

STATE OF ALABAMA )

COUNTY OF BALDWIN )

**DECLARATION OF CONDOMINIUM  
OF  
PERDIDO DUNES TOWER, A CONDOMINIUM**

State of Alabama, Baldwin County  
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This Declaration of Condominium ("Declaration") is made this the \_\_\_\_\_ day of January, 2006, by PERDIDO DUNES TOWER, L.L.C. ("Declarant") and with the approval of the Circuit Court of Baldwin County, Alabama.

Declarant represents all the owners of the real property as described in Article IV of this Declaration below.

Declarant intends by this Declaration to impose upon the above described Condominium Property mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of real property within the Condominium Property. Declarant desires to provide procedures for the overall development of the Condominium Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Condominium Property, consistent with the Condominium Documents of Perdido Dunes Condominium, a Condominium and the Master Association.

Declarant hereby declares that the Condominium Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of which shall run with the Condominium Property and which shall be binding on all parties having any right, title or interest in the Condominium Property or any part thereof, their heirs, successors, successor-in-title and assigns, and shall inure to the benefit of each Owners thereof. This Declaration intends to create a condominium within the meaning of the *Alabama Uniform Condominium Act of 1991, Code of Alabama, 1975, Section 35-8A-101, et. seq.*

947976

**DECLARATION OF CONDOMINIUM**  
**OF**  
**PERDIDO DUNES TOWER, A CONDOMINIUM**

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## **ARTICLE I** **DEFINITIONS**

The terms used herein, in the Exhibits attached hereto, and in the By-Laws shall have the meaning specified in the Act, and as follows, unless the context otherwise requires:

(1) "ACT" means the Alabama Uniform Condominium Act of 1991, Ala. Code §§35-8A-101 et. seq.

(2) "AREA OF COMMON RESPONSIBILITY" shall mean and refer to the Common Area which shall become the responsibility of the Master Association.

(3) "ARTICLES" means the Articles of Incorporation of the Association, recorded in the Office of the Judge of Probate of Baldwin County, Alabama, as amended.

(4) "ASSESSMENT" means a proportionate share of the funds required for the payment of the Common Expenses which from time to time may be levied against each Unit Owner.

(5) "ASSOCIATION" means Perdido Dunes Tower Condominium Owners Association, Inc., an Alabama not for profit corporation, and its successors, the entity responsible for the administration and management of the Condominium, and is the corporation organized in accordance with the Act.

(6) "BASE ASSESSMENT" shall mean and refer to assessments levied against the Units in the Condominium Property to fund Common Expenses, as provided in the Master Declaration.

(7) "BOARD" means the Board of Directors of the Association.

(8) "BUILDINGS" means all structures or structural improvements located on the Condominium Property and forming part of the Condominium.

(9) "BYLAWS" means the duly adopted Bylaws of the Association.

(10) "COMMON ELEMENTS" means any part of the Condominium Property, as set forth and defined in Section IV of this Declaration, in which all of the Unit Owners have an undivided interest.

(11) "COMMON EXPENSES" means the expenditures made by or financial liabilities of the Association, together with any allocation to reserves, including, but not necessarily limited to, expenses incurred in the maintenance, administration, improvement, and repair of the Common Elements, whether incurred or estimated by the Board, or for master assessments levied against Units of the Condominium Property to fund expenses, as provided in the Master Association and/or Master Declaration, for which the Unit Owners are liable to the Association in accordance with the terms of the Condominium Documents.

(12) "COMMON SURPLUS" means the excess of all receipts of the Association arising out of the ownership of Common Elements over the amount of the Common Expenses.

(13) "CONDOMINIUM" means Perdido Dunes Tower, a Condominium, and consists of the Condominium Property submitted to the condominium form of ownership by this Declaration.

(14) "CONDOMINIUM DOCUMENTS" means the Declaration, Bylaws, Articles and all Rules and Regulations as may be adopted by the Association; and all exhibits attached thereto as the same may be amended from time to time.

(15) "DECLARANT" shall mean and refer to Perdido Dunes Tower, L.L.C., an Alabama Limited Liability Corporation or its successors, successors-in-title or assigns who take title to any portion of the Condominium Property for the purpose of development. "DECLARANT" may be used interchangeably with the term "DEVELOPER", each of which shall have the same definition.

(16) "DECLARATION" means this Declaration as it may be amended from time to time.

(17) "ELIGIBLE MORTGAGE HOLDERS" are those holders of a first mortgage on a unit estate who have submitted a written request that the Association notify them on any proposed action requiring the consent of a specific percentage of eligible mortgage holders.



(18) "EXCLUSIVE EASEMENT" shall mean and refer to any Exclusive Easement(s) reserved to the Declarant, its successors and assigns, in this Declaration.

(19) "GOVERNMENTAL AUTHORITY" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion to the Condominium Property.

(20) "LIMITED COMMON ELEMENTS" shall have the same meaning as is defined in the Act, and as set out in this Declaration.

(21) "MASTER ASSOCIATION and/or MASTER DECLARATION" shall mean and refer to Perdido Dunes Condominium Owners Association, Inc.

(22) "MASTER ASSESSMENTS" shall mean and refer to the proportionate share of the funds required for the payment of the common expenses which from time to time may be levied against Unit owner pursuant to the terms, conditions, and provisions of the Master Declaration based on the unit's proportionate share of the Base Assessments as set out in the Master Declaration or this Declaration..

(23) "MASTER BOARD OF DIRECTORS and/or MASTER BOARD" shall be the elected governing body of the Master Association.

(24) "MORTGAGE" shall mean and refer to a permanent or construction mortgage or any other form of security deed, including any collateral security documents executed in connection therewith..

(25) "MORTGAGEE" means any holder and/or owner of a mortgage or vendor's lien on any part or all of the Condominium Property.

(26) "MEMBER" shall mean and refer to a person who is an owner of a unit in the Condominium Property and who is entitled to membership in the Association, as provided herein.

(27) "MORTGAGOR" shall mean and refer to any Person who gives a mortgage.

(28) "NEIGHBORHOOD" shall mean and refer to the Association located within the overall Condominium Property which will be governed by the

Association's Board of Directors, in which owners will have common interest other than those common to all Master Association Members, and which has common areas and facilities which are not available for use by all Master Association Members. Where the context permits or requires, the term Neighborhood shall also refer to Neighborhood Association having jurisdiction over the property within the Neighborhood.

(29) "OCCUPANT" means a person or person in possession of a Unit, regardless of whether that person is the Unit Owner.

(30) "PERSON(S)" means a natural person, a corporation, a partnership, a limited partnership, an association, a trustee, a joint venture, or other legal entity.

(31) "PLANS" means the site plan, floor plans, and elevations of the Condominium prepared by an independent registered engineer or registered architect, which are identified as Exhibit "B", and expressly made a part hereof.

(32) "REAL PROPERTY" or "PARCEL" means the real property as described in this Declaration which is herein submitted to the condominium form of ownership or shall be subsequently submitted in accordance with the terms of this Declaration and any subsequent amendment thereto.

(33) "UNIT" or "PRIVATE ELEMENT" means a physical portion of the Property designated, designed and intended for separate ownership or occupancy, the boundaries of which are described in this Declaration. Each Unit shall consist of the space and structures enclosed and bounded by the horizontal and vertical planes as shown on the Plan, which planes shall be determined as follows:

(a) Horizontal Boundaries (Planes). The upper and lower boundaries extend to their planar intersections with the vertical boundaries of the Unit as follows:

(i) Upper Boundary – The plane described by the ceiling of a unit shall be the unit's upper boundary. The ceiling shall include the area downward from the lower surface of the ceiling joist, beam or slab. The roof of

such a unit, defined as the area above the uppermost ceiling as described, shall be a common element.

(ii) Lower Boundary – The plane described by the exact floor of a unit. The floor shall include, for single floor building units, the area upward from the lower surface of the floor joist, beam or slab. For buildings with units on more than one story of the building, the floor of a unit shall include, for the bottom unit, the area upward from the upper surface of the floor joist, beam or slab. For higher units the floor shall include the area up from the lower surface of the floor joist, beam or slab. The area below the floor, as defined, for buildings having units on more than one floor shall be a common element.

(b) Vertical Boundaries (Planes). The vertical boundaries of each Unit shall be the vertical plane of the inside surfaces of the studs which are the component parts of the exterior walls of the unit and the plane of the inside surfaces of the studs which are the component parts of interior walls separating a unit from other units, and with reference to the deck, the outside surfaces of the handrails.

Each Unit shall include all improvements contained within such area, including any plumbing and electrical fixtures, provided, however, that no weight bearing walls and columns of the Buildings in which such Unit is located, and no pipes, wires, conduits, ducts, flues, shafts, and public utility lines situated within such Unit and forming part of any system serving one or more other Units or the Common or Limited Common Elements shall be deemed to be a part of the Unit.

When a Unit is conveyed, the following shall pass with it as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided by this Declaration and as may not be separately conveyed in accordance with this Declaration; (c) an exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time, provided

that an easement in a space that is vacated shall be terminated automatically; and (d) other appurtenances as may be provided in this Declaration.

(34) "UNIT OWNER" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit and of the appurtenant undivided interest in the Common Elements.

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

## **ARTICLE II**

### **SUBMISSION OF PROPERTY TO ACT**

By this Declaration, the Declarant hereby submits the Real Property described in Article IV below to the condominium form of ownership and provisions of the Act.

## **ARTICLE III**

### **NAME AND ADDRESS**

The name of the Condominium is Perdido Dunes Tower, a Condominium. The Condominium is located in Orange Beach, in the County of Baldwin County, State of Alabama.

## **ARTICLE IV**

### **DESCRIPTION OF PROPERTY**

4.01 Land. Consistent with the property description above, the following real property, together with all buildings, structures, improvements, and all other permanent fixtures thereon, and all rights and privileges belonging or in anyway pertaining thereto, is hereby resubmitted to the condominium form of ownership:

## **DESCRIPTION**

COMMENCING AT ORANGE BEACH REFERENCE MONUMENT RM 38 (REFERENCE MONUMENTS ARE ON RECORD AND ON FILE AT THE ORANGE BEACH CITY PLANNING OFFICE AND THE OFFICE OF THE PROBATE JUDGE, BALDWIN COUNTY, ALABAMA, SLIDES 2144B THRU SLIDE 2146A. THE PARCEL LIES IN SECTION 10, TOWNSHIP 9 SOUTH, RANGE 5 EAST, BALDWIN COUNTY, ALABAMA.), THENCE; S58°45'34"E FOR 884.12FT. TO THE POINT OF BEGINNING. THENCE; N90°00'00"E FOR 52.83FT., THEN S00°00'00"W FOR 28.25FT., THEN N90°00'00"E FOR 1.58FT., THEN S00°00'00"E FOR 59.75FT., THEN N90°00'00"E FOR 4.25FT., THEN S00°00'00"E FOR 20.92FT., THEN N90°00'00"W FOR 64.50FT., THEN N00°00'00"E FOR 20.92FT., THEN N90°00'00"E FOR 4.25FT., THEN N00°00'00"E FOR 59.75FT., THEN N90°00'00"E FOR 1.58FT., THEN N00°00'00"E FOR 28.25FT. TO THE POINT OF BEGINNING.

4.02 General Description of Improvements. The Condominium consists of the above described real property, together with the improvements, landscaping and other aesthetic amenities, automobile parking areas, and other common areas as more specifically set out herein, and as shown on the attached site plan. (Exhibit "B").

4.03. Units. Each Unit is assigned a number or letter or a combination thereof, which is indicated on the Plans, so that no Unit bears the same designation as any other Unit. The legal description of each Unit shall consist of the identifying number or letter as shown on the Plans, the name of the Condominium, the name of the county in which the Parcel is situated, the name of the office in which this Declaration is recorded, and the Instrument Number of this Declaration as recorded. The description and location of the Units/Private Elements are determined with the aid of the Plans and the horizontal and vertical planes as described in the definitions contained herein.

Each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit Owner shall have the unrestricted right of ingress and egress to his Unit, which right shall be an appurtenance to his Unit. The private elements of each Unit shall consist of the following:

(a) The air space of the area of the Building lying within the Unit boundaries.

(b) The surfacing materials on the interior of the exterior walls.

(c) The surfacing materials on the interior walls separating the unit from other units.

(d) The structural components and surfacing materials of all interior walls located within the boundaries of the unit.

(e) All bathtubs, toilets, sinks, range and oven, range hood, garbage disposal, dishwasher, hot water heater, heating unit, air conditioning unit (including the condenser and the wiring and piping located outside the boundaries of the unit if used solely for a unit), washer and dryer and light fixtures, hardware and interior lighting fixtures to be on the central billing except private deck lights which shall be metered to the individual unit, but shall not be a private element.

(f) All windows, doors, window screens, and all interior trim and finishing materials, exterior surface and exterior trim and finishing materials excluded.

4.04. Easement. Unit Owners shall have an exclusive easement and the exclusive right to use the air space and air encompassed with the deck boundaries of his unit, the area and air space encompassed with the rails of the unit.

4.05. Common Elements. The common elements of the condominium shall include the property described as common elements on Exhibit "B" and shall also include the following:

(a) The real property as described in Section 4.01, hereof.

(b) Driveways and paved areas, including ground and parking areas, though parking areas may be assigned to the exclusive use or subject to an exclusive easement in favor of a particular unit.

(c) Foundation, slab, columns or piers, girders, beams, supports, main walls, components and parts of the foregoing and roof.

(d) All utility or mechanical equipment, building and spaces not within the defined perimeters of the unit, all installations such as electrical, gas or other power forces not within the perimeters of the unit, heating and cooling systems and all ducts, pipes, wires, cables, and conduits used in connection therewith not within the perimeters of the unit, and not used solely for the unit, all storm drains, sewers, and water pipes not within the perimeter of the unit.

(e) All other areas and improvements not within the defined perimeters of the unit, not defined hereinafter as a private element.

(f) Lawn areas, landscaping, walkways, sidewalks, curbs and steps.

(g) All outdoor and exterior lights not metered to individual units and deck lights and all entrance and related type signs and the structural components thereof.

(h) All other parts of the condominium existing for the common use or necessary to the existence, maintenance and safety of the condominium.

(m) All other items listed as such in the Act and located on the property.

4.06. Limited Common Elements. The Limited Common Elements located on the Property and the Unit to which they are assigned are as follows:

The patio, balcony, terrace, or porch appurtenant to abutting each Condominium Residential Unit, and constructed so as to serve only such unit, including the storage closet area, if any, located on such balcony, are Limited Common Elements appurtenant to those Units to which they attach, and whose use is restricted to Units they are appurtenant. Doorsteps or stoops, if any, providing access to a patio, balcony, terrace, or porch are assigned as a Limited Common Element to the Unit to which the patio, balcony, terrace or porch serves.

4.07. Agreement. Each Person who shall acquire any Unit in the Condominium or interest in or lien upon any such Unit, shall be deemed, by accepting a conveyance of or otherwise acquiring such Unit interest or lien, to

have agreed and consented, within the meaning of this Declaration and the Act, to be bound by the terms and provisions hereof.

**ARTICLE V**  
**ADDITIONAL DEVELOPMENT AND WITHDRAWAL OF RIGHTS**

5.01 Additional Improvements. In the event that Declarant elects to develop additional improvements, such additional improvements may be submitted to the Act and added to the condominium by amendment of this Declaration, subject to the rights of Declarant.

**ARTICLE VI**  
**SPECIAL AND OTHER DECLARANT RIGHTS**

6.01 Amendment Of Condominium Plan. In addition to the development and withdrawal rights reserved by the Declarant, Declarant reserves the right to change the interior design, arrangement of all Units, to alter the boundaries between Units and to increase the number of Units so long as the Declarant, or its affiliates or members, owns the Units so altered. Changes in the boundaries between Private Elements, as herein provided, shall be reflected by an amendment to the Plan and, if necessary, an amendment to this Declaration. An amendment to the Plan or to this Declaration reflecting an alteration of the boundaries of the Units owned by the Declarant must be signed and acknowledged only by the Declarant and need not be approved by the Owners and Eligible Mortgagees, whether or not such approval may elsewhere be required herein. However, any change which shall result in a change in the undivided interest in the Common Elements or the Limited Common Elements or a change in the share of the Common Expenses with respect to Owners of units other than the Declarant at the time of such change or which shall result in the alteration of boundaries of Units may not be made with an amendment to this Declaration approved by the Owners and Eligible Mortgagees in the manner elsewhere required herein.



