-8A-313 of the Act, as amended.

(a) The Board of Directors shall utilize reasonable efforts to secure a blanket hazard insurance policy providing "all risk" coverage in an amount equal to full replacement cost, before application of deductibles, of all improvements located on the Condominium, except as provided otherwise above. If "all risk" coverage is not reasonably available at reasonable cost, after providing written notice to the Owners in accordance with Section 35-8A-313(c) of the Act, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. The Board shall use reasonable efforts to obtain policies that will provide the following:

(i) the insurer waives its rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, Occupants, and their respective household members;

(ii) any "other insurance" clause contained in the master policy shall expressly exclude individual Unit Owners' policies from its operation;

(iii) until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Unit Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;

(iv) the master policy may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Units; and

(v) an agreed value endorsement and an inflation guard endorsement.

(b) All policies of insurance shall be written with a company licensed to do business in the State of Alabama. The company shall provide insurance certificates to each Owner and each Mortgagee upon request.

(c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees. Each Unit Owner shall notify the Board of Directors of all structural improvements made by the Unit Owner to his or her Unit. Any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his or her expense and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is cancelled.

(e) In addition to the insurance required hereinabove, the Board shall obtain as a Common Expense:

(i) workers' compensation insurance if and to the extent necessary to meet the requirements of law;

(ii) public liability insurance in amounts no less than required by Section 35-8A-313 of the Act, as amended, and officers' and directors' liability insurance in such amounts as the Board may determine. The public liability insurance shall contain a cross liability endorsement;

(iii) fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds, if reasonably available, shall be in an amount consistent with the best business judgment of the Board of Directors, but in no event less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on the implementation of financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two (2) members of the Board of Directors must sign any checks written on the reserve account; and

(iv) such other insurance as the Board of Directors may determine to be necessary or desirable including, for example coverage of the following types of property contained within a Unit, regardless of ownership: (a) fixtures, improvements and alterations that are part of the building or structure; and (b) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

(f) Insurance carried by the Association as a Common Expense shall not be required to include: (i) any part of a Unit that is not depicted on the original Survey and Floor Plans; or (ii) any part of a Unit that was not included as part of the collateral for the initial loan made for the initial purchase of the Unit, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit. The foregoing sentence shall not be deemed to prohibit the Association from obtaining such additional coverage

(g) Nothing contained herein gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Unit Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

(h) Every Unit Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, the Unit Owner shall furnish a copy of such insurance policy or policies to the Association. In the event that any such Unit Owner fails to obtain insurance as required by this subparagraph, the Association may purchase such insurance on behalf of the Unit Owner and assess the cost thereof to the Unit Owner, to be collected in the manner provided for collection of assessments under Paragraph 10 hereof.

(i) Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one (1) Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Paragraph 8 of this Declaration; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than One Thousand and No/100 Dollars (\$1,000.00), or such higher amount as authorized by the Act, as the cost of the deductible for any one (1) occurrence.

(j) Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of assessments owed to the Association under Paragraph 10 hereof, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Unit Owner.

12. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Condominium as a result of fire or other casualty, unless eighty percent (80%) of the Unit Owners, including the Owner or Owners of any damaged Unit or Units, vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Unit Owner with respect to the distribution of proceeds to any such Unit.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to the Condominium, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition that existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to failure of the Association to maintain coverage as provided in Paragraph 11 of this Declaration, the additional cost shall be a Common Expense. If, for any reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Board, the additional costs shall be assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. This assessment shall not be considered a special assessment as discussed in Paragraph 10(e). If there are surplus funds after repair and reconstruction is completed, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Floor Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the Floor Plans and specifications under which the Condominium was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original Floor Plans and specifications are approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.

(d) Encroachments. Encroachments upon or in favor of Units that may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Unit Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments 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 manner set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

13. ARCHITECTURAL CONTROLS.

(a) During Declarant Control. During the time in which the Declarant has the right to appoint directors and officers of the Association under Article III, Part A, Section 2 of the Bylaws there shall be no Architectural Control Committee and all encroachments onto the Common Elements or Limited Common Elements, exterior change, alteration or construction (including painting and landscaping), and any erection, placement or posting of any object, sign, clothesline, speaker, playground equipment, light, fountain, flag, personalized or customized exterior door mat, or thing on the exterior or roof of the building, in any windows (except window treatments as provided herein), or on any Limited Common Elements or any Common Elements, must receive the prior written approval of the Declarant. However, a mezuzah or comparable religious symbol not larger than three inches (3") in width and nine inches (9") in height may be posted on the doorframe of the Unit. In addition, reasonable seasonal decorations no larger than six inches (6") in length and width may be temporarily affixed to the entry door to a Unit between December 15 and January 2. Granting or withholding such approval shall be within the sole discretion of the Declarant. All references in the Condominium Instruments to the Architectural Control Committee or ACC shall refer to the Declarant during the period the Declarant has the right to appoint the officers and directors of the Association. Notwithstanding anything to the contrary

stated herein, any architectural change to the Condominium made by the Declarant during the time in which the Declarant has the right to appoint directors and officers of the Association under Article III, Part A, Section 2 of the Bylaws shall be deemed to have been approved by the ACC.

(b) After Declarant Control. After such time as the Declarant's rights to appoint officers and directors of the Association as provided in Article III, Part A, Section 2 of the Bylaws has expired, an Architectural Control Committee shall be appointed by the Board of Directors and except for the Declarant, so long as the Declarant shall own a Unit for sale, no Owner, Occupant, or any other person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, clothesline, speaker, playground equipment, light, fountain, flag, personalized or customized exterior door mat, or thing on the exterior or roofs of the buildings, in any windows (except window treatments as provided herein), on any Limited Common Elements, or on any other Common Elements, without first obtaining the written approval of the ACC. However, a mezuzah or comparable religious symbol not larger than three inches (3") in width and nine inches (9") in height may be posted on the doorframe of the Unit. In addition, reasonable seasonal decorations no larger than six inches (6") in length and width may be temporarily affixed to the entry door to a Unit between December 15 and January 2. The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, Units and structures, the location in relation to surrounding structures and topography, and the impact of such approval, if any, on the increase or decrease of sounds and vibrations between the Units and between the Units and the Common Elements. Notwithstanding the above, Declarant shall not be required to obtain any approvals under this Paragraph.

(c) Alteration of Units. Subject to the other provisions of this Declaration, alterations to the interiors of Units, relocation of the boundaries between adjoining Units, and subdivision of Units are subject to the following restrictions:

(i) Alterations to the Interiors of the Units. Except as provided herein, no Owner or Occupant may make any alteration within a Unit which involves connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without prior written ACC approval (including, but not limited to, installation of washers and dryers or modifying connection of washers and dryers). Except as provided herein, no Owner or Occupant shall make any interior modifications to or place an excessive load on any structural or load bearing portions of a Unit without first obtaining the prior written approval of the ACC. Such approval shall not be granted by the ACC unless the Owner has presented to the ACC a report or drawing prepared by a licensed structural engineer showing that compensating measures will be taken to ensure the structural integrity of the Unit and the Condominium. All building code requirements must be complied with and necessary permits and approvals secured for any modifications. Notwithstanding the above, all Owners desiring to make any interior modifications or alterations to a Unit affecting the Common Elements or Limited Common Elements or structure or load bearing portions of a Unit must make application to the ACC as described below in order for the ACC to make the determination of whether the ACC's approval is required.

Notwithstanding the above, if any Owner acquires an adjoining Unit, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved) to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or part, be part of the Common Elements, so long as no portion of any structural or load bearing portions of the Unit(s) are materially weakened or removed and the ACC has approved the plans described above and no

portion of any Common Elements or Limited Common Elements is damaged, destroyed or endangered, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Condominium. Notwithstanding the above, Declarant shall not be required to obtain any approvals under this Paragraph. The alterations permitted in this Paragraph shall not be deemed an alteration or relocation of boundaries between adjoining Units as defined in Section 35-8A-212 of the Act.