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

6.03 Use By The Declarant. Subject to the rights of the Eligible Mortgagees hereunder, neither the Owners nor any other interested party nor their use of the Condominium Property or application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the Condominium until the Declarant has completed all of the Declarant's contemplated improvements and closed the sales of all of such Units. Subject to the rights of the Eligible Mortgagees hereunder, the Declarant may make such use of the unsold Units and of the Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office and model units, the showing of the condominium Property and the Units therein, and the display of signs thereon and therein. These special Declarant rights shall exist so long as the Declarant owns any Unit in the Condominium, holds any Unit in the Condominium for sale in the ordinary course of business.

6.04 Reallocation of Interests. If Units are added to the Condominium in accordance with the provisions of this Declaration, reallocation of undivided interest in the Common Elements and Common Expenses among all Units included in the condominium after the Addition shall be in proportion to the relative sizes of Units, based on the heated and cooled floor area of each Unit, not including Limited Common elements.

**ARTICLE VII**  
**COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

7.01. Ownership. Each Unit Owner shall be entitled to the Fractional Ownership in the Common Elements allocated to the respective Unit, as set forth in Exhibit "A". The ownership interests in the Common Elements shall be an undivided interest, and except as provided in the Act and this Declaration, shall remain undivided. No Unit Owner shall bring any action for partition or division of the Common Elements. The ownership interest in the Common Elements shall not be conveyed, transferred, encumbered or otherwise affected separate from the ownership of the Unit, and any agreement to the contrary shall be void.

7.02. Use.

(a) Each Unit Owner shall have the right to use the Common Elements (except any portions of the Property subject to leases made or assigned to the Board, and except any portions thereof designated as a Limited Common Element and restricted to the exclusive use of and as an appurtenance to another unit) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the respective Unit by such Unit Owner. The Unit Owner shall have the right to non-exclusive use and possession of the Limited Common Elements considered appurtenant to the ownership of such Unit. The right to use the Common Elements and Limited Common Elements shall be subject to, and governed by, the Provisions of the Act, Declaration, Bylaws, and the rules and regulations of the Association. In addition, the Association shall have the authority to lease, grant concessions, or grant easements with respect to parts of the Common Elements subject to the provisions of the Declaration and Bylaws.

(b) Anything contained herein notwithstanding, a valid exclusive easement is hereby declared and established for the benefit of each unit and its

owner consisting of the right to use and occupy the balcony or deck serving only such Unit.

7.03. Share of Expenses. Each Unit Owner shall be assessed and liable for a proportionate share of the Common Expenses, and the proportionate share of Common Expenses shall be the same ratio as his fractional ownership in the Common Elements. Payment of Common Expenses shall be in such amounts and at such times as determined in the Bylaws. No Unit Owner shall be exempt from payment of his or her proportionate share of the Common Expenses by waiver or nonuse or nonenjoyment of the Common Elements, or by abandonment of his Unit. Common Expenses shall include, but shall not necessarily be limited to, expenditures made or liabilities incurred by the Association, together with payments or obligations to reserve accounts.

7.04. Share of Master Association Expenses. Subject to the terms and conditions of the Master Declaration and as authorized by the Board of Directors of the Master Association, each Unit Owner shall be subject to two (2) types of assessments: (a) Base Assessments to fund Common Expenses for the benefit of all Members of the Master Association; and (b) Special Assessments.

Base and Special Assessments shall be levied on the Units of the Association in an amount equal to 54.05% of the combined assessments levied by the Board of Directors of the Master Association against the two (2) Neighborhood Association included in the Master Association.

Notwithstanding anything to the contrary in this Sub-Section and prior to the time that Perdido Dunes Tower completes construction of its new condominium tower and has received an official Certificate of Occupancy from the City of Orange Beach, Alabama, all Base and Special Assessments levied by the Board of Directors of the Master Association against the two (2) Neighborhood associations included in the Master Association shall be levied in accordance with the ownership interest in the common elements as identified and set forth in Exhibit "D".

7.04. Lien for Expenses. If any Unit Owner shall fail or refuse to make any payment of the Common Expenses or other assessment when due, the

amount due, together with costs, reasonable attorney's fees, and interest thereon at the maximum percentage rate as may then be permitted under the law of the State of Alabama, from and after the date said Common Expenses, or other assessments, become due and payable, in accordance with applicable law, shall constitute a lien on the interest of the Unit Owner in the Property.

7.05. Priority of Lien. Any lien of the Owners Association shall be subject to the rules of priority as stated in the Act and other applicable state laws.

7.06. Disposition of Surplus. The Common Surplus shall appertain to the Units in proportion to the liability for Common Expenses appertaining to each Unit; or in the alternative, such Surplus or any portion thereof may be added to a reserve fund for maintenance, repair, and replacement of the Common Elements at the sole discretion of the Association.

## **ARTICLE VIII** **THE ASSOCIATION**

8.01. Name. The name of the Association is Perdido Dunes Tower Condominium Owners Association, Inc.

8.02. Powers and Duties. The operation and administration of the Condominium shall be by the Association, pursuant to the Act. The Association shall be a not for profit corporation and shall be responsible for the maintenance, repair, replacement, administration, and operation of the Property. The Association shall have all the powers and duties set forth in the Act, as well as all the powers and duties granted to or imposed on it under the Bylaws and other Condominium Documents as they may be amended from time to time. Without limiting the foregoing, the Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other person or persons. Also, without limiting any of the foregoing, the Association shall have a reasonable right of entry upon any Unit to make emergency repairs and to do other work

reasonably necessary for the proper maintenance and operation of the project and further, shall have the right to grant permits, licenses, and easements over the common areas for utilities, proper maintenance or operation of the project. The Board of Directors shall have the authority and the duty to levy and enforce the collection of general and specific assessments for common expenses and limited common expenses, and is further authorized to provide adequate remedies for failure to pay such assessments.

8.03. Membership. Each Unit Owner shall be a member of the Association and the Master Association so long as he is a Unit Owner. A Unit Owner's memberships shall automatically terminate when he ceases to be a Unit Owner. The memberships of a Unit Owner cannot be assigned or transferred in any manner except as an appurtenance to his Unit.

8.04. Voting Rights. The aggregate number of votes for all Members shall be divided among the members in proportion to their respective ownership interests in the Common Elements. Each unit shall be entitled to one (1) vote, the numerical value of which shall be the fractional undivided interest in the common elements assigned to the unit of which the member is the owner, as provided in Exhibit "A", attached hereto and made a part hereof by reference. The vote of a Unit shall not be divisible. All votes shall be cast in accordance with the provisions set forth in the Bylaws.

8.05. By-Laws. The Association and its members shall be governed by the Bylaws, as amended.

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

8.07. Board of Directors. The affairs of the Association shall be conducted by a Board of Directors which shall consist of such number not less than three (3) nor more than five (5) as shall from time to time be determined and fixed by a vote of a majority of the voting rights present at any annual meeting of the Members.

8.08. Voting For Election of Board of Directors for Master Association.

The Unit Owners shall elect three (3) Directors to the Master Association Board of Directors. Said vote shall be in accordance with the voting procedures of the Association.

8.09. Indemnification. Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases wherein the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

8.10. Limitation of Liability. Notwithstanding the liability of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage caused by a latent condition of the Property to be maintained and repaired by the Association, nor for injury or damage caused by the elements, or other Owners or Persons.

8.11. Contracts. Any professional management contract entered into by the Association must contain provisions that the contract may be terminated without penalty and upon not more than ninety (90) days notice to the other party by the Association at any time.

8.12. Availability of Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act. The Association shall make reasonably available in the county where the Condominium is located for examination by Unit Owners, prospective

purchasers, first Mortgagees and insurers of the first Mortgagees of any Unit, or their authorized agents, current copies of the Declaration, By-Laws, Rules and Regulations and other books, records, financial statements and the most recent annual financial statement of the Association. Reasonably available shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

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

8.14. Assignment of Future Income. The Association may assign its right(s) to future income, including the right to receive common expense assessments.

## **ARTICLE IX** **OCCUPANCY, USE, AND LEASING RESTRICTIONS**

9.01. Residential Use. Each Unit or any two or more adjoining Units used together shall be used only as a residence, except that, if permitted by applicable zoning ordinances, a professional or quasi-professional Unit Owner or Occupant using a Unit as a residence may also use that Unit as an ancillary or secondary facility to an office established elsewhere. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit an Occupant from (1) maintaining his personal professional library, (2) keeping his personal business or professional records or accounts, or (3) handling telephone calls or correspondence relating to his personal business or profession. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions.

9.02. Use of Common Elements of the Association and the Master Association. The Common Elements maintained by the Association and the

Master Association shall be used only by the Unit Owners and their agents, servants, tenants, family members, invitees, and licensees for access, ingress to, and egress from the respective Units and for such other purposes incidental to use of the Units. However, other areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance, and operation of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession, or easement, presently in existence or entered into by the Board at some future time, affecting any part or all of said Common Elements. No Unit Owner or Occupant shall place, distribute, or maintain any sign, poster, or bill in any portion of the Common Elements outside his Unit without approval of the Board of Directors.

9.03. Use of Limited Common Elements. The Limited Common Elements shall be used only by the Unit Owner having an undivided interest in and to the Unit to which the Limited Common elements is assigned, and their agents, servants, tenants, family members, invitees and licensees for such purposes incidental to the use of said Units. Such uses shall at all times be consistent with this Declaration.

9.04. Nuisances. No nuisances shall be allowed on the Condominium Property, nor any use or practice that is the source of unreasonable annoyance to residents or interferes with the peaceful possession and proper use of the Condominium Property by its residents. All parts of the Condominium Property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate nor any fire hazard allowed to exist.

9.05. Lawful Use. No offensive or unlawful use shall be made of the Condominium Property, nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies that require maintenance, modification, or repair of the



Condominium Property shall be the same as the responsibility for the maintenance and repair of the Condominium Property concerned.

9.06. Leases. Units may be leased by the Unit Owners, provided, however; (1) that such lease and the rights of any tenant thereunder is hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Units and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including eviction; and (2) that such lease or rental agreement shall be in writing.

Each Unit Owner who has or who shall hereafter lease his unit hereby irrevocably empowers and authorizes the Association and/or its managing agent to enforce the rules and regulations of the Condominium Association, and to terminate the lease of and evict any tenant who fails to comply with said rules or who provides other sufficient cause for termination of the lease and eviction in accordance with the laws of the State of Alabama, this Declaration, the Bylaws, Rules and Regulations of the Association, or any contract for lease. The Association, the Board of Directors or its managing agent shall not become liable to any unit owner, sublessor or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this paragraph.

9.07. Right to First Refusal. The right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar refusal.

9.08. Restrictions on Mortgaging Units. Anything construed in any of the condominium documents notwithstanding, there shall be no restrictions of a Unit Owner's right to mortgage his or her unit.

9.09. Miscellaneous Restrictions.

- (1) No waste shall be committed in or on the Common Elements.
- (2) Except as expressly provided in this Declaration, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.

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

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

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

(6) No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the Buildings or any portion thereof.

(7) Outdoor drying of clothes, bedding, or similar items is not permitted.

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

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

(10) Except within individual Units, no planting, transplanting, or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the property, except as approved by the Board.

(11) Animals or pets of any kind shall be kept in any Unit or any property of the Condominium subject to the rules and regulations adopted for

keeping such pets by the Board of Directors of the Association. No animals shall be kept for commercial purposes nor be allowed to create or cause any disturbance or nuisance of any kind, and if an animal or pet does cause or create a nuisance of an unreasonable disturbance, said animal or pet shall be permanently removed from the property within three days from the day the owner received the written notice from the Board of Directors of the Association. The Owner of any pet or animal shall be liable for any and all damage caused by such animal or pet to any part of the Condominium Property or to any other property operated by the Association.

(12) At least one automobile parking space shall be made available to each Unit. The Board of Directors of the Association may or may not, in its discretion, assign specific parking spaces to the Unit Owners. If an assignment is made, such assignment shall not be recorded in the public records. The Board of Directors of the Association shall have the right to change the assignment of such specific parking spaces from time to time as in its sole discretion it deems advisable. Notwithstanding any provisions to the contrary in this Sub-Section, all parking spaces shall be allocated consistent with the Declaration of the Master Association.

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

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

## **ARTICLE X** **EASEMENTS**

Each of the following easements are reserved to the Association for the benefit of its Members, their guests, and lessees, is a covenant running with the land, may not be amended or revoked, and shall survive the termination of the Condominium:

(1) Utilities. Each Unit shall have an easement as may be required for Utility Services needed to serve the Condominium adequately; provided, however, easements through a Unit shall be according to the plans and specifications for the Building or as the Building is actually constructed or reconstructed, unless otherwise approved in writing by the Unit Owner. The Board of Directors or its designee shall have a right to access to each Unit to inspect such Unit, to maintain, repair or replace drainage facilities and the pipes, wires, ducts, vents, cables, conduits and other facilities related to the providing of Utility Services, and Common Elements or Limited Common Elements contained in the Unit or elsewhere in the Condominium property, and to remove any improvements interfering with or impairing the Utility Services, drainage facilities and easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entries shall not be made without prior notice to the Unit Owner.

(2) Ingress and Egress. Each Unit shall have an easement for pedestrian traffic over, through, and across sidewalks, paths, walks, lobbies, elevators, stairways, walkways and lanes, and like passageways, as the same may from time to time exist on the Common Elements: and for vehicular traffic over, through, and across such portions of the Common Elements as from time to time may be paved and intended for such purposes, but the same shall not give or create in any person the right to park on any portion of the Condominium Property not designated as a parking area, nor shall it give or create in any person the right to use or occupy a Limited Common Element

designated for the exclusive use of others. This easement shall be nonexclusive and shall include the right of ingress and egress to a public street or highway upon and over Common Elements providing such access and as shown on the Plans.

(3) Drainage. Each Unit shall have an easement as may be required to drain the Condominium Property adequately.

(4) Support. Each Unit shall have an easement of support and necessity and shall be subject to an easement of support and of necessity, and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements and the Limited Common Elements.

(5) Encroachment. If any portion of the Common or Limited Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common or Limited Common Elements, as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as such building stands. In any event any building, any Unit, any adjoining Unit, or any adjoining Common or Limited Elements, shall be partially or totally destroyed as a result of fire, or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common or Limited Common Elements upon any Unit or of any Unit upon another Unit or upon any portion of this Common or Limited Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such building shall stand.

## **ARTICLE XI**

### **MAINTENANCE, ALTERATION, AND IMPROVEMENTS**

#### **11.01 Maintenance by the Association.**

(1) The Association, as a Common Expense, shall maintain, repair, and replace if necessary the following:

(a) All portions of the Common Elements and Limited Common Elements not the responsibility of a Unit Owner under the provisions of Paragraph 9.02, hereof.

(b) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services that are contained within a Unit but service part or parts of the Condominium other than the Unit within which contained and that are not the responsibility of a Unit Owner under Section 9.02, hereof.

(c) Maintenance, repair and replacement of exterior windows and doors and ceiling, above the horizontal plane of unit.

(2) The Association may enter into a contract with any firm, person, or corporation, or may join with other entities in contracting for the maintenance and repair of the Condominium Property and other type properties, and may delegate to such agent all or any portion of the powers and duties of the Association, except such as are specifically required by the Condominium Documents to have the approval of the Members of the Association; provided however, such contract shall be subject to the provisions of paragraphs 8.10 and 8.11 herein above.