(ii) Relocation of Boundaries. Boundaries between adjoining Units may be relocated only in accordance with the provisions of Section 35-8A-212 of the Act and this Declaration. As long as Declarant owns a Unit for sale, an Owner must obtain the prior written consent of the Declarant and the Board of Directors in order to relocate the boundaries of his or her Unit. After Declarant no longer owns a Unit for sale, an Owner must obtain the prior written consent only of the Board of Directors in order to relocate the boundaries of his or her Unit. Declarant shall have the right to relocate boundaries between Units owned by Declarant without the approval of the Board of Directors, and the Board of Directors shall execute the required amendment to the Declaration.

(iii) Subdivision of Units. An Owner may subdivide his Unit only in accordance with the provisions of Section 35-8A-213 of the Act and this Declaration. As long as Declarant owns a Unit for sale, an Owner must obtain the prior written consent of Declarant and the Board of Directors in order to subdivide the boundaries of his or her Unit. After Declarant no longer owns a Unit for sale, an Owner must obtain the prior written consent only of the Board of Directors in order to subdivide the boundaries of his or her Unit. Declarant shall have the right to subdivide Units owned by Declarant without the approval of the Board of Directors, and the Board of Directors shall execute the required amendment to the Declaration.

(d) Applications. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction that is not in conformance with approved plans. The Board or ACC may publish written architectural standards for exterior and Common Element alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing buildings and Units and the location in relation to surrounding structures and topography of the vicinity.

In the event that the ACC fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the ACC may reasonably require have been submitted, ACC approval will not be required and this Paragraph will be deemed complied with; provided, however, even if the requirements of this Paragraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, or the rules and regulations of the Association.

(e) Encroachments onto Common Elements. The ACC, subject to this Paragraph, may permit Unit Owners to make encroachments onto the Common Elements as it deems acceptable.

(f) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration, unless otherwise agreed to in writing by the ACC. It is the

responsibility of every Owner of a Condominium Unit to determine for himself or herself what architectural modifications have been made to his or her Unit by any predecessor-in-interest. In the discretion of the Board or ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

(g) Limitation of Liability. Review and approval of any application pursuant to this Paragraph is made on the basis of aesthetic considerations only, and neither the Declarant, the Board of Directors or the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Unit.

(h) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Board of Directors and ACC may adopt different architectural standards for different parts of the condominium, based on street visibility and location of the proposed modification in the building. The approval of either the Board of Directors or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors, or the ACC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(i) Enforcement. Any construction, alteration, or other work done in violation of this Paragraph shall be deemed to be nonconforming. Upon written request from the Board or the ACC, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the benefited Unit and collected as an assessment pursuant to this Declaration.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions. Furthermore, the Board shall have the authority to record in the Baldwin County land records notices of violation of the provisions of this Paragraph.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Elements or Limited Common Elements in violation of this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction be removed or that it remain on the Common Elements or Limited Common Elements without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

(j) Commencement of Construction. All changes, modifications and improvements approved by the ACC hereunder must be commenced within six (6) months from the date of approval. If not commenced within six (6) months from the date of such approval, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. All work

approved by the ACC hereunder shall be completed in its entirety within ninety (90) days from the date of commencement, unless otherwise agreed in writing by the ACC. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement.

14. USE RESTRICTIONS.

Each Owner of a Unit shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Condominium Instruments and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants or Occupants, as a result of such person's violation of the Condominium Instruments, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

In addition to the following use restrictions, the Board of Directors may adopt rules and regulations in accordance with the terms hereof and as specified in the Bylaws.

(a) Use of Units.

(i) Residential Units. Each Residential Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Residential Unit or any part of the Condominium, except that the Owner or Occupant residing in a Residential Unit may conduct ancillary business activities within the Residential Unit so long as:

(A) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Residential Unit;

(B) the business activity does not involve visitation of the Residential Unit by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a Residential Unit without business activity;

(C) the business activity is legal and conforms to all zoning requirements for the Condominium;

(D) the business activity does not increase traffic in the Condominium in excess of what would normally be expected for Residential Units in the Condominium without business activity (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

(E) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(F) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as determined in the Board's discretion; and

(G) the business activity does not result in a materially greater use of common element facilities or Association services.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

(ii) Commercial Units. Each Commercial Unit shall be used only for such residential purposes and/or commercial use or business purposes permitted by applicable zoning ordinance and use restrictions, provided such commercial or business activity does not constitute a nuisance or hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as may be determined in the reasonable discretion of the Board. Except as otherwise specifically provided for herein, no tenant, employee, visitor, guest or invitee of a Commercial Unit shall have access, ingress, or egress to or through any portion of the Condominium except said Commercial Unit.

(A) Prohibited Uses. Notwithstanding the foregoing, no part of a Commercial Unit used for any of the following purposes:

- (1) cinema/movie theater;
- (2) bowling alley;
- (3) skating rink;
- (4) video game room, amusement gallery or amusement arcade;
- (5) pool hall;
- (6) massage parlor or facility that hosts obscene, nude or semi-nude live performances;
- (7) adult book store or adult video store where obscene, pornographic or "adult" materials or paraphernalia, including, but not limited to, movies, videotapes, devices, books, magazines, or other related items are sold or displayed;
- (8) facilities used for the sale, display or advertisement of any paraphernalia used in the preparation or consumption of controlled substances;
- (9) facilities used for the operation of any liquor store, package store, or other store primarily selling and/or manufacturing alcoholic beverages;
- (10) funeral home or store selling caskets;
- (11) industrial or manufacturing uses;
- (12) automotive supplies and parts;
- (13) hair salons; and
- (14) restaurant where food is cooked in the Unit.

(B) Permitted Uses. Notwithstanding the foregoing, Commercial Units may be used for any of the following purposes:

- (1) office providing real estate-related services; and
- (2) uses that are ancillary to the permitted uses specified herein.

(C) Proposed Uses. Any proposed use of any part of a Commercial Unit that is not prohibited in subsection (A) above but is not specified as a permitted use in

subsection (B) above, shall be submitted for the review, consideration and approval or disapproval of the Board of Directors.

(b) Number of Occupants. The maximum number of Occupants in a Residential Unit shall be limited to two (2) people per bedroom in the Unit, (as such bedrooms are depicted on the original Survey and Floor Plans filed in the Baldwin County, Alabama records). Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

If an Owner of a Unit is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the Unit. The designated person(s) to occupy the Unit may not be changed more frequently than once every six (6) months without the express written consent of the Board as determined in the Board's sole discretion.

(c) Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner or Occupant, other than the Declarant, on any portion of the Condominium, at any time, either temporarily or permanently, without the prior written approval of the Board.

(d) Use of Common Elements Including Amenities. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner may reserve portions of the Common Elements for use for a period of time as set by the Board. Any such Owner who reserves a portion of the Common Elements as provided herein shall assume, on behalf of himself or herself and his or her guests, Occupants and family, all risks associated with the use of the Common Elements and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees. There shall be no use of the roof of the Condominium building by the Owners, their family members, guests, tenants, invitees, agents or contractors, except the roof deck amenity area, which may be utilized from sunrise until 11:00 p.m. in accordance with any rules and regulations adopted by the Board. The Association and its agents and contractors shall have access to the roof for performing its maintenance and repair responsibility. There shall be no gardening or landscaping on the Common Elements by Owners or Occupants without the prior written consent of the Board. This subparagraph shall not apply to the Declarant, so long as the Declarant shall own a Unit for sale.

(e) Use of Limited Common Elements, Storage Spaces and Balconies. Except as otherwise provided herein, the use of the Limited Common Elements assigned to the Units is restricted exclusively to the Owners of the Unit to which such Limited Common Elements are assigned, and said Owner's family members, guests, tenants and invitees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.