11.02. Maintenance by Unit Owners.

(a) Each Unit Owner shall maintain his Unit and the interior thereof in good tenantable condition and repair, and shall repair, maintain, and replace if necessary the following:

(1) The fixtures and equipment in his Unit, including the refrigerator, stove, fans, dishwasher, and all other appliances, drains, plumbing fixtures and connections, sinks, and plumbing within the Unit; electric panels, wiring, outlets, and electric fixtures within the Unit; interior doors and all wall coverings and carpeting within a Unit.

(2) The plumbing, heating, ventilation, air conditioning, and electrical systems serving only that Unit, whether located within or without the

boundary of that Unit, including the heater and air conditioning compressor, hot water heaters, fuse boxes, wiring, fireplace flues, and all other plumbing, electrical, gas or mechanical systems. In the event any such system or a portion thereof is within another Unit, or requires access to another Unit, the repair, maintenance or replacement thereof shall be performed by the Association, and the cost thereof shall constitute an Assessment against the Unit Owner responsible therefor.

(b) Each Unit Owner shall keep the Limited Common Elements, appurtenant to his Unit, if any, in a neat and presentable appearance and shall not allow such area to be used for storage or beyond its intended use.

11.03. Unit Owner's Covenants. Each Unit Owner agrees as follows:

(1) To perform all maintenance, repairs, and replacements that are the Unit Owner's obligations under this Declaration and the Act.

(2) To pay for all of his utilities, including electricity, gas and telephone used within the Unit and all taxes levied against his Unit.

(3) Not to make, or cause to be made, any repairs to any plumbing, heating, ventilation or air conditioning systems located outside his Unit but required to be maintained by him pursuant to the provisions hereof, except by licensed plumbers or electricians authorized to do such work by the Association or its delegate or agent.

(4) Not to make any addition or alteration to his Unit or to the Common Elements or Limited Common Elements or do any act that would impair the structural soundness or safety of any part of the Condominium Property. Structural alterations within a Unit may be made only with the written consent of the Association.

(5) To make alterations, additions, improvements, decoration, repair, replacement, or change to the Common Elements, or Limited Common Elements, or to any outside or exterior portion of the building, specifically including, but not limited to screening or enclosing private balconies, installing garage or other exterior doors, or affixing outshutters to windows, without the

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

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

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

11.04. Facade. The Association shall determine the exterior color scheme of the Buildings and shall be responsible for the maintenance thereof, except as may be otherwise provided herein. No Owner shall paint any exterior surface or add or replace anything hereon or affixed thereto without written consent of the Association.

11.05. Repairs. The Association shall be responsible for the maintenance, repair, and replacement of the Common Elements and Limited Common Elements, except as otherwise provided for in Paragraph 9.02; provided, that if any repairs or replacements are made necessary because of abuse or negligent use thereof by a Unit Owner, the cost of such repair or replacement may be assessed against such Unit Owner.



11.06. Addition, Alteration and Improvement. Except for repairs and maintenance of existing improvements, there shall be no addition, alteration, or further improvement of the Common Elements or Limited Common Elements without the prior approval of not less than a majority of the Members. Any such alteration or addition shall be done in accordance with complete plans and specifications therefor first approved in writing by the Board; and promptly upon completion of such additional building or structural alteration or addition to any structure, the Association shall duly record or file of record in the office of the Judge of Probate of Baldwin County, Alabama, such amendment together with a complete set of plans of the Condominium, as so altered, certified "as built" by a licensed or registered engineer or architect.

## **ARTICLE XII** **INSURANCE**

12.01 Obligation to Purchase. The Association shall maintain insurance upon the Condominium Property, to the extent reasonably available, as provided for in the Act and as follows. If the insurance which is required to be maintained is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

12.02 Specified Insurance. Insurance, other than title insurance, that shall be carried on the Property and the property of the Unit Owners shall be governed by the provisions of this Article. Insurance coverage maintained by the Association pursuant to these provisions is hereafter referred to as "Specified Insurance." Anything to the contrary notwithstanding, all insurance coverages shall be consistent with local, state and federal insurance laws.

12.03. Location of Policies. The Association shall retain the original of all insurance policies for Specified Insurance in a place of safekeeping such as a safe or a safety deposit box and shall provide copies of such policies to Institutional Mortgagees requesting such copies.

12.04. Notice of Change in Insurance Coverage. No cancellation or substantial change in the Specified Insurance provisions, including changes in the amount of coverage, the risks covered, the ratio to value of coverage, or endorsements or other changes in the coverage provisions, may be effected by the Association without at least ten (10) days written notice to the Association or insurance trustee and each Mortgage Holder named in the mortgage clause, and each holder of a first mortgage on an individual unit.

12.05. Qualification of Insurance Company. Each company issuing Specified Insurance must be specifically authorized by the laws of the State of Alabama to transact such business as is necessary to provide the Specified Insurance.

12.06. Provisions. Insurance coverage as specified and required under this Article, shall, in substance and effect:

(1) Provide that the policy will be primary, even if unit owner has other insurance that covers the same loss, and further provided that the liability of the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of any insurance obtained by or for any Unit Owner.

(2) Contain no provision relieving the insurer from liability for a loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Association, or because of any breach of warranty or condition or any other act or neglect by the Association or any Unit Owner or any other persons under either of them.

(3) Provide that such policy may not be canceled or substantially modified (whether or not requested by the Association) except by the insurer giving at least ten (10) days prior written notice thereof to the Association, the fee owner, each holder of a first mortgage on an individual unit, and every other person in interest who shall have requested such notice of the insurer.

(4) Provide that each Unit Owner is an insured person under the policy with respect to the liability arising out of his interest in the common elements or membership in the Association.

(5) Provide that no act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

(6) Contain a waiver by the insurer of any right of subrogation to any right of the Association, or either against the Unit Owner or member of his household or lessee of any Unit; and

(7) Contain a standard mortgage clause which shall:

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

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

(c) Waive any provisions invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use on vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

(8) Any insurance trust agreement will be recognized.

12.07. Named Insured. The named insured on all policies of Specified Insurance shall be the Association, for the use and benefit of the individual owners. Any "loss payable" clause shall show the Association or other insurance trustee as a trustee for each Unit Owner and the holder of each Unit's mortgage.

12.08. Property Damage Insurance. The Board shall secure and maintain in effect a "master" or "blanket" type policy of property damage insurance providing coverage in an amount not less than the full replacement

value of the Common Elements and Limited Common Elements, (except land, foundation, excavation or other items usually excluded from coverage) and including coverage for all improvements, fixtures and personal property included in the Common Elements and Limited Common Elements. The policy shall cover all of the Common Elements and Limited Common Elements that are normally included in coverage, including but not limited to, fixtures and building service equipment and common personal property and supplies owned by the Association. The policy, which shall be a "All-In-One" policy, shall also cover damage to the units, as required by the Act. The policy shall include an "Agreed Amount Endorsement" or its equivalent, if available, or an "Inflation Guard Endorsement", if available. If the enforcement of any building, zoning, or land-use law will result in loss or damage, increased costs of repairs or reconstruction, or additional demolition and removal costs, the Association shall require a Building Ordinance or Law Endorsement which must provide for such contingent liability. Such coverage for property damage insurance shall afford protection against:

- (1) Loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsements; and
- (2) Risks as are covered by an all-risk endorsement; and
- (3) Other risks as from time to time shall be customarily covered with respect to condominium buildings similar in construction, location and use as the Buildings. The deductible amount shall be determined by the Board of Directors. Funds to cover these deductible amounts shall be included in the Owners Association's operating reserve account.

12.09. Public Liability Insurance. The Association shall secure and maintain a comprehensive commercial general liability insurance policy, including medical payments insurance, covering all Common Elements, public ways and any other areas that are under its supervision. The insurance shall also cover commercial spaces that are owned by the Association, even if they are leased to others. The policy should provide coverage for death, bodily injury and property damage arising out of or in connection with the operation,

maintenance, or use of the project's Common Elements and, further, any legal liability that results from lawsuits related to employment contracts in which the Association is a party. Such policy shall provide coverage, in an amount to be determined by the Board of Directors, for bodily injury, including death, and property damage for any single occurrence. In no event shall the coverage be in an amount less than one million dollars for any single occurrence. If the policy does not include "severability of interest" in its terms, it shall contain a specific endorsement to preclude the insurer's denial of a Unit Owner's claim because of negligent acts of the Owners' Association or of other Unit Owners. The coverage shall also include protection against water damage liability and, if applicable, elevator collision, garage keep's liability, and such other risks as shall customarily be covered with respect to condominium buildings similar in construction, location, and use.

12.10. Flood Insurance. If any part of the project shall be deemed to be in a Special Flood Hazard Area, as defined by the Federal Emergency Management Agency, the Association shall maintain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a Common Expense. The policy shall cover the buildings and any other property within the designated hazard area. The amount of insurance should be at least equal to the lesser of: (1) 100% of the current replacement cost of all buildings and other insurable property located in the flood hazard area; or (2) the maximum coverage available for the property under the National Flood Insurance Program. The policy shall be in a form which meets the criterion set forth in the most current guidelines issued on the subject by the Federal Government. Funds to cover the deductible amount shall be maintained in the Owners Association's operating reserve account.

12.11. Personnel Coverages. Should the Association employ personnel, all coverages required by law, including worker's compensation, shall be obtained so as to meet the requirements of the law.

12.12. Fidelity Bonds. The Board shall secure and maintain in effect adequate blanket fidelity coverage to protect against loss of money

through dishonest acts on the part of officers, directors, employees, and all others who handle or are responsible for handling the funds held or administered by the Association, whether or not that individual received compensation for services, including but not limited to employees or professional managers. Such fidelity bonds shall have their premiums paid as a Common Expense by the Association and shall meet the following requirements:

(a) Fidelity bonds shall name the Association as an insured or obligee.

(b) The bonds shall be written in an amount equal to at least One Hundred Fifty percent (150%) of the estimated annual Common Expenses, including reserves, unless a greater amount is required by a federal governmental agency insuring or purchasing Mortgages encumbering Units.

(c) The bonds shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of employee or similar expression.

(d) The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association or insurance trustee and each mortgage holder or servicer that services a Fannie Mae-owned or securitized mortgage in the condominium project.

(2) Any management agent that handles funds for the Association shall also be covered by its own fidelity bond which is equal or exceeds the coverage of that bond obtained by the Association.

12.13. Other Coverages. The Association shall obtain all other insurance required by the Act. The Board shall secure other boiler and machinery insurance, directors' and officers' liability insurance, and plate glass insurance as it deems necessary and shall also have authority to obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable. The premiums for such insurance shall be a Common Expense.

12.14        Unit Owner's Individual Responsibilities. A Unit Owner shall be liable for any claim, damage, or judgement entered as a result of the use or operation of his Unit caused by his own conduct. Each Unit Owner shall be responsible for obtaining his own insurance on the contents of his own Unit and the contents of any Limited Common Elements serving his Unit, as well as additions and improvements thereto, decorations, furnishings, and personal property therein, and personal property stored elsewhere on the property.

12.15.        Premiums. Premiums for insurance maintained by the Association shall be paid by the Association as a Common Expense. Should the Association fail to pay such premiums when due, or should the Association fail to comply with other insurance requirements of the Mortgage Holder, the Mortgage Holder shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance. To the extent of any money so advanced, the Mortgage Holder shall be subrogated to the Assessment and lien rights of the Association as against the individual Unit Owners for the payment of such item of Common Expense.

12.16.        Association as Agent. All insurance policies purchased by the Association shall provide that all proceeds covering property losses shall be paid to the Association, for the benefit of the Association and the Unit Owners and their Mortgagees as their interest may appear and as contemplated herein. The Association is hereby irrevocably appointed agent with full power of substitution, for each Unit Owner and for each owner of any other insured interest in the Property. The Association shall have power to adjust all claims arising under insurance policies purchased by the Association; to bring suit thereon in its name and/or in the name of other insured; to deliver releases on payment of claims; to compromise and settle such claims; and otherwise to exercise all of the rights, powers and privileges of the Association and each Unit Owner or any other holder of an insured interest in the Property under such insurance policies. However, the actions of the Association shall be subject to the approval of any eligible First Mortgagee if the claim shall involve more than one Unit, and if only one Unit is involved, such actions shall be subject to the

approval of any eligible First Mortgagee holding a mortgage encumbering such Unit.

12.17. Share of Proceeds. The Association shall receive such insurance proceeds as are paid to it and shall hold the same in trust for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

(1) Common Elements. An undivided share of the proceeds on account of damage to Common Elements shall be held for each Unit Owner, with such shares' portion of the total proceeds being the same percentage as the share of the Common Elements appurtenant to his Unit as set forth in Exhibit "A".

(2) Units and Limited Common Elements. Except as provided elsewhere in this Declaration, proceeds on account of damage to Units and Limited Common Elements shall be held in the following undivided shares:

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

(b) When the Condominium Property is not to be restored, the proceeds shall be held for the Unit Owners in undivided shares that are the same as their respective shares of the Common Elements as set forth in Exhibit "A".

(3) Mortgagees. In the event a mortgagee endorsement has been issued with respect to a Unit, the share of the Owner of that Unit shall be held in trust for the mortgagee and the Unit Owner as their interest may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination whether or not any damaged property shall be reconstructed or repaired except as may be specifically provided to the contrary elsewhere in this Declaration.



12.18. Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners in the following manner:

(1) Reconstruction or Repair. First, if the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs, if in excess of \$3,000.00, shall be distributed to the beneficial owners, with remittances to Unit Owners and mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by any such mortgagee.

(2) Failure to Reconstruct or Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds, if in excess of \$3,000.00 per unit, shall be distributed to the beneficial owners, with remittances to Unit Owners and their mortgagee being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by any such mortgagee.

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

### **ARTICLE XIII** **RECONSTRUCTION AND REPAIR**

13.01. Responsibility. In the event of damage or destruction, and if the damage is only to those parts of Units for which the responsibility of maintenance and repair is that of the respective Unit Owners, then those Unit Owners shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

13.02. Determination to Reconstruct or Repair. Any portion of the condominium for which insurance is required under this Declaration which is

damaged or destroyed must be repaired or replaced promptly by the Association unless:

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

13.03. Plans. Any reconstruction or repair must be substantially in accordance with the Act and in accordance with the Plans for the original improvements or as the Condominium Property was last constructed; or if not, then according to Plans approved by the Board of Directors of the Association.

13.04. Estimate of Cost. When the Association shall have the responsibility of reconstruction or repair, prior to the commencement of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to repair or rebuild.

13.05. Assessments for Reconstruction and Repair. If the proceeds of insurance are not sufficient to defray completely the estimated cost of reconstruction and repair by the Association, Special Assessments shall be levied against all Unit Owners in sufficient amount to provide funds for the payment of such estimated costs. Special Assessments against Unit Owners for damage to Units shall be in the proportion that the cost of reconstruction and repair of their respective Units bears to the total cost of such reconstruction and repair. An Assessment against a Unit Owner on account of damage to Common elements shall be in proportion to the Unit Owner's share in the Common Elements. Special Assessments for reconstruction and repair may be collected, and the collection enforced, in the same manner as an Assessment.

13.06. Construction Funds. The funds for the payment of costs for reconstruction and repair after casualty for which the Association is responsible, which shall consist of the proceeds of insurance held by the Association and funds collected by the Association from Assessments and/or Special Assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(1) Damage. The construction fund shall be disbursed in payment of such costs on the order of, and in the manner provided by the Board.

(2) Unit Owner. If there is a balance of insurance proceeds after the payment of the costs of reconstruction and repair that are the responsibility of the Association, this balance shall be distributed to Unit Owners of damaged Units who are responsible for the construction and repair of the damaged portions of their Units. The distribution to each such Unit Owner shall be made in the proportion that the estimated cost of reconstruction and repair of such damage to his Unit bears to the total of such estimated costs in all damaged Units. However, no Unit Owner shall be paid an amount in excess of such estimated costs for his Unit. If a Mortgagee holds a Mortgage upon a Unit, the distribution shall be paid to the Unit Owner and the Mortgagee jointly.