(i) Storage Spaces. Storage spaces shall be used solely for the purpose of storing any personal property belonging to the Owner or Occupant of the Unit to which such storage space is assigned as a Limited Common Element. No Owner or Occupant shall store any explosives, or any flammable, odorous, noxious, corrosive, hazardous or pollutant materials or any other goods in the space that would cause danger or nuisance to the storage space or the Condominium. The storage

space shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code. If hazardous substances are stored, used, generated or disposed of on or in the storage space or if the storage space becomes contaminated in any manner for which the Owner or Occupant thereof is legally liable, Owner or Occupant shall indemnify and hold harmless the Declarant, Association and Board of Directors from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses and any and all sums paid from settlement of claims, attorneys' fees, consultant and expert fees, arising as a result of that contamination by Owner or Occupant.

(ii) Balconies. No objects other than potted plants and patio furniture shall be placed on a balcony. This prohibition applies to objects such as, but not limited to, grills (excluding electric grills), umbrellas, bicycles, laundry garments, towels and objects other than potted plants and patio furniture, except as may be authorized by the Board. Objects shall not be permitted to hang over or be attached to any exterior balcony wall or to otherwise protrude outside of the vertical plane formed by the exterior surface of the balcony wall. Penetration of the surfaces of a balcony wall or floor is prohibited. Enclosure of a balcony is also prohibited. As used herein, "enclosure" shall mean the permanent enclosure of a balcony into the heated and cooled space within the boundaries of a Unit.

(f) Prohibition of Damage, Nuisance and Noise. Without the prior written consent of the Board of Directors, nothing shall be done or kept on the Condominium, or any part thereof, which would increase the rate of insurance on the Condominium or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

The dwelling Units in the Condominium are built in close proximity to one another, resulting in the sharing of common walls, floors and ceilings. As a result, noise and vibration may be detectable between Units or between Units and the Common Elements. Therefore, an Owner or Occupant shall not conduct activities within a Unit or use a Unit in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Unit by its respective Owner and Occupant.

Furthermore, noxious, destructive or offensive activity shall not be carried on within any portion of the Condominium. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Condominium at any time, in any way or for any purpose which may endanger the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. In addition, no Owner or Occupant of a Unit may use or allow the use of a Unit or the Common Elements in any manner which creates disturbing noises, including, without limitation, use of stereo speakers or equipment that will in the sole discretion of the Board of Directors interfere with the rights, comfort or convenience of the other Owners or Occupants. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the reasonable opinion of the Association's Board of Directors or its designee, would jeopardize the soundness or safety of the Condominium or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all members of the Association and their Mortgagees.

No damage to or waste of the Common Elements, or any part thereof, shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting

from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

(g) Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Elements or Limited Common Elements is prohibited; provided, however, the display of lawful firearms on the Common Elements or Limited Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Elements or Limited Common Elements to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size

(h) Pets. No Owner or Occupant may keep any animals on any portion of the Condominium except as expressly permitted in this subparagraph. An Owner or Occupant may keep no more than a total of two (2) dogs per Unit and a reasonable number of other generally recognized household pets, as determined in the Board's sole discretion, weighing less than two (2) pounds each (including by way of illustration, but not limitation, fish, gerbils and small birds). Additionally, no Owner or Occupant shall maintain any House Cat as a pet on the Condominium property, or otherwise bring or permit any House Cat under his or her control onto the Condominium property. Notwithstanding anything to the contrary herein, there shall be no limit on the number of dogs that Declarant may keep in any Unit owned by Declarant or any of its members.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Elements, including Limited Common Elements, without prior written ACC approval. No pets are allowed on any portion of the Common Elements except for the designated dog walk area, if any; provided, however, an Owner or Occupant may walk a pet across the Common Elements to reach such dog walk area, if any, or to enter or exit the Condominium property. Notwithstanding the foregoing, pets must be kept on a leash or under the physical control of a responsible person at all times while on the Common Elements. Feces left upon the Common Elements by pets must be immediately removed by the owner of the pet or the person responsible for the pet.

No potbellied pigs, venomous snakes, pit bulldogs, Rotweillers, or Doberman Pinschers may be brought onto or kept on the Condominium at any time. In addition, other animals determined in the Board's sole discretion to be dangerous shall not be brought onto or kept on the Condominium at any time. The Board may require that any pet that, in the Board's opinion, endangers the health of any Owner or Occupant or creates a nuisance or unreasonable disturbance, be permanently removed from the Condominium upon seven (7) days written notice. If the Owner or Occupant fails to do so, the Board may remove the pet. The Board may remove any pet, which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any community member, without prior notice to the pet's owner.

Any Owner or Occupant who keeps or maintains any pet upon the Condominium shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium.

(i) Parking. Parking within the Condominium shall be by permit only. Each Unit shall initially be assigned one (1) parking permit for the exterior parking area. Each parking permit shall be valid for only a specific parking area, either the exterior parking area or the underground parking facility. For so long as Declarant owns a Unit primarily for the purpose of sale, Declarant may sell additional parking permits to a Unit Owner and may adopt rules regulating the use of parking permits. The proceeds of the sale of parking permits shall belong to Declarant. Once a parking permit has been issued to a

specific Unit, said parking permit shall be irrevocable and shall run with the title to the Unit. Furthermore, a parking permit shall be valid only as to a specific Unit and shall not be transferable between Units. Parking by permit shall be on a first-come-first-serve basis and does not guarantee that a parking space will always be available to a permit holder. Parking permits may only be used by the Owner or Occupants of the Units to which the parking permits are allocated, and once issued to a Unit, such parking permits shall be irrevocable, provided, however, the Association reserves the right to suspend the use of a permit if the Owner or Occupant of the Unit to whom the permit is granted is more than thirty (30) days delinquent in any amount owed to the Association.

Vehicles permitted under this subparagraph may be parked only in designated, lined parking spaces or other areas authorized in writing by the Board. Disabled and stored vehicles are prohibited from being parked on the Condominium. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Condominium without being driven for fourteen (14) consecutive days or longer without prior written Board permission.

Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Alabama Department of Motor Vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than Sheriff's, Marshall's, or police officer's vehicles marked as such, are also prohibited from being parked on the Condominium, except in areas, if any, that may be designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Elements during normal business hours for the purpose of serving any Unit or the Common Elements; provided, however, no such vehicle shall remain on the Common Elements overnight or for any purpose unless prior written consent of the Board is first obtained.

If any vehicle is parked on any portion of the Condominium in violation of this Paragraph or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the person or entity that will do the towing or booting and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's Unit or parking space, is obstructing the flow of traffic, is parked on any grassy area, is parked in a parking space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately.

If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

(j) Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to any portion of the Condominium, increased Common

Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five degrees (55°) Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. The Board of Directors may fine any Owner or Occupant and/or may cause the water service to the violator's Unit to be discontinued for violation of this subparagraph, in addition to any other remedies of the Association.

(k) Signs. Except as may be provided for herein or as may be required by legal proceedings, and except for signs which may be erected by Declarant related to the development and sale of Units, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Board or its designee. The Board also shall have the authority to adopt regulations permitting temporary signs on the front door of a Unit announcing births, birthdays or other events for limited periods of time. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.

The Owners of the Commercial Units shall be permitted to erect signs identifying the business on the exterior of said Units or on or adjacent to the interior windows of said Units with the approval of the ACC; provided, however, such signs shall comply with all relevant zoning ordinances.

(l) Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except in trash chutes. Rubbish, trash, and garbage shall be disposed of in sealed bags and either placed in the trash chutes, or proper receptacles designated by the Board for collection or removed from the Condominium.

(m) Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

(n) Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board of Directors.

(o) Window Treatments. All windows in Residential Units must have window treatments. The color of all window treatments visible from outside the Residential Unit must be white or off-white. Bed sheets shall not be used as window treatments.

(p) Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Condominium, including the Unit or Limited Common Elements; provided, however, the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Unit Owners:

(i) No transmission antenna, of any kind, may be erected anywhere on the Condominium, including the Units, without written approval of the Board of Directors or the Architectural Control Committee.