(3) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund.

#### **ARTICLE XIV** **TERMINATION**

The termination of the Condominium may be effected in accordance with the provisions of the Act and by the agreement of Unit Owners of units to

which eighty percent (80%) of the votes in the Association are allocated and, in the case of termination for reasons other than substantial destruction or condemnation of the property, by eligible mortgage holders (as defined in Bylaws and this Declaration) that represent at least sixty-seven percent (67%) of the votes of the mortgaged units. The agreement shall be evidenced by a written instrument executed in the manner required for conveyance of land, and recorded in the public records of Baldwin County, Alabama. After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares equal to the fractional undivided interest in the common elements assigned to each Unit. Notwithstanding any thing to the contrary in this Sub-Section, the termination of the Condominium must be approved by at least sixty-seven percent (67%) of the Unit Owners of Perdido Dunes 2006 and by at least sixty-seven percent (67%) of the Board of Directors of the Master Association.

**ARTICLE XV**  
**EMINENT DOMAIN/CONDEMNATION**

15.01. Determination Whether to Continue Condominium. The taking of a portion of a Unit or of the Common elements by eminent domain shall be deemed to be a casualty and the determination as to whether the Condominium will be reconstructed or repaired or continued after condemnation will be determined in the manner provided for in the Act and under the provisions of this Declaration pertaining to reconstruction and repair after casualty losses.

15.02. Proceeds. The proceeds and awards for such taking shall be deemed proceeds from insurance on account of the casualty and shall be deposited with the Association as Insurance Trustee. Even though the awards may be payable to a Unit Owner, the Unit Owner shall deposit the awards with the Association as Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, an Assessment shall be

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

15.03.     Disbursement of Funds. If the condominium is terminated after condemnation, the proceeds of the condemnation awards will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in this Declaration for the distribution of insurance proceeds if the Condominium is terminated after damage to the Common Elements. If the Condominium is not terminated after condemnation, the size of the Building will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of said awards shall be disbursed in the manner provided for disbursements of funds by the Association after damage to the Common Elements.

15.04.     Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(1)     Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award and the Owner of the Unit does not within a reasonable period of time provide the additional funds required for restoration, such additional funds may, in the discretion of the Board of Directors, be expended for restoration by the foreclosure of the Association's lien for delinquent Assessments, Special Assessments, or both where the bid of the Association does not exceed the amount found due the Association, or to be acquired by the Association in lieu of foreclosure of such lien if the consideration therefor does not exceed the cancellation of such lien. In any event, the Board of Directors or a designee thereof, acting on behalf of the Association, may only purchase a Condominium Parcel in accordance with this Article, or as the result of a sale pursuant to the foreclosure of (i) a lien on the condominium Parcel for unpaid taxes; (ii) the lien of a mortgage; (iii) the

lien for unpaid Assessments, Special Assessments or both; or (iv) any other judgment lien or lien attaching to such Condominium Parcel by operation of law.

#### **ARTICLE XVI**

#### **NOTICE OF LIEN OR SUIT**

16.01. Notice of Lien. A Unit Owner shall give notice in writing to the Secretary of the Association of every lien on his unit, other than liens for Mortgages, taxes, and special assessments, within five (5) days after he learns of the attaching of the lien.

16.02. Notice of Suit. A Unit Owner shall give notice in writing to the Secretary of the Association of every suit or other proceeding that may affect the title to his unit, with such notice to be given within five (5) days after the Unit Owner obtains knowledge thereof.

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

#### **ARTICLE XVII**

#### **RULES AND REGULATIONS**

17.01. Compliance. Each Unit Owner and the Association shall be governed by and shall comply with the terms of the Condominium documents and the rules and regulations applicable to the Condominium Property and consistent with the terms of the condominium documents and the rules and regulations of the Master Association. Ownership of a Unit subjects the Unit Owner to compliance with provisions of the Declaration, the Articles, the Bylaws, the Rules and Regulations of the Association and Master Association, and any contract with the Association as a party, as well as to any amendments to any of the foregoing. Failure of the Unit Owner to comply therewith shall entitle the Association, Master Association or other Unit

Owners to an action for damages or injunctive relief, or both, in addition to other remedies provided in the Condominium Documents and the Act.

17.02.     Enforcement. The Association and the Master Association, through their respective Boards of Directors, is hereby empowered to enforce the Condominium Documents and all rules and regulations of the Association by such means as are provided by the laws of the State of Alabama, including the imposition of reasonable fines (after reasonable notice and opportunity to be heard) from time to time as set forth in the Bylaws. In the event a Unit Owner fails to maintain his Unit in the manner required in the Condominium documents and any rules and regulations of the Association, the Association, through the Board of Directors, shall have the right to assess the Unit Owner and the Unit for the sums necessary to do the work required to effect compliance and to collect, and enforce the collection of a Special Assessment therefore as provided in this Declaration. In addition, the Association shall have the right, for itself and its employees and agents, to enter such Owner's Unit and perform the necessary work to effect compliance.

17.03.     Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or by that of any member of his family, his lessees, or his or their guests, invitees, employees, or agents, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire and casualty insurance rates occasioned by the use, misuse, occupancy or abandonment of a Unit, or the Common Elements or the Limited Common Elements. The liability for such increases in insurance rates shall equal five times the first resulting increase in the annual premium rate for such insurance.

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

**ARTICLE XVIII**  
**GENERAL PROVISIONS PERTAINING TO MORTGAGES**

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

(a) Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage.

(b) Any 60-day delinquency in the payment of Assessments or charges owned by the Owner of any Unit on which it holds the mortgage.

(c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

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



**ARTICLE XIX**  
**COVENANT AGAINST PARTITION**

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

**ARTICLE XX**  
**AMENDMENT OF THE DECLARATION BY DECLARANT**

20.01 Amendments by Declarant. Without limiting the rights of the Declarant to alter the plans as described hereinabove in this Declaration and notwithstanding any other provision herein contained, the following provisions shall be deemed to be in full force and effect, none of which shall be construed as to relieve the Declarant from any obligations as a Unit Owner to pay assessments as to Units owned by it in accordance with the Condominium Documents. Declarant reserves the right to amend the Articles of Incorporation and the By-Laws of the Association until such time as Declarant relinquishes control of the Association as provided below. Declarant reserves the right to amend this Declaration and the Condominium Documents so long as there is no Unit Owner other than the Declarant and as is permitted or required by the Act in connection with the Declarant's exercise of development rights provided for herein..

20.02. Amendments Required by Mortgagee. Declarant reserves the right at any time to amend this Declaration with the consent of other Owners if required by any Mortgagee as a condition of making a loan secured by an interest in a Unit in order to meet requirements of the lending institution, provided that any such changes or amendments requested by Mortgagee shall not materially affect the rights of the Unit Owners or the value of the Unit or the undivided interest in the Common Elements or Limited Common Elements, if any, assigned to a Unit Owner.

20.03. Prohibited Amendments. No amendment that is in conflict with the Condominium Documents of the Master Association or the Act shall be adopted.

20.04. Recording. Any amendment shall become effective when recorded in the office of the Judge of Probate of Baldwin County, Alabama, in accordance with the Act.

## **ARTICLE XXI**

### **AMENDMENT TO THE DECLARATION BY UNIT OWNERS**

21.01. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

21.02. Adoption. This document may be amended under the terms hereof or the Act, Declaration may be altered, amended or appealed or new Declaration may be adopted by the affirmative vote or agreement of Unit Owners or Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Notwithstanding anything to the contrary in this Sub-Section, this document may be amended by the affirmative vote of the Unit Owners, within sixty (60) days of approval of this Declaration by the Circuit Court of Baldwin County, Alabama, to which at least a majority of the votes in the Association are allocated..

21.03. Prohibited Amendments. No amendment that is in conflict with the Condominium Documents of the Master Association or the Act shall be adopted.

21.04. Recording. Any amendment shall become effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in accordance with the Act.

**ARTICLE XXII**  
**DECLARANT CONTROL OF ASSOCIATION**

22.01. Election of Board of Directors. Declarant, its successors or assigns, may appoint and remove the members of the Board of Directors and in the event of vacancies, Declarant shall fill the vacancies, until no later than Declarant has completed construction of the condominium property and has received an official Certificate of Occupancy from the City of Orange Beach, Alabama; provided that the Declarant may, at its option, terminate its control of the Association at an earlier date.

22.02 Notice of Meeting. Within thirty (30) days after the date of termination of control of the Association by Declarant, the Association shall call a meeting of the Unit Owners for the purpose of electing the members of the Board of Directors. Such meeting shall be called and the notice given in accordance with the By-Laws.

22.03 Status of Unsold Units. Declarant shall be deemed to be the Owner of each Unit and/or Limited common element which has not been conveyed to a person other than the Declarant. Unless otherwise provided in the Condominium Documents, the Declarant shall be entitled to all rights and privileges available to, and shall be subject to any and all obligations and duties imposed upon the Owner of any such Unit under the condominium documents.

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

**ARTICLE XIII**  
**MISCELLANEOUS**

23.01.     Intent.     In the event that this Declaration shall fail in any respect to comply with the Act, then the common law as the same exists on the filing date of this Declaration shall control, and the condominium hereby created shall be governed in accordance with the several laws of the State of Alabama, the Bylaws, the Articles, and all other instruments and exhibits attached to or made a part of this Declaration.

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

23.03.     Severability.     The invalidity in whole or in part of any covenant or restriction or any paragraph, subparagraph, sentence, clause, phrase, word, or other provision of this Declaration, the Articles, the Bylaws, any rules and regulations of the Association promulgated pursuant thereto, and any exhibit attached hereto, as the same may be amended from time to time, or the Act, or the invalidity in whole or in part of the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase word, or other provision shall not affect the remaining portions thereof.

23.04. Taxation of Condominium Parcels. The assessment and taxation of the Condominium Property shall be governed by the Act.

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

23.06. Governing Law. Should any dispute or litigation between any of the parties whose rights or duties are affected or determined by the condominium documents or any rules and regulations adopted pursuant to such documents, such dispute or litigation shall be governed by the laws of the State of Alabama.

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

23.08. Ratification. Each Unit Owner, by reason of having acquired ownership of his Condominium parcel, whether by purchase, gift, operation of

law, or otherwise, shall be deemed to have acknowledged and agreed that all the provisions of the Condominium Documents and any rules and regulations promulgated thereunder are fair and reasonable in all material respects.

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

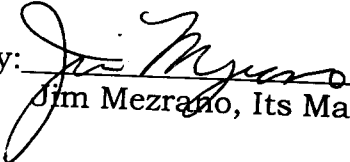
23.10. Costs and Attorney's Fees. In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be awarded by the Court.

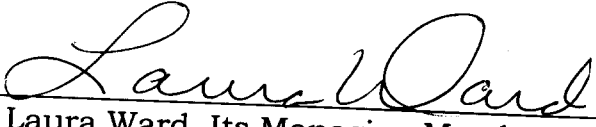
23.11. Rights of Action. The Association and any aggrieved unit owner shall have the right of action against unit owners who fail to comply with the provisions of the Declaration, Bylaws, Rules and Regulations, the Act, and other condominium documentation. Unit estate owners shall have the right of action against the Association for its failure to comply with the provisions of the Declaration, Bylaws, Rules and Regulations, the Act, and other condominium documentation. In the event that the Condominium Documents give the Association the right to use summary abatement or similar means to enforce restrictions against the unit property or its use, a judicial proceeding shall be instituted before any items of construction can be altered or demolished.

23.12. Applicability. Each unit estate owner shall be subject to all rights and duties assigned to owners under the terms of the Condominium Documents.

**IN WITNESS WHEREOF**, the Declarant has caused this Declaration of Condominium to be executed on this 4<sup>th</sup> day of January, 2006.

PERDIDO DUNES TOWER, L.L.C.

By:   
Jim Mezrano, Its Managing Member

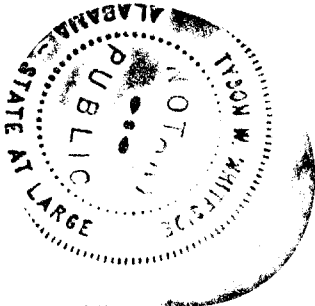
By:   
Laura Ward, Its Managing Member

STATE OF ALABAMA )

COUNTY OF BALDWIN )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Jim Mezrano and Laura Ward, whose respective names as Managing Members of Perdido Dunes Tower, L.L.C., are signed to the foregoing instrument and who are known to me, acknowledged before me on this day, that being informed of the contents of said instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Corporation on the day the same bears date.

Given under my hand and seal this the 4<sup>th</sup> day of January, 2006.



Tyson W. Whiteside  
Notary Public

My Commission Expires: 6/29/09

*This Instrument Prepared By:*  
Daniel H. Craven, P.C.  
Post Office Drawer 4489  
Gulf Shores, AL 36547  
Voice: 251-968-8170  
Fax: 251-968-4837

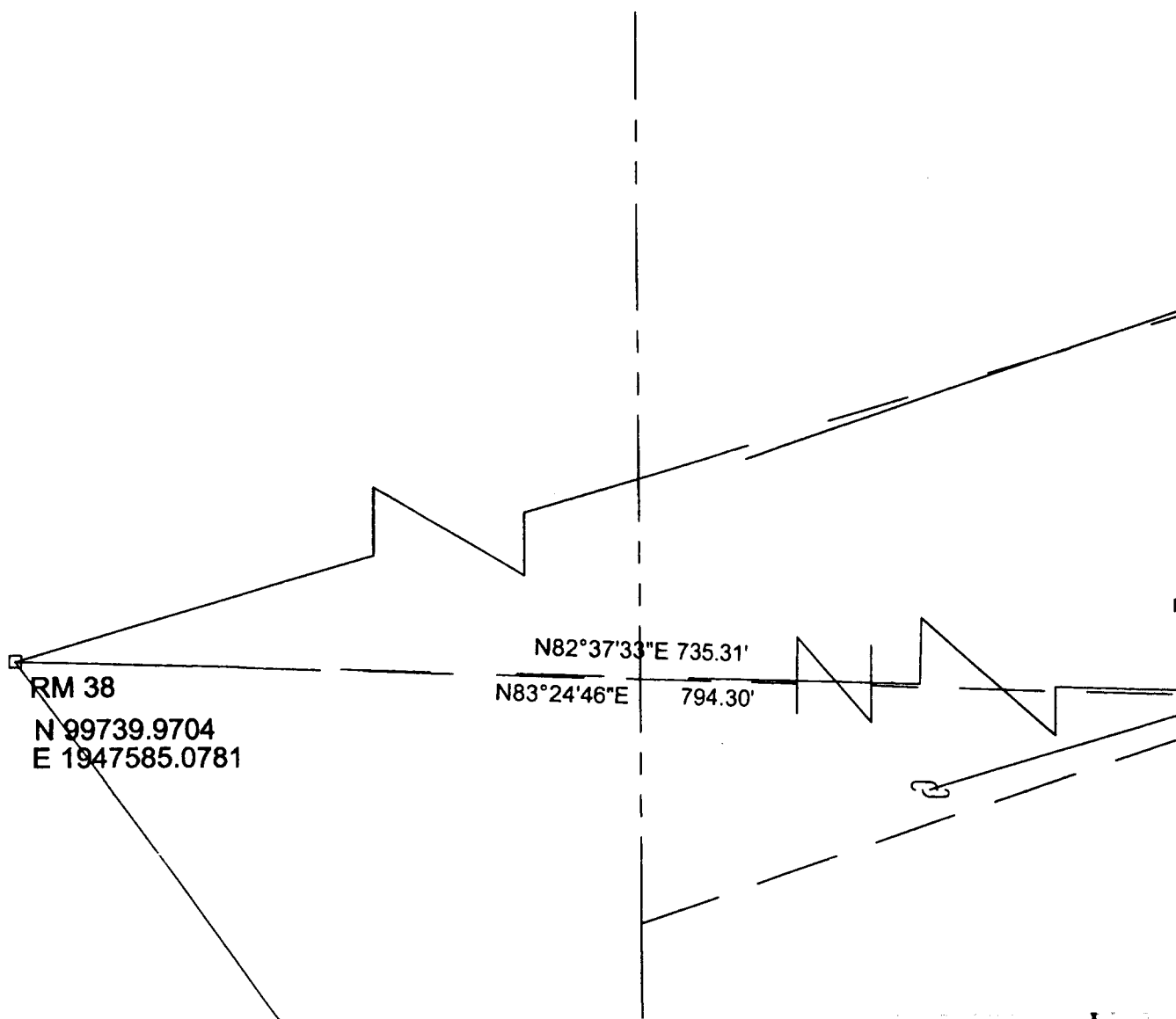


**EXHIBIT A**

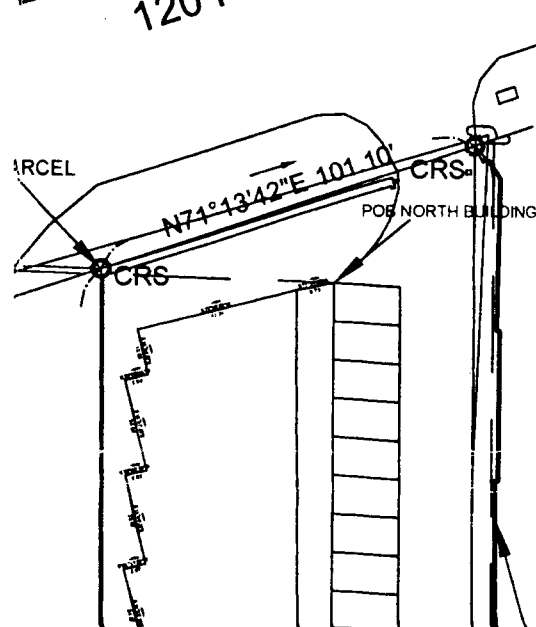
**OWNERSHIP INTEREST IN COMMON ELEMENTS OF EACH UNIT AND  
NUMERICAL VALUE OF VOTE TO WHICH EACH UNIT IS ENTITLED**

<b><u>UNIT #</u></b>	<b><u>NUMERICAL VOTE</u></b>	<b><u># OF SHARES IN COMMON ELEMENTS</u></b>
1	1	1
2	1	1
3	1	1
4	1	1
5	1	1
6	1	1
7	1	1
8	1	1
9	1	1
10	1	1
11	1	1
12	1	1
13	1	1
14	1	1
15	1	1
16	1	1
17	1	1
18	1	1
19	1	1
20	<u>1</u>	<u>1</u>
	20	20

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ALABAMA HIGHWAY 182  
120 FT. R/W

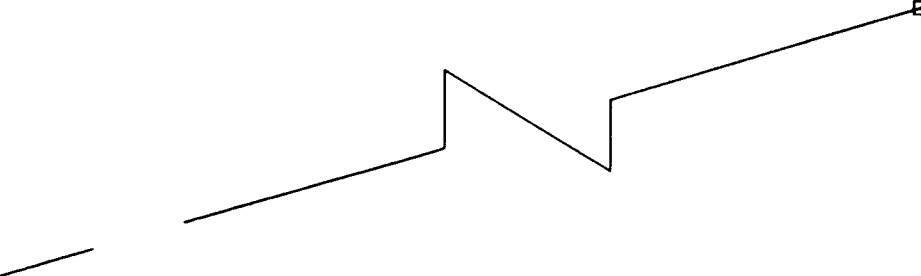


DESCRIPTION:

ENTIRE PARCEL:

COMMENCING AT ORANGE BEACH RE  
AND ON FILE AT THE ORANGE BEA  
BALDWIN COUNTY, ALABAMA, SLIDE3  
TOWNSHIP 9 SOUTH, RANGE 5 EAS  
 $N82^{\circ}37'33''E$  735.31FT. TO A SET  
POINT OF BEGINNING, THENCE;  $N71^{\circ}$   
182, THENCE; LEAVING SAID RIGHT  
CAPPED REBAR AT 695.03 FT.(CON  
POINT THAT BEARS  $S00^{\circ}16'40''E$  FR  
BEGINNING, PASSING A SET CAPPED  
 $S00^{\circ}16'40''E$  670.60 FT. FROM THE  
BEING THE OCCUPIED AND PRIVATE  
SOUTHERN BUILDING. THE REMAIND  
OCCUPANTS.

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RM 39  
N 100253.5030  
E 1949302.2862

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REFERENCE MONUMENT RM38 (REFERENCE MONUMENTS ARE ON RECORD  
EACH CITY PLANNING OFFICE AND THE OFFICE OF THE PROBATE JUDGE,  
PAGES 2144B THRU SLIDE 2146A. THE PARCEL LIES IN SECTION 10,  
EAST, BALDWIN COUNTY, ALABAMA.) THENCE;

TO A CAPPED REBAR ON THE SOUTH RIGHT OF WAY OF HIGHWAY 182, THE  
BEARING IS N11°13'42"E 101.10 FT. WITH THE SOUTH RIGHT OF WAY OF HIGHWAY  
182, S00°12'50"E TO THE GULF OF MEXICO, PASSING A SET  
BACK (CONSTRUCTION CONTROL LINE), THENCE; WITH THE GULF OF MEXICO, TO A  
CAPPED REBAR ON THE CONSTRUCTION CONTROL LINE, SAID REBAR BEARS,  
THE BEARING FROM THE POINT OF BEGINNING, N00°16'40"W TO THE POINT OF  
BEGINNING. LESS AND EXCEPT THE FOLLOWING 2 PARCELS,  
THE AREAS OF THE EXISTING NORTHERN BUILDING, AND THE PROPOSED  
ORDER OF THE PARCEL IS A COMMON AREA, FOR USE BY BOTH BUILDINGS

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WESTERN LINE SECTION 10

S58°45'34"E  
884.12'

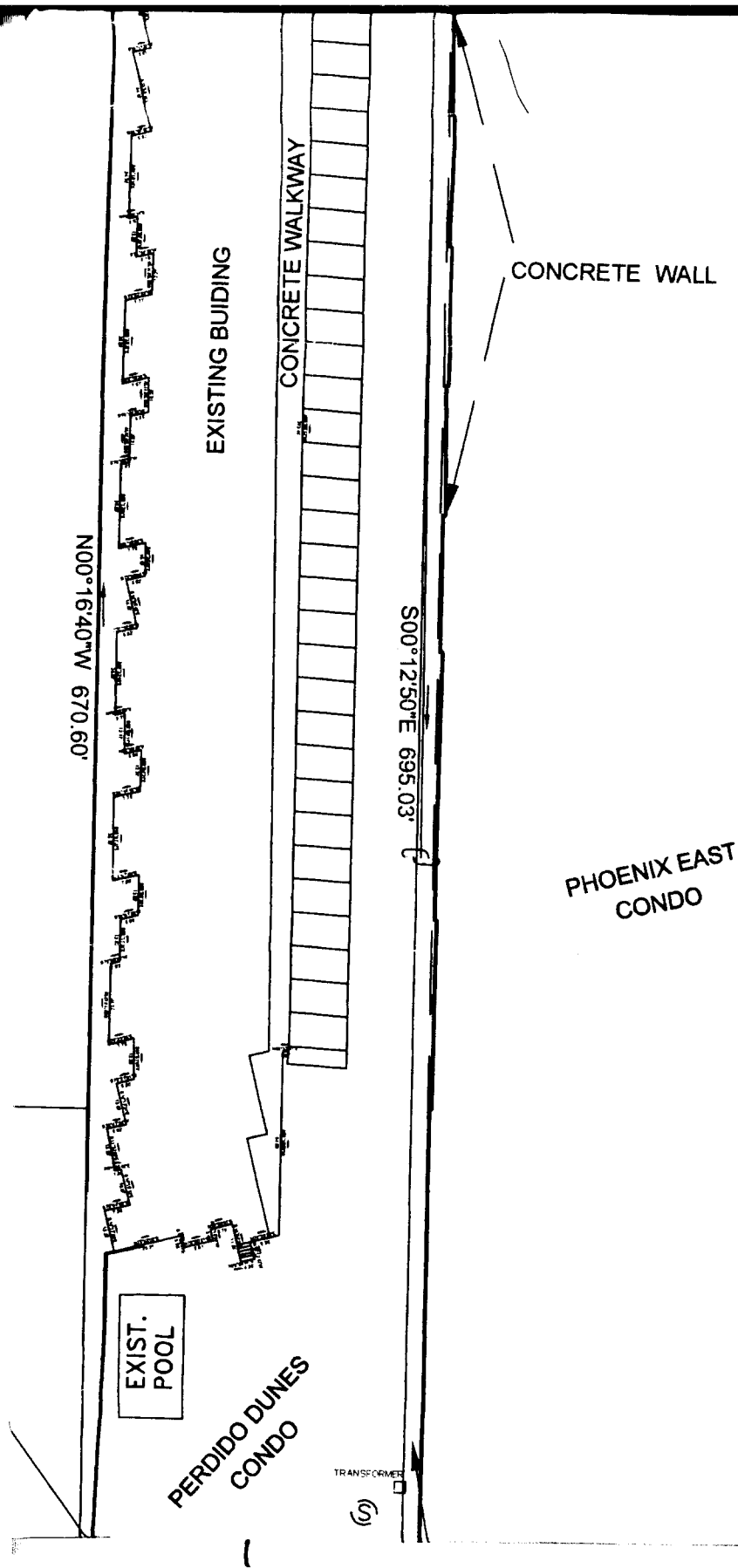
PHOENIX VIII  
CONDO

S89°43'20"W  
200.00'(FROM ORIGINAL SURVEY)

S00°18'40"E 670.60' FT. FROM THE  
BEING THE OCCUPIED AND PRIVATE  
SOUTHERN BUILDING. THE REMAINING  
OCCUPANTS.

NORTH BUILDING:  
COMMENCING AT ORANGE BEACH  
N83°24'46"E 794.30' TO THE NORTH  
BUILDING, THENCE WITH THE APPROXIMATE  
S77°31'37"W 9.73' S75°39'56"W  
24.04' S75°40'16"W 5.83' S13°4'  
5.92' S00°18'10"E 24.74' N76°21'  
S00°05'17"W 12.21' S75°22'53"W  
10.26' S76°43'29"W 5.25' S00°06'  
7.79' S00°25'50"E 10.10' S75°39'0"  
N76°35'06"E 2.73' S00°09'11"E 1'  
S00°41'27"E 25.10' N75°47'46"E  
S75°45'06"W 2.63' S00°14'43"W  
S14°13'31"E 12.69' S75°47'24"W  
S75°44'09"W 7.58' S14°17'58"E  
N14°15'02"W 3.43' N74°58'01"E  
N74°33'50"E 8.59' N00°10'03"W  
BEGINNING.

SOUTH BUILDING:  
COMMENCING AT ORANGE BEACH R  
S58°45'34"E 884.12' TO THE POINT  
N90°00'00"E 52.83' S00°00'00"W  
N90°00'00"E 4.25' S00°00'00"E 20'  
N90°00'00"E 4.25' N00°00'00"E 59'  
BEGINNING.

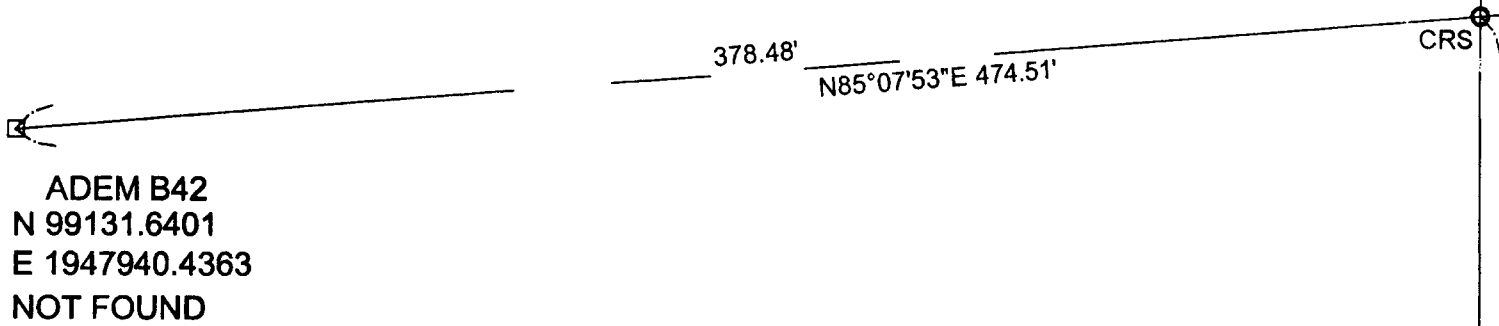


THE POINT OF BEGINNING. LESS AND EXCEPT THE FOLLOWING 2 PARCELS,  
THE AREAS OF THE EXISTING NORTHERN BUILDING, AND THE PROPOSED  
ORDER OF THE PARCEL IS A COMMON AREA, FOR USE BY BOTH BUILDINGS

REFERENCE MONUMENT RM 38, THENCE;  
NORTHEAST CORNER OF THE SERVICING WALKWAY OF THE EXISTING NORTH  
BUILDINGS OF THE NORTH BUILDING;  
42.24' S13°34'57"E 12.03' S75°09'06"W 5.95' S13°37'22"E  
8'22"E 23.67' S76°11'22"W 5.87' S13°58'19"E 24.33' S76°07'55"W  
6'14"E 2.67' S00°05'20"E 12.08' N76°24'38"E 5.10' S  
7.77' S00°10'37"E 25.04' N75°19'36"E 7.87' S00°20'11"W  
34"W 14.03' S76°48'08"W 2.43' S00°13'01"E 25.09' N76°13'54"E  
01"W 5.52' S14°06'42"E 14.53' S76°39'52"W 5.95' S00°23'08"E 24.67'  
12.11' N76°30'49"E 5.09' S00°04'31"E 12.31' S76°14'19"W 7.75'  
7.69' S00°06'30"E 12.06' S76°01'53"W 5.09' S00°11'34"E 12.63'  
24.17' N74°22'56"E 7.75' S00°51'03"E 12.36' S75°31'01"W 5.20'  
5.62' S11°32'08"E 12.52' N81°03'43"E 1.88' S14°18'13"E 10.97'  
12.25' N75°42'02"E 20.31' S15°00'51"E 3.58' N75°50'51"E 8.91'  
6.76' S13°44'35"E 11.58' N76°08'47"E 4.26' N16°12'12"W 5.08'  
54.83' N88°33'40"E 1.67' N00°08'13"W 372.44' TO THE POINT OF

REFERENCE MONUMENT RM 38, THENCE;  
POINT OF BEGINNING, THENCE;  
28.25' N90°00'00"E 1.58' S00°00'00"E 59.75'  
0.92' N90°00'00"W 64.50' N00°00'00"E 20.92'  
9.75' N90°00'00"E 1.58' N00°00'00"E 28.25' TO THE POINT OF