(ii) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed or maintained upon the Condominium, including the Units and the Limited Common Elements.

(iii) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

In the event of a transfer of the Unit which includes a satellite dish or antenna, the Grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

(q) Grilling. The use of outdoor grills other than electric grills on any portion of the Condominium building is prohibited; provided, however, Owners and Occupants are permitted to use grills located on the Common Elements that were provided by the Declarant or the Association, if any.

(r) Building Materials. No lumber, metals, or bulk materials shall be kept, stored, or accumulated, provided, however: (a) Declarant may keep, store, or accumulate building materials during the construction of the Units and Common Elements; (b) the Association may keep, store, or accumulate building materials during the construction or renovation of any portion of the Condominium; and (c) upon the written approval of the Board, and subject to any conditions imposed by the Board, a Unit Owner may keep, store, or accumulate building materials during the construction of any portion of his or her Unit.

(s) Abandoned Personal Property. Personal property, other than vehicles as provided for in subparagraph (i) shall not be kept, or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Elements, other than on a Limited Common Element, without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property. The notice shall include the name and telephone number of the person or entity that will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

(t) Replacing Carpet with Tile or Hardwood Floors. Other than the Declarant, no Owner, Occupant, or any other person may replace carpeting with a tile, marble, vinyl, hardwood floor, or other

hard surfaced flooring material, on the interior floor of a Unit which is located immediately above another Unit without first obtaining written approval of the Declarant or the Architectural Control Committee, as applicable, as set forth in Paragraph 13. Among other factors, the Declarant or the Architectural Control Committee, as applicable, may consider whether the change will cause noise to any Unit below which will exceed the average noise level in Units below Units with carpeted floors and that the weight of such proposed flooring is appropriate and will not cause problems to the structure or subflooring.

The Owner applying for such approval shall provide the Declarant or the Architectural Control Committee, as applicable, with information regarding these factors, as well as other information requested by the Declarant or the Architectural Control Committee regarding the proposed flooring and its effect; provided, however, the noise level requirements shall be considered to be met if the Owner provides a sound transmission test that the proposed flooring will create a noise level less than a standard level set by reasonable regulation of the Declarant or the Architectural Control Committee, as applicable.

(u) Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of the Condominium Units it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns and representatives, to maintain and carry on, upon such portion of the Condominium as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of the Condominium Units, including, but without limitation, business offices, signs, model Units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities on the Condominium for such purposes and to use the Units owned by Declarant as model Units and as offices for the sale of the Condominium Units and related activities.

(v) Move In/Move Out. A Unit Owner or Occupant shall not move furniture, construction materials, and other over-sized items in or out of the Condominium except during such hours and according to requirements to be determined by the Board of Directors. Furthermore, an Owner or Occupant shall reserve a date and time with the Board of Directors to use the elevators for moving furniture, construction materials, and other over-sized items in or out of the Condominium, and during such use of the elevators, the walls of the elevators being used for such purpose shall be covered with padded blankets. The Board of Directors, in its sole discretion, may require a non-refundable security deposit prior to using an elevator for moving furniture, construction materials or other over-sized items.

(w) Life-Safety Systems. Owners and Occupants shall not tamper with or disengage any portion of the life-safety systems that serve the Condominium including, without limitation, the sprinkler heads and all branch and feed lines that support such sprinkler heads, and all fire control devices (such as smoke detectors and call boxes), regardless of whether such items are located within the boundaries of a Unit.

15. LEASING.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Paragraph. "Leasing," for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any Person other than the Owner. For purposes hereof, occupancy by a roommate of an Owner who occupies the Unit as such Owner's primary residence shall not constitute Leasing hereunder. Leasing of all Units shall be governed by the following provisions:

(a) General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board

prior to the effective date of the lease. The Board may maintain and, upon request, provide a form that is deemed acceptable. There shall be no subleasing of Units or assignment of leases without prior written Board approval. The Owner must provide or make available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(b) Liability for Assessments, Use of Common Elements, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all Occupants of his or her Unit to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with Article V of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Alabama law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs, associated with the eviction shall be an assessment and lien against the Unit.

(ii) Use of Common Elements. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, including but not limited to, the use of any and all recreational facilities and other amenities.

(iii) Liability for Assessments. When a Unit Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due

dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Paragraph. "Leasing," for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Residential Unit by any Person other than the Owner. For purposes hereof, occupancy by a roommate of an Owner who occupies the Residential Unit as such Owner's primary residence shall not constitute Leasing hereunder. Leasing of all Residential Units shall be governed by the following provisions:

(c) General. Residential Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form that is deemed acceptable. There shall be no subleasing of Residential Units or assignment of leases without prior written Board approval. The Owner must provide or make available to the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(d) Liability for Assessments, Use of Common Elements, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Residential Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Residential Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Residential Unit in order to ensure such compliance. The Owner shall cause all Occupants of his or her Residential Unit to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Residential Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with Article V of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Residential Unit.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Alabama law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting

from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs, associated with the eviction shall be an assessment and lien against the Residential Unit.

(ii) Use of Common Elements. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, including but not limited to, the use of any and all recreational facilities and other amenities.

(iii) Liability for Assessments. When a Residential Unit Owner who is leasing his or her Residential Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(c) Applicability of this Paragraph. Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by the Declarant (regardless of whether said lease is entered into prior to or after the expiration of the Declarant's right to appoint and remove officers and directors of the Association pursuant to Article III, Part A, Section 2 of the Bylaws), the Association, or the holder of any first Mortgage on a Residential Unit who becomes the Owner of a Residential Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. Such parties shall be permitted to lease a Residential Unit without first obtaining a permit in accordance with this Paragraph, and such leases shall not be counted towards the maximum number of Residential Units that may be leased in accordance with this Paragraph.

16. SALE OF UNITS.

A Unit Owner intending to make a transfer or sale of a Unit or any interest in a Unit shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the transfer or sales documents. The Unit Owner shall furnish to the Board as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

In addition, a non-refundable contribution to the working capital fund of the Association shall be paid to the Association by the purchaser of a Unit at the closing of each sale or resale of a Unit in the amount of two (2) months of the general assessment charges to such Unit in accordance with Paragraph 10(i) hereof.

Within seven (7) days after receiving title to a Unit, the purchaser of the Unit shall give written notice to the Board of Directors of his or her ownership of the Unit. Upon failure of a Owner to give the

required notice within the seven (7) day time period provided herein, the Board may levy fines against the Unit and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

17. MAINTENANCE RESPONSIBILITY.

(a) By the Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit and all improvements made by the Owner to the Limited Common Elements assigned to the Unit except any portion of a Unit which is expressly made the maintenance obligation of the Association as set forth in subparagraph (b) below. This maintenance responsibility shall include, but not be limited to the following: all glass surfaces (excluding exterior cleaning), windows, window frames (except for periodic painting, staining and/or cleaning of the exterior window frames), casings and locks (including caulking of windows); all doors, doorways, door frames, and hardware that are part of the entry system of the Unit (except for periodic painting, staining and/or cleaning of the exterior surface of entry doors and door frames facing the hallway of the Condominium); all portions of the heating and air conditioning system, including the air conditioning compressor and the fan coil serving the Unit; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit).

In addition, each Unit Owner shall have the responsibility:

(i) To keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit.

(ii) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Units.

(iii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

(iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Unit Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Unit Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Unit Owner's next chargeable assessment.

(b) By the Association. The Association shall maintain and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes the following:

(i) all Common Elements, including Limited Common Elements;

(ii) periodic painting, staining and/or cleaning of exterior surfaces of the Condominium building, exterior window frames, and entry doors and door frames facing the hallway of the Condominium, on a schedule to be determined by the Board of Directors;

(iii) periodic cleaning of exterior window surfaces on a schedule to be determined by the Board of Directors; and

- (iv) life safety (including, but not limited to, interior sprinkler systems) and building systems.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

The Association shall repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner of a Unit has put the Association on notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(c) Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors.

Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner, or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Unit, shall become a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

(d) Measures Related to Insurance Coverage.

(i) The Board of Directors, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Condominium, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to install and maintain smoke detectors, requiring Owners to certify that they have checked the batteries for their smoke detectors, requiring Owners to allow the Association to inspect the smoke detectors and replace batteries if needed on a schedule to be determined by the Board of Directors, requiring Owners to make improvements to the Owner's Unit, and such other measures as the Board may reasonably require so long as the cost of such work does not exceed Three Hundred and No/100 Dollars (\$300.00) per Unit in any twelve (12) month period.

(ii) In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any requirement made by the Board of Directors pursuant to subparagraph (d)(i) above, the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to subparagraph (d)(i) of this Paragraph, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

(e) Mold and/or Mildew. Mold and/or mildew can grow in any portion of the Condominium that is exposed to elevated levels of moisture. The Association and each Unit Owner agree to: (i) regularly inspect the parts of the Condominium that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or damage; (ii) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that they respectively maintain; (iii) remediate or replace any building material located in the parts of the Condominium that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that they respectively maintain in accordance with current industry-accepted methods. In addition, the Association agrees to notify the Units Owners, and each Unit Owner agrees to notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in the parts of the Condominium that they respectively maintain.

Notwithstanding anything to the contrary herein, Declarant shall have no obligation to perform any invasive testing or inspections, maintenance or repairs in accordance with this Paragraph 17(c), and shall not be held liable for any loss or damage caused by the failure of the Association or a Unit Owner to perform their obligations herein.

18. MORTGAGEE'S RIGHTS.

(a) Unless at least two-thirds (2/3) of the first Mortgagees and Unit Owners give their consent, the Association or the membership shall not:

- (i) by act or omission seek to abandon or terminate the Condominium;
- (ii) change the pro rata interest or obligations of any individual Unit for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (2) determining the pro rata share of ownership of each Unit in the Common Elements;
- (iii) partition or subdivide any Unit in any manner inconsistent with the provisions of this Declaration;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements or licenses, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or
- (v) use hazard insurance proceeds for losses to any portion of the Condominium (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Condominium.

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Unit Owners where a larger percentage vote is otherwise required by the Act or the Condominium Instruments for any of the actions contained in this Paragraph.

(b) Where the Mortgagee holding a first Mortgage of record, a secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Unit) or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable, nor shall the Unit be subject to a lien, for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

- (i) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a first Mortgage held by such Eligible Mortgage Holder;

(ii) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Unit Owner of any other obligation under the Condominium Instruments which is not cured within sixty (60) days;

(iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(iv) any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

(e) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 15 and 16 governing leasing and sales of units, respectively, shall not apply to impair the right of any first Mortgagee to:

(i) foreclose or take title to a Unit pursuant to remedies contained in its Mortgage; or

(ii) take a deed or assignment in lieu of foreclosure; or

(iii) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

(f) No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

(g) Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of any mortgagee encumbering such Owner's Unit.

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

(i) Construction of this Paragraph. Nothing contained in this Paragraph shall be construed to reduce the percentage vote that must otherwise be obtained under the Condominium Instruments or Alabama law for any of the actions set forth in this Paragraph.

19. GENERAL PROVISIONS.

(a) SECURITY. THE ASSOCIATION OR THE DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SECURITY ON THE CONDOMINIUM; HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT NEITHER

THE ASSOCIATION NOR THE DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY ON THE CONDOMINIUM. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-UNIT OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE CONDOMINIUM AND COMMIT CRIMINAL ACTS ON THE CONDOMINIUM NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS ON THE CONDOMINIUM WILL NOT BE COMMITTED BY OTHER UNIT OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH UNIT OWNER. NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN.

(b) Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, a Unit Owner or Occupant must request and attend a hearing with the Board of Directors. Any such request shall be in writing and shall be personally delivered to any member of the Board of Directors or the property manager, if any, of the Association. The Owner or Occupant shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) or more than twenty-one (21) days from the date of receipt of the request.

(c) Parking Spaces, Vehicles and Storage Spaces. Neither the Declarant nor the Association shall be held liable for any loss or damage arising from theft, vandalism, malicious mischief, or any loss or damage resulting from water or acid damage, to any property placed or kept in any parking space or storage space in the Condominium. Each Owner or Occupant with use of a parking space or storage space who places or keeps a vehicle and/or any personal property in the vehicle, parking space or storage space does so at his or her own risk.

(d) Unit Keys. At the request of the Association, each Residential Unit Owner, by acceptance of a deed to a Unit, agrees to provide the Association with a key to the Unit (and the security alarm code, if any) to be used by the Association for maintenance, emergency, security or safety purposes as provided in Paragraph 9(a) of this Declaration (and for pest control, if necessary, as provided in Paragraph 21(e) of this Declaration). Neither the Declarant nor the Association shall be liable for any loss or damage due to its holding such key, or use of such key for the purposes described above and each Unit Owner shall indemnify and hold harmless the Declarant, the Association and its officers and directors against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon the Declarant, the Association or its officers or directors in connection with any action, suit, or other proceeding (including settlement of any such action, suit or proceeding) brought by the Unit Owner or the Unit Owner's family, tenants, guests, employees, invitees, or licensees against the Declarant, the Association, its officers or directors arising out of or relating to its holding or use of such key for the purposes described above.

(e) Right of Action. All Owners hereby acknowledge and agree that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Owners which is based on any alleged defect in any Unit or the Common Elements, or any damage allegedly sustained by any Owner by reason thereof, but rather, that all such actions shall be instituted by the Person(s) owning such Units or served by such Common Elements or allegedly sustaining such damage. Notwithstanding the above, once the Declarant no longer has the right to appoint and remove directors and officers, as set forth

in Article III, Part A, Section 2 of the Bylaws, the Association Board of Directors may negotiate the resolution of any alleged defect(s) in the Common Elements and Area of Common Responsibility on behalf of the Unit Owners and shall have the right and authority to settle and release on behalf of any and all of the Unit Owners claims, causes of action, damages and suits involving the same. Any such settlement and release shall bind all Unit Owners and their successors and assigns. As set forth in Paragraph 22 hereof, no amendment to this Declaration shall (i) modify, alter, or delete any provision of this Declaration that benefits the Declarant or any rights, privileges, easements, protections, or defenses of the Declarant; or (ii) alter the rights of the Unit Owners or the Association in relationship to the Declarant, without the written consent of the Declarant attached to and recorded with such amendment.

(f) Successor Declarants. Any successor to the Declarant shall not be responsible or subject to liability by operation of law or through the purchase of Declarant's interest in the Condominium or any portion thereof at foreclosure or otherwise for any act, omission, or matter occurring or arising from any act, omission, or matter occurring prior to the time the successor succeeded to the interest of the Declarant.

(g) Use and Conveyance of Commercial Unit(s) by Declarant to Association.

(i) Declarant may, but is not required to, give the Unit Owners and/or the Association the right to use any unoccupied Commercial Unit(s). The duration, terms, and conditions of such usage are at the discretion of the Declarant and may be unilaterally changed by Declarant from time to time. If Unit Owners and/or Association are given the right by Declarant to use any Commercial Unit(s) owned by Declarant, then the Association shall be responsible for paying for insurance, property taxes, and the cost of maintaining and repairing such Commercial Unit(s).

(ii) The Declarant may, but shall not be obligated to, transfer or convey to the Association the Commercial Unit(s) which are subject to the terms of this Declaration. Any such conveyance shall be accepted by the Association, and the Commercial Unit(s) shall thereafter be maintained by the Association. Declarant shall not be required to make any improvements whatsoever to the Commercial Unit(s) to be conveyed and accepted pursuant to this subparagraph.

(h) Disclosures. Each Owner and Occupant acknowledge the following:

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

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

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

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

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

(vi) No representations are made that the Unit is or will be soundproof or that sound may not be transmitted from one Unit to another.