Pg. 63 of 109



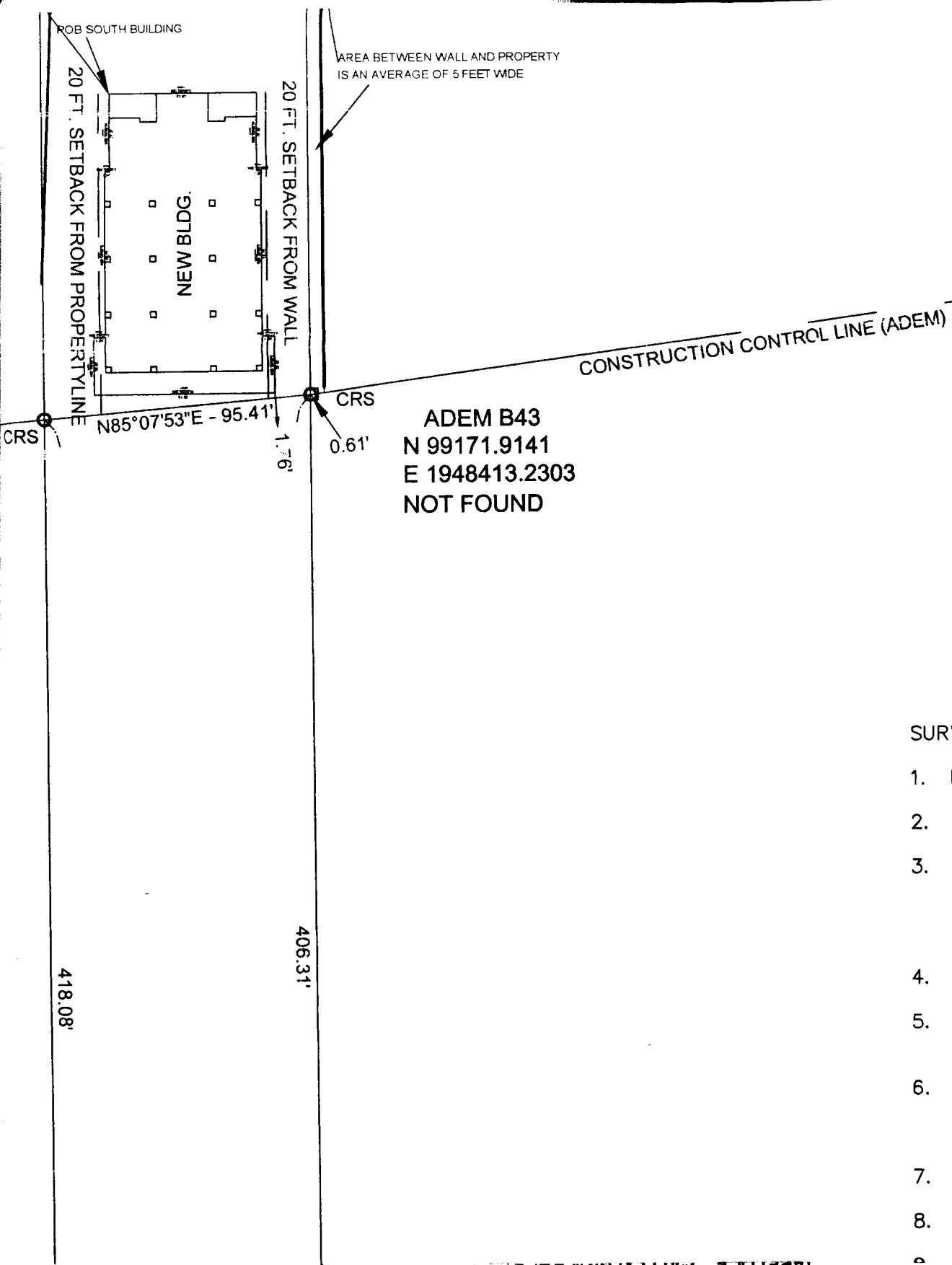
LEGEND OF STANDARD ABBREVIATIONS:

- OEPF - OPEN END IRON PIPE FOUND (SPEC. SIZE)
- CTIF - CRIMPED TOP IRON PIPE FOUND (SPEC. SIZE)
- RRSF - RAILROAD SPIKE FOUND
- CMF - CONCRETE MONUMENT FOUND (SPEC. SIZE & TYPE)
- CRF - CAPPED REBAR FOUND (SPEC. CAP NUMBER)
- CRS - CAPPED REBAR SET (CA-0031LS)
- CSF - COTTON SPINDLE FOUND
- RBF - REBAR FOUND (SPEC. SIZE)
- RBS - REBAR SET
- IRF - IRON ROD FOUND (SPEC. SIZE)

pg 64 of 109

418.08'



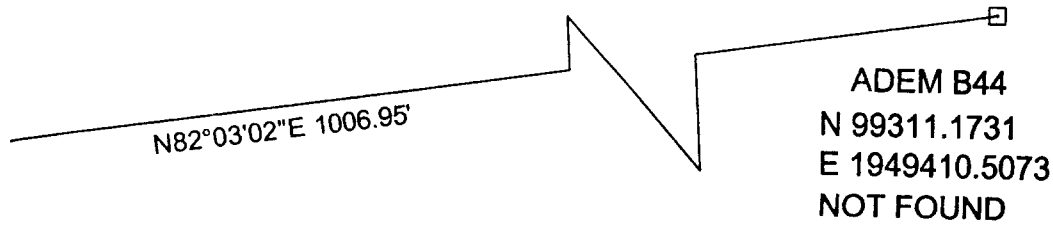


ADEM B43  
 N 99171.9141  
 E 1948413.2303  
 NOT FOUND

501  
 50  
 59.81

SURVEYOR'S NOTES:

1. DESCRIPTION FROM P
2. SOURCES OF INFORM
3. NO TITLE SEARCH, T
4. THIS PROPERTY MAY
5. THE LINES SHOWN R
6. THERE WAS NO ATTE
7. NO INVESTIGATION H
8. BUILDING SETBACK L



Pg. 66 of 109

S:

FROM PROVIDED SURVEYS, RECORD DOCUMENTS AND  
NOTATIONS.

INFORMATION USED WERE PREVIOUS SURVEYS BY  
OTHER FIRMS.

NO TITLE OPINION OR ABSTRACT WAS FURNISHED  
FORMED BY THIS FIRM FOR THE SUBJECT PROPERTY.  
NO DEEDS OF RECORD, UNRECORDED DEEDS,  
RIGHTS-OF-WAY OR OTHER INSTRUMENTS WHICH  
AFFECT THE BOUNDARIES OF SAID PROPERTY.

PROPERTY MAY BE SUBJECT TO ADDITIONAL RESTRICTIONS  
FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.  
NO REPRESENTING THE CENTERLINE AND RIGHTS  
OF THE STREETS ARE SHOWN FOR VISUAL PURPOSES ONLY  
IF SURVEYED UNLESS MONUMENTATION IS ALSO SHOWN.  
NO ATTEMPT TO DETERMINE THE EXISTENCE, LOCATION  
OF ANY SUBSURFACE FEATURES, OTHER THAN THE  
UTILITIES SHOWN HEREON AS LOCATED BY THE  
UTILITY COMPANIES.

NO WORK HAS BEEN MADE BY THIS FIRM TO DETERMINE  
THEIR EXISTENCE OF ANY WETLAND AREAS.  
CHECK LINES SHOULD BE VERIFIED BY  
LOCAL OFFICIAL PRIOR TO CONSTRUCTION.

NO AND DESCRIPTION DO NOT CLOSE GEOMETRICALLY

pg 67 of 109

- (APF) DCF - ("ALLEN PIN" OR) DIGGER CHAIN FOUND
- OHPL - OVERHAD POWER LINE
- XFMR - POWER TRANSFORMER
- TP (TPED) - TELEPHONE PEDESTAL
- CATV - CABLE TV PEDESTAL
- PP - POWER POLE OR UTILITY POLE
- WM - WATER METER
- WV - WATER VALVE
- GM - GAS METER
- GV - GAS VALVE
- GWA - GUY WIRE ANCHOR
- NF - NAIL FOUND
- NS - NAIL SET
- R/W - RIGHT OF WAY
- A/C - AIR CONDITIONER
- RCP - REINFORCED CONCRETE PIPE (SPEC. SIZE)
- CMP - COORUGATED METAL PIPE (SPEC. SIZE)
- EOP - EDGE OF PAVEMENT
- GS - GROUND SHOT
- TOB - TOP OF BANK
- TOE - TOE OF SLOPE
- SMH - SANITARY SEWER MANHOLE
- DMH - DRAINAGE MANHOLE
- TMH - TELEPHONE MANHOLE

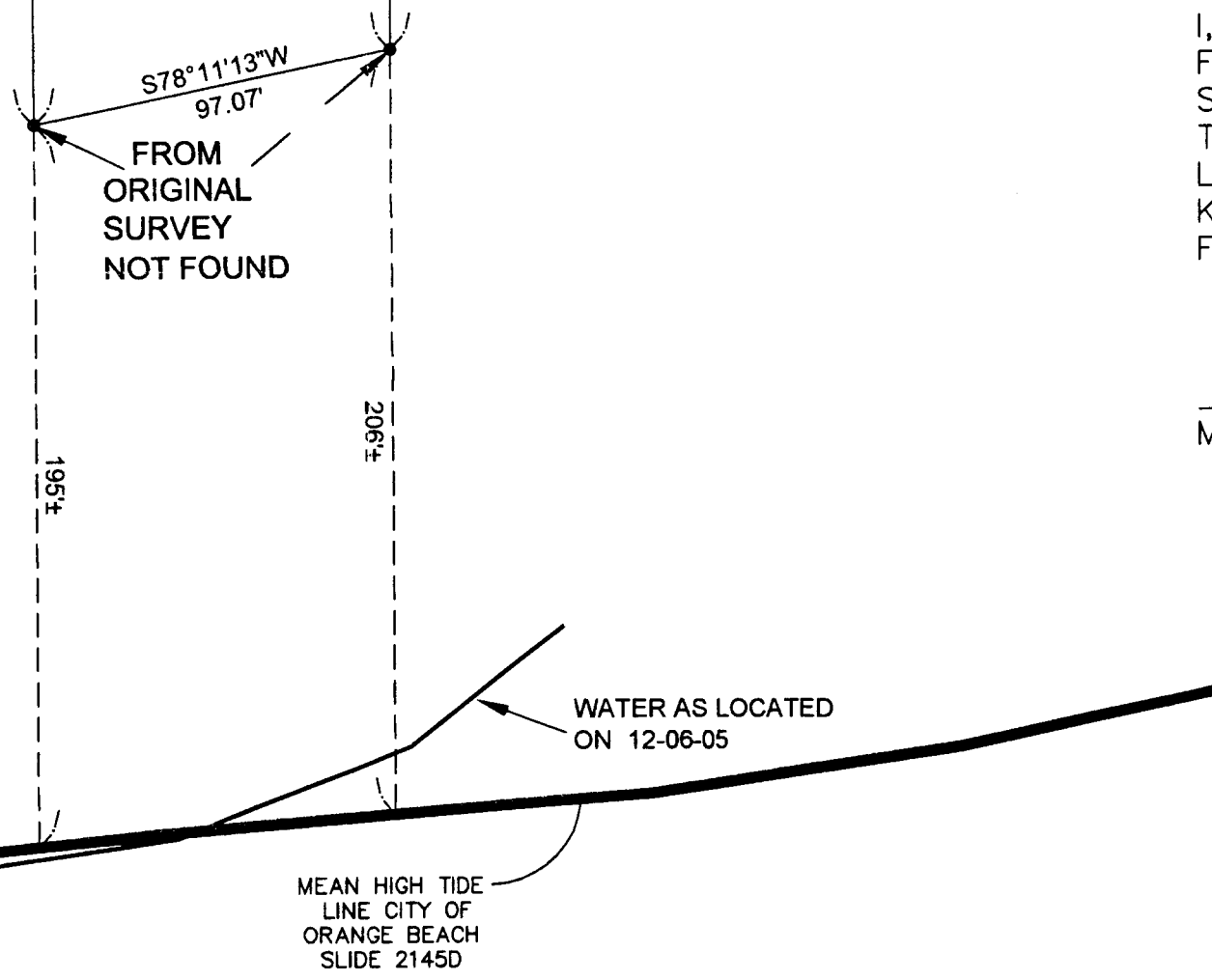
GU

9. ORIGINAL SURVEY AND  
DESCRIPTIONS ON T  
POLYGONS DERIVED  
AND THE INTENT OF

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, MICHAEL J. KELLY  
FOR LUCIDO & OLIVER  
STATE THIS SURVEY  
THE REQUIREMENTS  
LAND SURVEYING IN  
KNOWLEDGE, INFORM  
FIELD WORK FOR THE

*Michael J. Kelly*  
MICHAEL J. KELLY,



601  
50  
89-81  
Pg-68

F OF MEXICO



AND DESCRIPTION DO NOT CLOSE GEOMETRICALLY.  
ON THIS SURVEY ARE FROM CLOSED  
IVED FROM THE RECORD DESCRIPTIONS  
IT OF THE ORIGINAL SURVEYS.

AMA  
DWIN

ELLY, A LICENSED PROFESSIONAL LAND SURVEYOR  
OLIVER, INC., IN THE STATE OF ALABAMA, HEREBY  
RVEY HAS BEEN COMPLETED IN ACCORDANCE WITH  
NTS OF THE STANDARDS OF PRACTICE FOR  
G IN THE STATE OF ALABAMA, TO THE BEST OF MY  
FORMATION, AND BELIEF.  
R THIS SURVEY WAS PERFORMED DECEMBER, 2005.

*Michael J. Kelly*  
LY, L.P.L.S.


AL LIC. NO. 26275

### GRAPHIC SCALE



( IN FEET )  
1 inch = 50 ft.

*pg. 69 of 109*

NOT VALID UNLESS ACCOMPANIED BY ORIGINAL SIGNATURE & SEAL		DESCRIPTION SURVEY FOR:	
		<b>PERDIDO DUNES CONDOMINIUMS</b>	
		Drawn By M.J.K.\CD	Scale 1" = 50'
		Checked By M.J.K.	Drawing File I:\D\LP3\505\505-362BOUNDARY12-29.dwg
		Section 10, Township 9 South, Range 5 East Baldwin County, Alabama	
Project No. 505-362		Date 12-29-05	
		<b>I &amp; O</b> Lucido & Oliver Inc. Consulting Engineers & Land Surveyors 24693 Canal Road Suite A Orange Beach, Alabama 36561 Tel.: (251) 967-3250 Fax: (251) 967-3251 email: loincorp@earthlink.com	

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LEGALLY

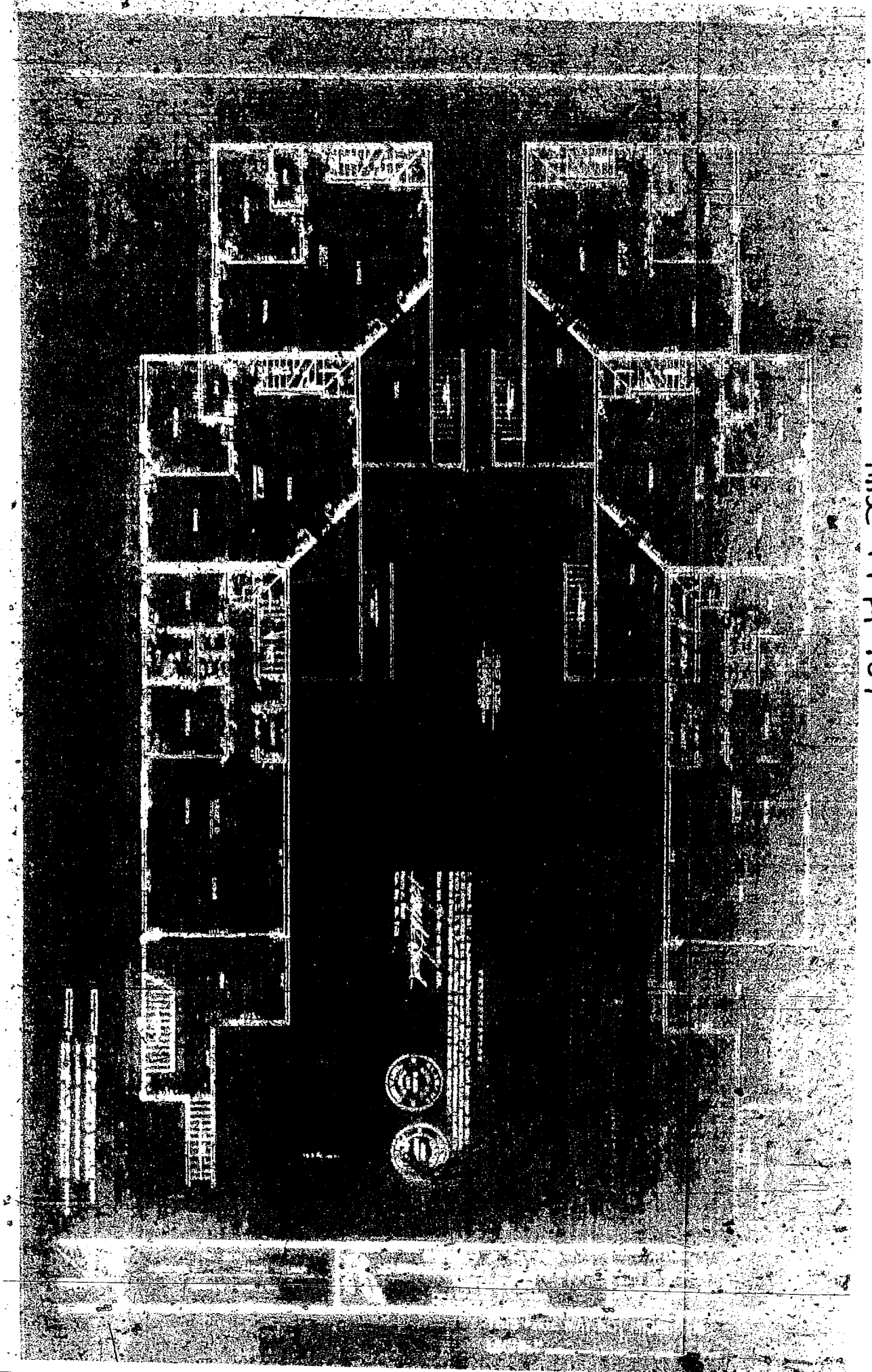
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EXHIBIT