(vii) The Condominium floor plans and the dimensions and square footage calculations shown thereon are only approximations. Any Unit Owner who is concerned about any representations regarding the floor plans should do his/her own investigation as to the dimensions, measurements and square footage of his/her Unit.

(viii) All Owners and Occupants acknowledge and understand that the Declarant will be constructing/renovating portions of the Condominium and engaging in other construction activities related to the construction of Common Elements and improvement of Units. Such construction activities may, from time to time, produce certain conditions on the Condominium, including, without limitation: (A) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (B) smoke; (C) noxious, toxic, or corrosive fumes or gases; (D) obnoxious odors; (E) dust, dirt or flying ash; (F) unusual fire or explosion hazards; (G) temporary interruption of utilities; and/or (H) other conditions that may threaten the security or safety of Persons on the Condominium. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Condominium resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

(ix) Exposed concrete surfaces in portions of the Condominium which are not heated and cooled are subject to cracking due to (A) water penetration, (B) expansion and contraction of the concrete with temperature changes, and (C) building settlement.

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

(ix) A Unit may trap humidity created by every day living (cooking, bathing, laundering etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Occupants, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold (see Paragraph 17(e) of this Declaration).

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

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

(xii) The Condominium property is subject to that certain Driveway Easements from the State of Alabama, Department of Conservation and Natural Resources, dated June 24, 1996, and recorded in Real Property Book 695, Page 998, et seq., of the Office of the Judge of Probate, Baldwin County, Alabama.

(xiii) The Condominium property is subject to that certain Easement Agreement dated September 29, 2003, by and between Sage Development, L.L.C., The Dunes Master Homeowners' Association, Inc., and The Dunes of GP, LLC, recorded as Instrument No. 793510 in the Office of the Judge of Probate, Baldwin County, Alabama, and providing certain access, parking, beach access, construction, utility, and drainage easements.

(xiv) The Condominium property is subject to that certain Pier/Dock Access Easement Agreement dated September 29, 2003, by and between Sage Development, L.L.C. and The Dunes of GP, LLC, recorded as Instrument No. 793511 in the Office of the Judge of Probate, Baldwin County, Alabama.

(i) Hurricane Preparations. No hurricane or storm shutters shall be installed on any structure except as approved in accordance with Paragraph 13 hereof. Each Unit Owner or Occupant who is absent from such Owner's Unit during hurricane season, shall prepare his/her Unit prior to departure by:

(i) Removing all furniture and plants and any other item not permanently affixed from the balconies; and

(ii) Designating a responsible firm or individual to care for the Unit during his/her absence (including the removal of furniture and plants and other items not affixed to balconies) in the event of a hurricane or severe storm, and in the event that the Unit suffers hurricane or storm damage. Each Unit Owner or Occupant shall furnish the Board, or manager, if any, with the name of such firm or individual.

(j) Services During Declarant Control. Each Owner acknowledges that Declarant and its affiliates may provide services utilized by communities such as this Condominium including, but not limited to, management services. Each Owner consents and agrees that the Association may enter into service contracts with Declarant and its affiliates.

(k) Master Covenants. Every Owner, by acceptance of a deed to a Unit, acknowledges that, in addition to being subject to and bound by the Condominium Instruments, he or she is subject to the Master Covenants.

(l) Supremacy of Master Covenants. In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Declaration, the Bylaws, or the Articles of Incorporation, the Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to the Master Covenants. The Association and all committees of the Association shall also be subject to all superior rights and powers, which have been conferred pursuant to the Master Covenants. The Association shall take no action in derogation of the rights of or contrary to the interest of the Master Covenants.

(m) Alabama Beach Mouse.

(i) General Recitals.

(A) The Condominium property is located in close proximity to an area that has been designated critical habitat for the Alabama Beach Mouse ("Peromyscus Polinotus annobates"), a species that has been designated as an endangered species by the United State of America. The designation as an endangered species is set forth in the Title 50 Code of Federal Regulations Section 17.11(h) and the establishment of a critical habitat is set forth in Title 50 Code of Federal Regulations Section 17.95.

(B) In order to engage in construction and development activities on the Condominium property, Declarant obtained a permit from the Department of the Interior, U.S. Fish & Wildlife Service, under the authority of Title 16 U.S.C. Section 1539(a)(1)(b) and the Regulations promulgated thereunder set forth at Title 50 Code of Federal Regulations Section 17.22 (the "Permit"), a copy of which is attached hereto as Exhibit "E" that permits, along with other activities, Declarant and its authorized agents, pursuant to the terms and conditions of the Permit, to take the Alabama Beach Mouse incidental to construction of a Condominium project on the property, and it further authorizes the monitoring of the Alabama Beach Mouse during the term of the Permit.

(C) As a condition to the issuance of the Permit, a habitat conservation plan (the "HCP") has been developed by Sage Development, L.L.C., the developer of the Planned Unit Development within which the Condominium property is located, and the HCP is hereby adopted by the Association to be binding upon the Owners and Occupants.

(D) Condominium property shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the Alabama Beach Mouse Covenants, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title, or interest in any Unit, and their respective heirs, executor, administrator, personal representatives, successors and assigns.

(ii) Withdrawal of Property is Prohibited. No portion of the Condominium property that is subject to the Alabama Beach Mouse Covenants may be withdrawn from the Alabama Beach Mouse Covenants without the prior written consent of FWS, if the Permit is still in effect and prohibits such removal.

(iii) Grant of Access Easements for Monitoring Compliance with Covenants. Declarant does hereby establish and reserve for itself, the Master Association and the Association, their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon the Common Elements for the purpose of providing ingress to and egress from the Common Elements to (a) conduct the trapping requirements set forth in the HCP, Alabama Beach Mouse Covenants or the Permit, and (b) perform the respective duties of Declarant, Master Association and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Declarant and/or the Association pursuant to any of the terms or provisions of the Alabama Beach Mouse Covenants, the HCP, or the Condominium Instruments.

(iv) Easement to Governmental Authorities for Monitoring of Permit Requirements. Declarant does hereby grant to each branch, bureau, department and agency of any governmental authority and its respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across, through and upon the Common Elements for the purposes of performing such duties and activities related to monitoring compliance with the Permit, including, but not limited to, trapping of the Alabama Beach Mouse; provided, however, such access shall only be allowed during reasonable hours and at reasonable intervals, unless an emergency exists. In addition, FWS is hereby granted a license during the term of the Permit to enter the Condominium property at reasonable times and at reasonable hours for the general purposes specified in Part 50 Code of Federal Regulations Section 13.2(d)(2) and to trap and monitor the Alabama Beach Mouse; provided, however, FWS, its agents or assigns shall not enter a Unit without obtaining the Owner's prior consent, which consent shall not be unreasonably withheld and provided that FWS, its agents or assigns shall enter the Condominium property at their own risk and, by acceptance of this license, do hereby waive any and all claims for any injury, loss or damage suffered by said FWS, their agents and assigns while on the Condominium property or in a Unit.

(v) Covenants to Protect and Conserve the Habitat of the Alabama Beach Mouse and to Implement the HCP.

(A) Copy of Permit to be Placed in Each Unit. Each Owner, by acceptance of a deed to a Unit, shall be a permittee under the express terms of the Permit. As a permittee, each Owner shall be bound by the terms and conditions of the Permit and this Declaration, and the rules and regulations promulgated by the Association hereunder. The selling Owner of each Unit shall provide the new Owner with a copy of the Permit at the closing of the purchase of a Unit. Each Owner must maintain a copy of the Permit in his or her Unit and shall inform all Occupants of the Unit of the Permit and shall require such persons to read and abide by the Permit.

(B) No Cats. No Owner or Occupant shall maintain any House Cat as a pet on the Condominium property or in a Unit. Owners are prohibited from supporting the presence of free-roaming stray cats by providing food, shelter or any other life support elements. Any free roaming cats observed by an Owner shall be reported immediately to the Association.

(C) Trash Containers. No Owner or Occupant shall maintain any trash container on the Common Elements, including, but not limited to, the Limited Common Element balconies. Any trash container installed on the Common Elements by the Association shall be scavenger-proof and rodent-proof.

(D) Informational Brochures. The Master Association shall prepare and publish a brochure giving information about the protection and conservation of the Alabama Beach Mouse and provide the same to the Association for disbursement to its Unit Owners or Occupants. Funds from the Alabama Beach Mouse Fund shall be used for purposes of preparing such brochures and updating such brochures.

(E) Notification of FWS of Location of Alabama Beach Mouse. Any Owner or Occupant who locates a dead, injured or sick Alabama Beach Mouse shall immediately notify the FWS. The name and address of the contact person to notify shall be listed and updated in the rules and regulations issued by the Master Association. If an Alabama Beach Mouse is killed during construction activity on the Condominium property, the

Declarant, or the Association, or said party's contractor, shall immediately place the specimen in a secure refrigerated storage and shall contact the FWS for instructions on disposition thereof. If an Alabama Beach Mouse is injured during construction activity on the Condominium property and may be safely captured without additional injury or trauma, the Declarant or the Association, or said party's contractor shall immediately place the specimen in a secure indoor area and shall contact the FWS for instruction on the care of the injured Alabama Beach Mouse.

(F) Alabama Beach Mouse Assessment. All Unit Owners shall pay any "Beach Mouse Assessments" (as defined in the Beach Mouse Covenants) to the Master Association in accordance with the Beach Mouse Covenants.

(G) Amendment of the HCP. To allow the Master Association to comply with changing conditions as contemplated by the HCP and to allow flexibility in compliance with the Permit, each Owner, by acceptance of a deed, agrees that the Master Association may amend, modify, clarify, expand the scope of, limit the scope of, or otherwise change the HCP.

(H) Interpretation. In all cases, the provisions set forth and provided for in the Alabama Beach Mouse Covenants shall be construed together and given that interpretation or construction that, in the opinion of the Declarant or the Master Association or the Association, as the case may be, will best effect the protection and conservation of the Alabama Beach Mouse and to prevent violation of the Permit or the HCP. If there is any direct conflict between the requirements of this Paragraph and the Alabama Beach Mouse Covenants, the requirements of the Alabama Beach Mouse Covenants shall prevail. If there is any direct conflict between the requirements of the Alabama Beach Mouse Covenants and the requirements of the Permit, the requirements of the Permit shall prevail and this Paragraph or the Alabama Beach Mouse Covenants, as the case may be, shall be deemed to prevent such conflict. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of the Alabama Beach Mouse Covenants shall be given full force and effect, notwithstanding the existence of any zoning ordinance of building codes that are less restrictive.

(I) Further Assurances. Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered, and to otherwise do or make or cause to be done and made, any and all agreements, instruments, papers, deed, acts or things, supplemental, conformity or otherwise, that may be reasonably requested by Declarant or the Association, for the purpose of or in connection with clarifying, amending or other consummating any of the transactions and matters set forth in this Paragraph.

(J) Owner's Responsibility for Compliance with Permit. Each Owner agrees and acknowledges that the acceptance of a deed to a Unit, they are a permittee pursuant to the terms of the Permit. As such permittee, the Owners are solely responsible for their full and complete compliance with the Permit.

(K) No Waiver. All rights, remedies and privileges granted to Declarant, Master Association and the Association pursuant to the terms and provisions of the Alabama Beach Mouse Covenants shall be deemed to be cumulative, and the exercise of any one (1) or more of such rights, remedies or privileges shall not be deemed to constitute

an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein or the Alabama Beach Mouse Covenants shall in no event be deemed a waiver of the right thereafter to such covenant or restriction.

20. EMINENT DOMAIN.

In the event of a taking by condemnation or by eminent domain, the provisions of the Act shall prevail and govern; provided, however, any proceeds received for a taking of the Common Elements (other than Limited Common Elements) by condemnation or eminent domain shall, at the option of the Board, either be allocated to the Owners in proportion to their Common Expense liabilities, or be deposited into the Association's operating account or reserve account to be applied to Common Expenses. Each holder of a first Mortgage shall be entitled to written notice of any such condemnation proceedings, and nothing in the Condominium Instruments shall be construed to give a priority to any Unit Owner in the distribution of proceeds to such Unit.

21. EASEMENTS.

(a) Use and Enjoyment. Each Unit Owner and Occupant shall have a right and a non-exclusive easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from his or her Unit over those portions of the Condominium designated for such purpose), and such non-exclusive easement shall be appurtenant to and shall pass with the title to such Unit, subject to (i) the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units; (ii) to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein; and (iii) the right of the Association to have access to the Units and Limited Common Elements assigned to a Unit to discharge its rights and obligations, under the Condominium Instruments, including without limitation, the maintenance responsibility of the Association.

(b) Support. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with a non-exclusive easement of support for the benefit of such abutting Unit.

(c) Encroachments. The Units and Common Elements shall be subject to non-exclusive easements of encroachment as set forth in the Act.

(d) Utilities. To the extent that the sprinkler system or any utility line, pipe, wire, or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements shall be burdened with a non-exclusive easement for the use, maintenance, repair and replacement of such sprinkler system, utility line, pipe, wire or conduit, such non-exclusive easement to be in favor of the Unit, Units, or Common Elements served by the same and the Association. It shall be the obligation of the benefited Owner to maintain, replace and repair any pipe, line, conduit, duct or wire owned by such Owner, even if such pipe, line conduit, duct or wire is located within the boundaries of a Unit of another Owner. In such circumstance, the benefited Owner shall repair all incidental damage to any Unit resulting from performance of any such work. All Unit Owners hereby covenant and agree that as finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Components that may require repair or replacement, such as tile and trim, will be reinstalled only to the extent of readily available

materials or similar materials (trim and such will also be finished to "paint-ready"). Due to the uncontrollability of quality of repair, items such as faux paint treatment, wallpaper, ceiling/wall appliqué, and any other similar types of finishes, will not be the responsibility of the benefited Owner.

(e) Pest Control. The Association may but shall not be obligated to dispense chemicals for the extermination of insects and pests within the Units and Common Elements. In the event the Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives, and agents shall have an easement to enter Units for the purpose of dispensing chemicals for the exterminating of insects and pests within the Units and Common Elements. Unit Owners shall either provide a key to the Unit for purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry into the Unit for this purpose. The Association shall not be liable for any illness, damage, or injury caused by the dispensing of these chemicals for this purpose.

(f) Community Bulletin Board. As part of the Common Elements maintained by the Association, Declarant and/or the Board shall have the right, but not the obligation, to erect on the Condominium a bulletin board, or other appropriate similar item, primarily for the use of Unit Owners in advertising their Units for sale. For so long as the Association desires to maintain this bulletin board or similar item, each Unit Owner and his licensed real estate broker and agent may use the Condominium for access, ingress and egress to and from this bulletin board or item; provided, however, the use of the bulletin board or similar item shall be subject to such reasonable nondiscriminatory rules and regulations as may be adopted or promulgated by the Board regulating the size and duration of such advertisements. Declarant or Board may terminate use of this bulletin board or similar item entirely at any time, and no property rights of any kind are created hereby.