C

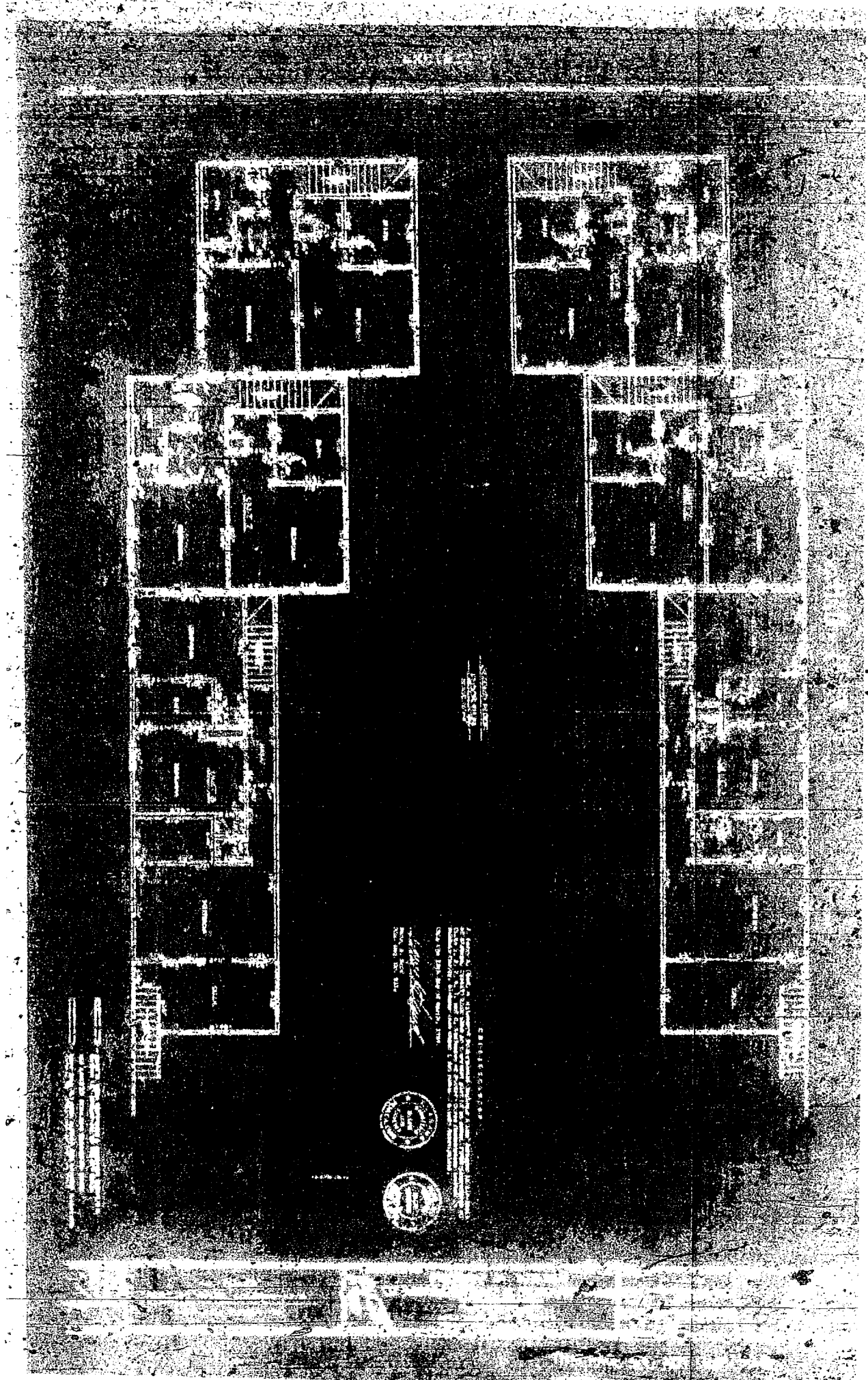
Misc 49 pg. 986

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REPRODUCED



Misc 49 pg 987

THIS DOCUMENT MAY NOT BE REPRODUCED

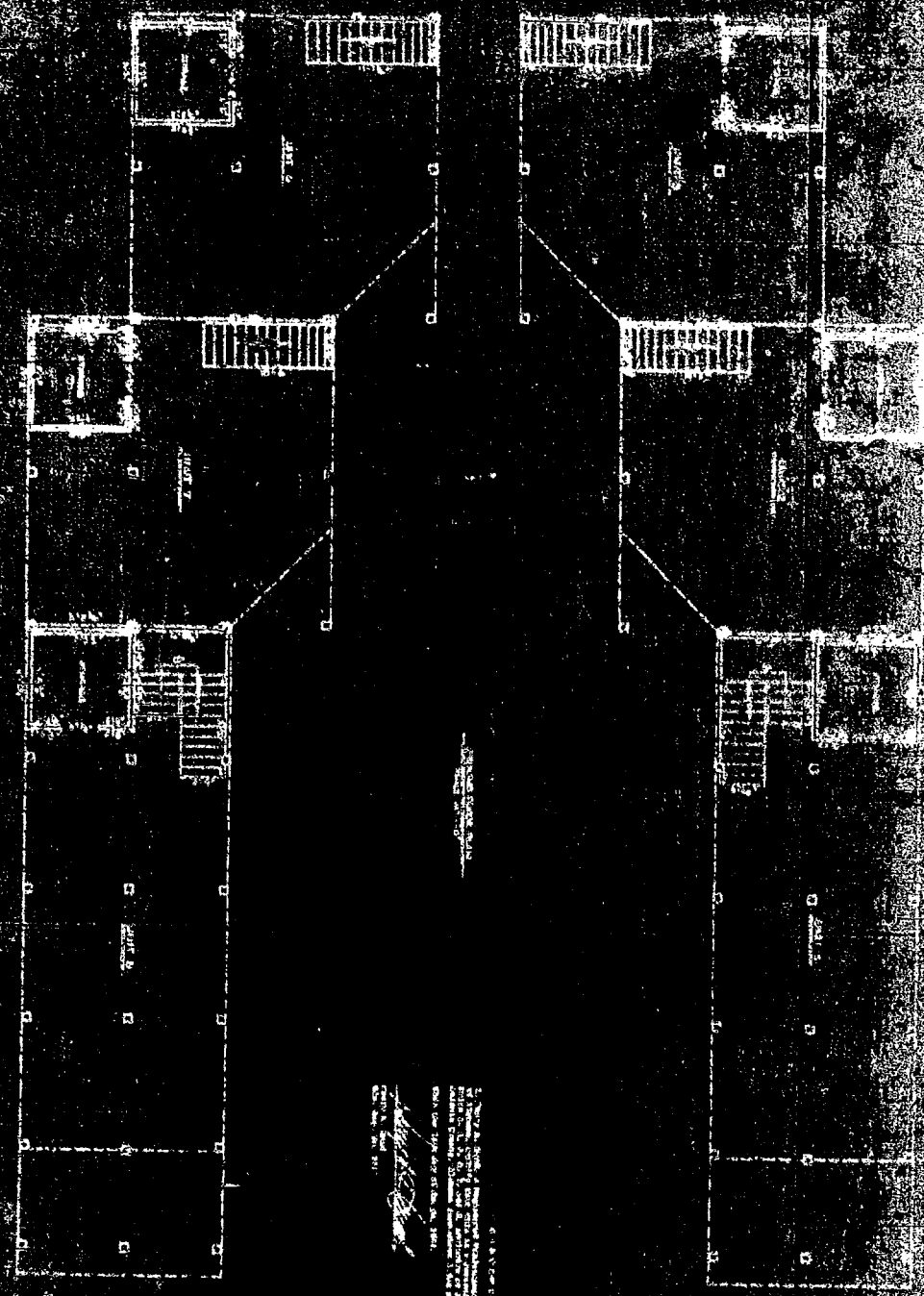


SECRET

Misc 49 pg 988



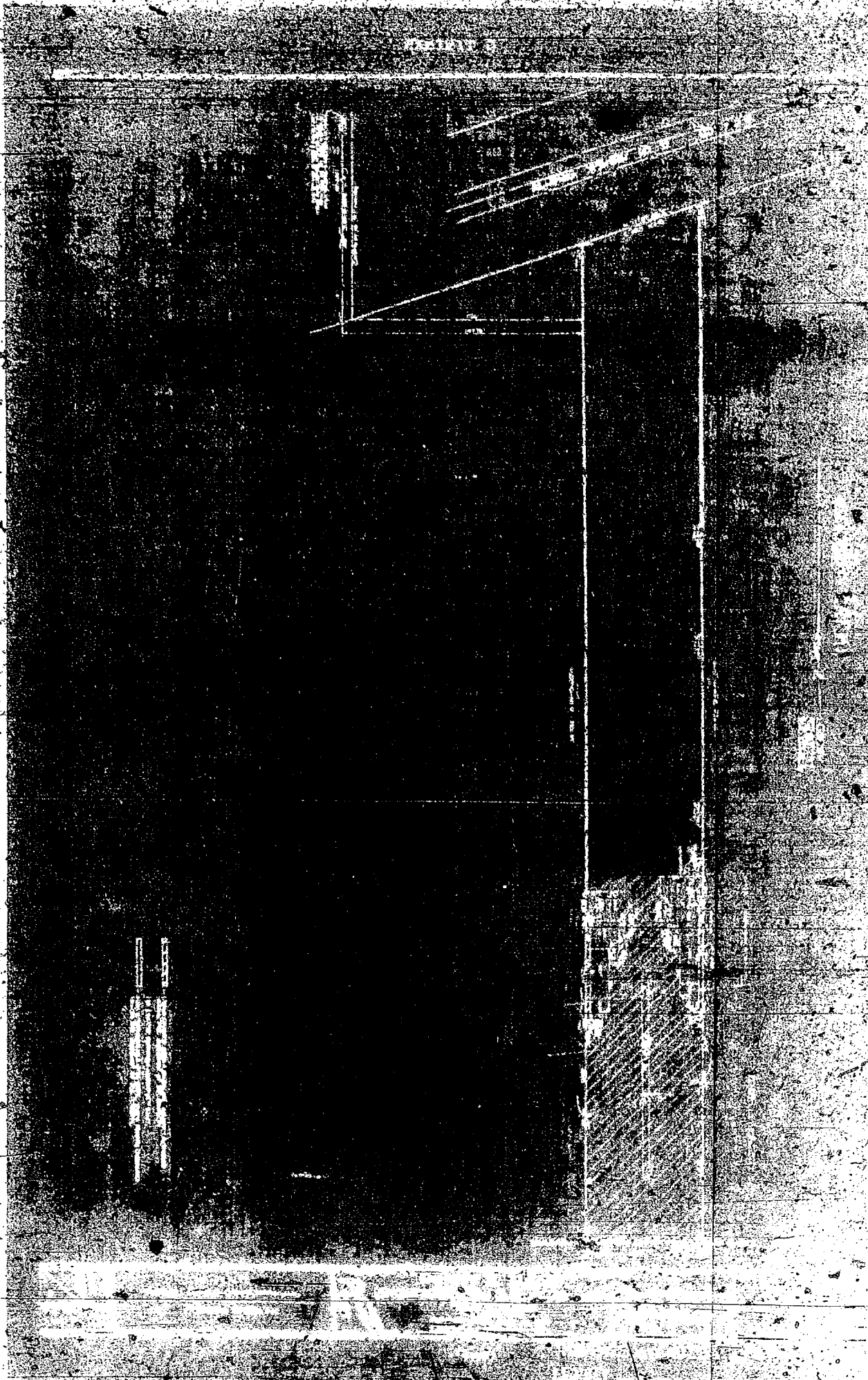
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NOTED 03/20/61  
1001 THE NEW YORK PUBLIC LIBRARY  
ASTOR LENOX TILDEN FOUNDATION  
155 E. 42ND ST. NEW YORK 17, N.Y.

Misc. Bk 49 pg 989

DOCUMENT MAY NOT SCAL



Misc 49 pg 990

ROAD EASEMENT DESCRIPTION

Beginning at a point 200 feet East of the West line of Section 10, Township 9 South, Range 3 East, on the South line of Alabama Highway No. 182 as per plat of survey by J. S. Allen (Plat. Map No. 1326) dated December 2, 1969; for the Point of Beginning, run thence in a Northeasterly direction along a curve to the left having a radius of 5785.77 feet a chord bearing a distance of North 71°-47'-02" East for 101.1 feet; run thence South 60°-13'-40" East for 552.27 feet; run thence South 89°-43'-20" West for 35.07 feet; run thence South 00°-16'-40" East for 12.47 feet; run thence South 9°-43'-20" West for 50.1 feet; run thence North 00°-16'-40" West for 533.01 feet to the South right-of-way of said Alabama Highway No. 182 and the Point of Beginning, LESS AND EXCEPT THE ROAD EASEMENT DESCRIBED AS FOLLOWS:

ROAD EASEMENT DESCRIPTION

Beginning at a point 200 feet East of the West line of Section 10, Township 9 South, Range 3 East, on the South line of Alabama Highway No. 182 as per plat of survey by J. S. Allen (Plat. Map No. 1326) dated December 2, 1969; run thence in a Northeasterly direction along a curve to the left having a radius of 5785.77 feet a chord bearing a distance of North 71°-47'-02" East for 77.98 feet to the Point of Beginning; continue thence along said curve along the South right-of-way of said Alabama Highway No. 182 for 23.12 feet; run thence South 00°-16'-40" East for 459.31 feet; run thence South 89°-43'-20" West for 2.0 feet; run thence in a Southwesterly direction along a curve to the right having a radius of 70.43 feet for an arc distance of 55.31 feet; run thence along a curve to the left having a radius of 50.43 feet for an arc distance of 39.61 feet; run thence South 00°-16'-40" East for 19.97 feet; run thence South 89°-43'-20" West for 20.0 feet; run thence North 00°-16'-40" East for 19.97 feet; run thence in a Northeasterly direction along a curve to the right having a radius of 70.43 feet for an arc distance of 55.31 feet; run thence along a curve to the left having a radius of 50.43 feet for an arc distance of 39.61 feet; run thence North 00°-16'-40" West and parallel with the East property line for 452.19 feet to the South right-of-way of said Alabama Highway No. 182 and the Point of Beginning.