(g) Declarant Easements. For so long as Declarant owns any Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, subcontractors, representatives, agents, associates, employees, tenants and successors and assigns shall have: (1) a non-exclusive easement for access and ingress to, egress from and use of the Common Elements for the placement and maintenance of signs, banners, balloons, decorations marketing materials and tables, a sales office, a leasing office, a business office, promotional facilities and model Units on any portion of the Condominium, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, sale or lease of any Unit; (2) a non-exclusive easement to use the Common Elements for special events and promotional activities; (3) a transferable, non-exclusive easement on, over, through, under and across the Common Elements and Limited Common Elements for the purpose of making improvements on the Condominium or any portion thereof, for the purpose of constructing, installing, replacing, repairing, restoring and maintaining all utilities, buildings, driveways, landscaping and any other improvements on the Condominium property or serving the Condominium, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

22. AMENDMENTS

Except in cases of amendments that may be executed by Declarant under Section 35-8A-209(f) or 35-8A-210 of the Act, the Association under Sections 3508A-107, 35-8A-206(d), 35-8A-208(c), 35-8A-212(a), or 35-8A-213 of the Act, or by certain Unit Owners under Sections 35-8A-208(b), 35-8A-212(a), 35-8A-213(b), or 35-8A-218(b) of the Act, and except where a higher vote is required for action under any other provision of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding two-thirds (2/3) of the total eligible Association vote and such amendment shall otherwise comply with the provisions of Section 35-8A-217 of the Act. Moreover, no amendment to this Declaration shall modify, alter, or

delete any: (i) provision of this Declaration that benefits the Declarant; (ii) rights, privileges, easements, protections, or defenses of the Declarant; or (iii) rights of the Unit Owners or the Association in relationship to the Declarant, without the written consent of the Declarant attached to and recorded with such amendment, until the later of the following: (A) the date upon which the Declarant no longer owns any Unit; (B) the date upon which the Declarant no longer has the right to appoint the directors and officers of the Association as provided in Article III, Part A, Section 2 of the Bylaws; or (C) ten (10) years after the date on which this Declaration is recorded in the Baldwin County, Alabama records, whichever period of time is longer.

In addition, no amendment to this Declaration shall (i) modify, alter, or delete the permissible uses of the Commercial Units; (ii) interfere with the ownership or operation of the Commercial Units; or (iii) modify, alter, or delete any: (A) provision of this Declaration that benefits the Commercial Unit Owners; (B) rights, privileges, easements, protections, or defenses of the Commercial Unit Owners; or (C) rights of the Unit Owners or the Association in relationship to the Commercial Unit Owners, without the written consent of the Commercial Unit Owners attached to and recorded with such amendment.

Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Baldwin County, Alabama land records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested. Material amendments are those that establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Elements;
- (d) Insurance or fidelity bonds;
- (e) Rights to use of the Common Elements;
- (f) Responsibility for maintenance and repair of the Condominium;
- (g) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (h) Boundaries of any Unit;
- (i) The interests in the Common Elements or Limited Common Elements;
- (j) Convertibility of Units into Common Elements or of Common Elements into Units;

(k) Leasing of Units;

(l) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit in the Condominium;

(m) Establishment of self-management by the Association where professional management has been required by any of the agencies or corporations set forth below;

(n) Amendment of any provisions that are for the express benefit of Eligible Mortgage holders or insurers or guarantors of first mortgages on Units in the Condominium; and

(o) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in the Condominium Instruments).

Notwithstanding the foregoing, Declarant or the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to correct any scrivener's errors, comply with any applicable state, city or federal law, and/or to bring the Condominium into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

Any action to challenge the validity of an amendment adopted under this Paragraph must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

23. SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

24. DECLARANT RIGHTS.

(a) In accordance with Section 35-8A-215 of the Act, Declarant shall have the right to conduct such sales, marketing, leasing, management, administrative and other activities on the Common Elements, and any Unit owned by the Declarant, as Declarant deems appropriate for the sale, marketing or leasing of any Unit, including maintaining sales offices, management offices, and models therein. Declarant shall have the right to determine in its sole discretion the number, size, location, and relocation of any sales offices, management offices, and models. Declarant shall have a non-exclusive easement right across the Common Elements to erect signs, banners, balloons and other decorations and to conduct such other sales, marketing and leasing activities as provided herein.

(b) Declarant reserves the right to convert any Unit into Common Elements or Limited Common Elements, or both. This right may be exercised with respect to all or any portion of the Condominium property in any order at any time. There is no limitation on this right.

(c) The rights described in subparagraphs (a) and (b) above must be exercised within seven (7) years of the date of the recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama.

(d) The expiration of Declarant's right to appoint and remove officers and directors of the Association pursuant to Article III, Section 2 of the Bylaws shall not terminate or alter the status of the above-referenced entity and its respective successors and assigns as the Declarant hereunder or divest the Declarant of other rights specifically reserved to the Declarant herein.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has executed this Declaration under seal this 27 day of July, 2005.

DECLARANT:

THE DUNES OF GP, LLC,
a Georgia limited liability company

By: [Signature] (SEAL)
Name: Richard H. Skelton
Title: Managing Member

STATE OF Georgia
COUNTY OF Cobb

I, the undersigned Notary Public in and for said County, in the said State, do hereby certify that Richard Skelton, whose name as Manager of The Dunes of GP, LLC, a Georgia limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said document, he, as such Member/Manager and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official notarial seal this 27 day of July, 2005.

[Signature]
NOTARY PUBLIC

My Commission Expires:

LYNN HOLT
Notary Public, Cobb County, Georgia
My Commission Expires April 10th, 2007

EXHIBIT "A"

Description Of Submitted Property

Lot 51B, of a resubdivision of Lot 51, The Dunes, a subdivision, Phase II, as the same is recorded on Slide 1937-A, in the Office of the Judge of Probate, Baldwin County, Alabama.

TOGETHER WITH a non-exclusive easement for ingress and egress and the placement of utilities, over, under and across the access driveway easement granted by the State of Alabama, Department of Conservation as the same is recorded in Real Property Book 695, page 998, in the Office of the Judge of Probate, Baldwin County, Alabama.

TOGETHER WITH a non-exclusive easement for ingress and egress and the placement of utilities, over, under and across Dune Drive as the same is recorded on Slides 1705-B and 1706-A, as the same was revised and re-recorded on Slides 1907-B and 1908-A in the Office of the Judge of Probate, Baldwin County, Alabama for the purpose of obtaining access to the property described above.

EXHIBIT "B"

**Undivided Percentage Interest In The Common Elements
And Liabilities For Common Expenses**

Unit Number	Approximate Square Feet	Ownership Percentage
101	1,542	1.907%
102	1,085	1.341%
103	1,212	1.499%
104	1,212	1.499%
107	1,212	1.499%
108	1,212	1.499%
109	1,085	1.341%
110	1,542	1.907%
201	1,542	1.907%
202	1,085	1.342%
203	1,212	1.499%
204	1,212	1.499%
205	808	.999%
206	808	.999%
207	1,212	1.499%
208	1,212	1.499%
209	1,085	1.342%
210	1,542	1.907%
301	1,542	1.907%
302	1,085	1.342%
303	1,212	1.499%
304	1,212	1.499%
305	808	.999%
306	808	.999%
307	1,212	1.499%
308	1,212	1.499%
309	1,085	1.342%
310	1,542	1.907%
401	1,542	1.907%
402	1,085	1.342%
403	1,212	1.499%
404	1,212	1.499%
405	808	.999%
406	808	.999%
407	1,212	1.499%
408	1,212	1.499%
409	1,085	1.342%
410	1,542	1.907%
501	1,542	1.907%

502	1,085	1.342%
503	1,212	1.499%
504	1,212	1.499%
505	808	.999%
506	808	.999%
507	1,212	1.499%
508	1,212	1.499%
509	1,085	1.342%
510	1,542	1.907%
601	1,542	1.907%
602	1,085	1.342%
603	1,212	1.499%
604	1,212	1.499%
605	808	.999%
606	808	.999%
607	1,212	1.499%
608	1,212	1.499%
609	1,085	1.342%
610	1,542	1.907%
701	1,542	1.907%
702	1,085	1.342%
703	1,212	1.499%
704	1,212	1.499%
705/706	1,616	1.998%
707	1,212	1.499%
708	1,212	1.499%
709	1,085	1.342%
710	1,542	1.907%
CU 1	450	.556%
Total		100%

Note: The following formula was used to calculate the ownership percentage attributable to each Unit:

$$\text{Ownership Percentage} = \frac{\text{approximate square footage of Unit}}{\text{total approximate square footage of all Units}}$$