49 0991

PLANT MA

EXHIBIT 2



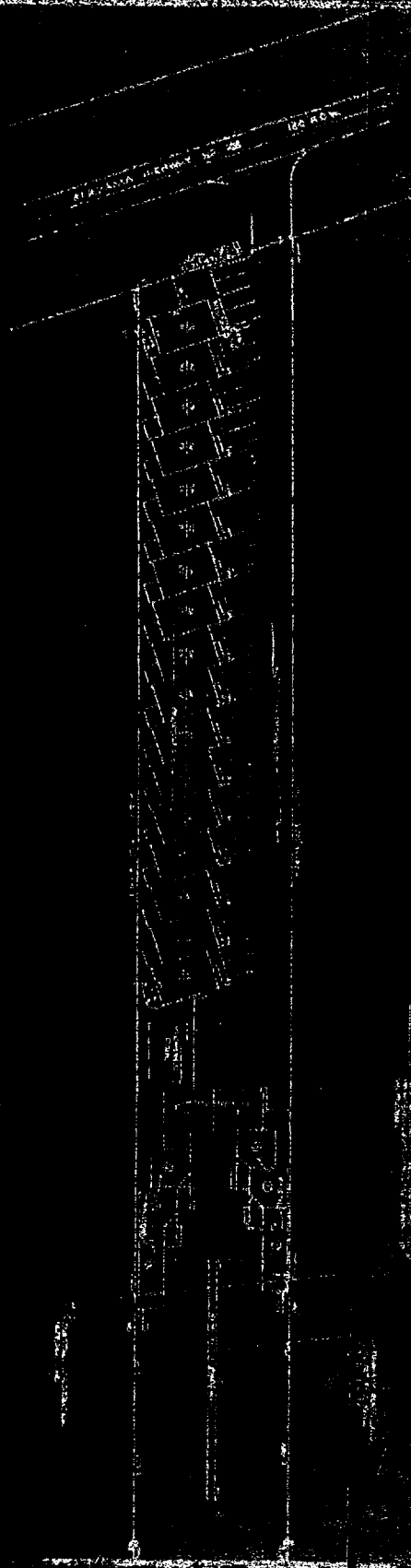
COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF REVENUE  
TAXPAYER SERVICE CENTER  
100 STATE STREET, 10TH FLOOR  
BOSTON, MA 02109  
TEL: 617-725-6000  
FAX: 617-725-6001



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100 STATE STREET, 10TH FLOOR  
BOSTON, MA 02109  
TEL: 617-725-6000  
FAX: 617-725-6001



0849 0992

**EXHIBIT D**

**OWNERSHIP INTEREST IN COMMON ELEMENTS (# OF SHARES / 412) OF  
EACH UNIT AND NUMERICAL VALUE OF VOTE TO WHICH EACH UNIT IS  
ENTITLED**

<b><u>UNIT #</u></b>	<b><u>NUMERICAL VOTE</u></b>	<b><u># OF SHARES IN COMMON ELEMENTS</u></b>
1	1	13
2	1	12
3	1	12
4	1	14
5	1	18
6	1	12
7	1	12
8	1	13
9	1	9
10	1	9
11	1	9
12	1	9
14	1	9
15	1	9
16	1	9
17	1	9
18	1	9
19	1	9
20	1	9
21	1	9
22	1	9
23	1	9
24	1	9
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28	1	9
29	1	9
30	1	9
31	1	9
32	1	9
33	1	9
34	1	9
35	1	9
36	1	9

37	1	9
38	1	9
39	1	9
40	1	9
41	1	9
42	1	9
43	<u>1</u>	<u>9</u>
	42	412

**BY-LAWS**  
**OF**  
**PERDIDO DUNES TOWER CONDOMINIUM OWNERS ASSOCIATION, INC.**  
**A Non-Profit Corporation**

**ARTICLE I**  
**PURPOSE AND APPLICATION**

1.01. Purpose and Application. The following are the By-Laws of PERDIDO DUNES TOWER CONDOMINIUM OWNERS ASSOCIATION, INC., hereinafter referred to as the "Association," a not for profit corporation, formed for the purpose of managing and operating a certain condominium located in Baldwin County, Alabama, known as PERDIDO DUNES TOWER, a condominium, hereinafter referred to as the "Condominium."

The provisions of the By-Laws are applicable to the entirety of the Condominium property.

All present or future owners, tenants and their employees, and any other persons or entities that might use the facilities of PERDIDO DUNES TOWER in any manner, are subject to the regulations and provisions set forth in these By-Laws and to the Rules and Regulations established and promulgated by the Association of Unit Owners pursuant to the By-Laws and the Condominium Declaration.

The mere acquisition or rental of any of the units of PERDIDO DUNES TOWER or the mere act of occupancy of any said Units will signify that these By-Laws and the provisions of the Declaration and any Rules and Regulations, as they each may be amended from time to time, are accepted, ratified and will be complied with.

**ARTICLE II**  
**PRINCIPAL OFFICE AND REGISTERED AGENT**

2.01. Principal Office. The principal office of the Association shall be Post Office Box 279, Lowndesboro, Alabama 36752, or at such other place as may be designated and subsequently by the Board of Directors or as the business of the corporation may require. All books and records of the Association shall be kept at its principal office. The mailing address of the Association shall be Post Office Box 279, Lowndesboro, Alabama 36752.

2.02. Principal Agent. The principal agent of the Association of such office shall be Laura Ward.

**ARTICLE III**  
**DEFINITIONS**

3.01. Declaration Defined. "Declaration" shall mean that certain Declaration of Condominium of PERDIDO DUNES TOWER, a condominium, filed in the Office of the Judge of Probate of Baldwin County, State of Alabama, as the same may be amended from time to time in accordance with the terms thereof.

3.02. Other Terms Defined. Other terms used herein shall have the meaning given to them in the Declaration, as amended and are hereby incorporated by reference and made a part hereof.

**ARTICLE IV**  
**MEMBERSHIP**

4.01. Qualification. The sole qualification for membership shall be ownership of a Unit in the Condominium. No membership may be separated from the Unit to which it is appurtenant.

4.02. No Additional Qualifications. No initiation fees, costs or dues shall be assessed against any person as a condition of the exercise of the rights of membership, except such assessments, levies, and charges as are specifically authorized by the Declaration.



4.03. Succession. The membership of each Unit Owner shall automatically terminate on the conveyance transfer, or other disposition of a Unit Owner's interest in the Unit. The Unit Owner's membership shall automatically be transferred to the new Unit Owner succeeding to such ownership interest. On the conveyance, transfer or other disposition of a portion of a Unit Owner's interest in a Unit, the transferring Unit Owner and the transferee shall each be members of the Association in accordance with the ownership interest of each following such conveyance or transfer.

4.04. Certificates of Membership. The Association shall issue no shares of stock of any kind or nature whatsoever.

## **ARTICLE V**

### **MEETINGS OF MEMBERS**

5.01. Annual Meeting. The annual meeting of the members shall be held on the date, at the place, and at the time, as determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and not later than thirteen (13) months after the last proceeding annual meeting. The purpose of the annual meeting shall be to elect the Directors, and to transact any other business authorized to be transacted by the Members or stated in the notice of the meeting sent to the Members in advance thereof.

5.02. Special Meeting. Special meetings of the Members may be called at any time by the President, a majority of the Board, or on receipt by the Board of a written request of Members representing at least twenty-five percent (25%) of the total votes of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

5.03. Notice of Meeting. Notice of all meetings of Members shall state the time and place of the meeting, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or By-Laws, any budget changes, and any proposal to remove an officer or a member of the Board. Notices shall be prepared and delivered by or at the direction of the Secretary, and may be

delivered either personally or by mail to a Member at the address given to the Board by said Member, or to the Member's Unit if no such address has been given to the Board. Notice of the annual meeting and special meetings shall be mailed or delivered to each Member not less than ten (10) days prior to the meeting. No notices of annual or special meetings shall be mailed or delivered more than sixty (60) days prior to such meeting. A copy of the notice of any meeting of Members shall also be posted in a conspicuous place on the Condominium Property at least seven (7) days prior to the meeting. Proof of such notice shall be given by the affidavit of the person giving the notice.

5.04. Waiver of Notice. Any Member or mortgagee may waive the right to receive notice of the annual meeting by sending a written waiver to the Board of Directors. Notice of specific meetings may be waived before or after the meeting, orally or in writing. Attendance by a Member at an annual or special meeting, either in person or by proxy, shall constitute waiver of notice of such meeting.

5.05. Quorum. A quorum of Members for any meeting shall be deemed present throughout such meeting if Members, represented in person or by proxy, holding more than fifty-one percent (51%) of the votes entitled to be cast at such meeting (in accordance with the percentages assigned in the Declaration) are present at the beginning of such meeting, except as otherwise provided by law, by the Articles of Incorporation, by the Declaration of Condominium, or by the By-Laws.

5.06. Adjournment for Lack of Quorum. In the absence of a quorum at any meeting of members, a majority of those Members entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting, from time to time, without notice other than announcement of the meeting, until the requisite number of members, present in person or by proxy, shall be present. At such adjourned meeting at which the requisite number of votes shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed.

5.07. Action Without Meeting. Any action which may be taken at a meeting of the Members may also be taken without a meeting if a consent in writing,

setting forth the action so taken, is signed by the number of members required to take such action at a meeting, and is filed with the Secretary of the Association.

5.08. Order of Business. The order of business at annual meetings of Members and, as far as practical, at all other meetings of Members, shall be:

Call to Order

Calling of the roll and certifying of proxies

Proof of notice of meeting or waiver of notice

Reading and disposal of any unapproved minutes

Reports of officers

Reports of committees

Election of Directors

Unfinished business

New business

Adjournment

5.09. Minutes of Meeting. The minutes of all meetings of Members shall be kept in a book available for inspection by Unit Owners or their authorized representatives.

## **ARTICLE VI**

### **MEMBER'S VOTING RIGHTS**

6.01. Number of Votes. The aggregate number of votes for all Members shall be divided among the Members in proportion to their respective ownership interest in the common elements. The number of votes to which each Unit is entitled is provided in the Declaration. The votes of a Unit shall not be divisible.

6.02. Vote Required to Transact Business. When a quorum is present, the holders of a majority of the voting rights present, in person or by proxy, shall decide any question brought before the meeting, unless the question is one on which, by express provision of the Act or the Condominium Documents, a different number or manner of voting is required, in which case the express provision shall govern and control the decision in question.

6.03. Designation of Voting Member. If a Unit is owned by more than one person, the person entitled to cast the vote or votes for the Unit may be designated by a certificate signed by all of the record owners of the unit and filed with the Secretary of the Association. If a Unit is owned by a corporation, partnership, trust, or other legal entity, the person entitled to cast the vote or votes for the Unit may be designated by a certificate of appointment signed by a duly authorized representative of the entity and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate, or until a change in the ownership of the Unit involved. A certificate may be revoked by any owner of an interest in the Unit.

6.04. Failure to Designate a Voting Member. If a Unit is owned by more than one person and they do not designate a voting member, the following provisions shall apply:

(1) If more than one such owner is present at any meeting, and they are unable to concur in a decision on any subject requiring a vote, they shall lose their right to vote on that subject at the meeting, however, said vote or votes shall be included in the determination as to the present of, or lack thereof, of a quorum.

(2) If only one such owner is present at a meeting, that person shall be entitled to cast the vote or votes pertaining to the Unit.

(3) If more than one such owner is present at the meeting, and they concur, any one such owner may cast the vote or votes for the Unit.

6.05. Voting by Proxy. Votes may be cast in person or by proxy, as provided for in the Act. All proxies must be in writing, dated, signed by the Member generating the proxy, and filed with the Secretary of the Association before the appointed time of any meeting to which it applies. A Member may revoke a proxy at any time by delivering a written notice of revocation to the Association.

6.06. Conditional Proxy. The granting of a mortgage on a Unit by its owner(s) shall be construed as conferring upon the mortgagee a conditional proxy to cast the vote or votes attributable to such Unit at any regular or special meeting of the Association. The condition of such proxy shall be notice by such mortgagee to the Association, in writing, of its intent to exercise the conditional proxy rights

granted to it, as mortgagee, by the terms of this subparagraph. In the absence of such written notice, the Association shall be entitled to recognize the Unit Owner(s) votes attributable to their unit. However, once such written notice is received by the Association, the mortgagee's right to cast the vote or votes attributable to that unit shall be recognized by the Association until the mortgage withdraws its intent to cast such votes, in writing, or until the mortgage is paid in full and satisfied of record, whichever first occurs.

## **ARTICLE VII**

### **BOARD OF DIRECTORS**

7.01. Number. The affairs of this Association shall be managed by a Board of Directors, consisting of the number as may be selected by the members, however no less than three (3) person nor more than five (5) persons in number.

7.02. Qualification. Each Director shall be a Unit Owner. If a Unit Owner is a trust, then the beneficiary of the trust may be a Director; and if a Unit Owner is a corporation or partnership, then an officer, partner, or employee of such Unit Owner may be a Director. If a Director shall cease to meet such qualifications during his term, he shall cease to be a Director and his place on the Board shall be deemed vacant.

7.03. Nomination for Election. Nomination for election to the Board of Directors shall be made from the floor at the annual meeting of Members, or at any other meeting of Members called for the purpose of electing directors. Nominations may be made in writing to the presiding President prior to the annual meeting of the Members or prior to any other meeting of members called for the purpose of electing Directors.

7.04. Election of Directors. Directors shall be elected at the annual meeting of Members. The election shall be by secret ballot (unless dispensed with by unanimous consent), and each Member shall be entitled to vote for each vacancy. There shall be no cumulative voting. Those candidates receiving the greatest number of votes cast either in person or by proxy shall be elected.

7.05. Term. The term of each Director's services shall extend to the next annual meeting of the Members. Each Director shall hold office until his successor shall be elected and qualified, or until he resigns or is removed in any manner provided elsewhere herein.

7.06. Vacancies. Any vacancy in the position of a Director elected by the Members of the Association shall be filled by a majority vote of the remaining Directors, and any Director so elected shall hold office for a term equal to the unexpired term of the Director whom he succeeds.

7.07. Removal. Any Director may be removed for cause by the concurrence of two-thirds (2/3) of the votes of the Association in accordance with the provisions of the Act. The vacancy in the Board of Directors so created shall be filled by the Members at the same meeting.

7.08. Compensation. A Director shall not receive any compensation for any service he may render to the Association as a Director; however, any Director may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties.

## **ARTICLE VIII**

### **MEETINGS OF DIRECTORS**

8.01. Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly at such place and at such time and date as the Board shall designate. Notice of the regular meetings shall be given to each Director, personally or by mail or telephone and shall be transmitted at least fourteen (14) days prior to the meeting.

8.02. Special Meetings. Special meetings of the Directors may be called by the President at any time, and must be called by the President or Secretary at the written request of a majority of the Directors. A notice of the meeting stating the time, place and purpose of the meeting shall be given to each Director, personally, by mail, or by telephone, at least three days prior to the meeting.

8.03. Open Meetings. All meetings of the Board of Directors shall be open

to all members of the Association, and notice of such meetings shall be posted conspicuously on the Condominium property at least forty-eight (48) hours prior to the meeting, except in the event of an emergency.

8.04. Waiver of Notice. Any Director may waive notice of a meeting either before or after the meeting, or may consent to the holding of a meeting without notice. Attendance by any Director at a meeting shall constitute waiver of notice of that meeting, except when attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business on the grounds that the meeting was not lawfully called.

8.05. Quorum. A quorum shall consist of the Directors entitled to cast a majority of votes of the entire Board of Directors. The acts of the Directors approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such a Director for the purpose of determining a quorum.

8.06. Action Without Meeting. Any action permitted or required to be taken at a meeting of the Directors may be taken without a meeting if written consent setting forth the action so taken shall be signed by all the Directors, and filed with the minutes of the proceedings of the Board.

8.07. Presiding Officer. The presiding officer of the Directors' meeting shall be the President. In the absence of the President, the Directors present shall designate one of their number to preside.

8.08. Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a minute book available for inspection by Unit Owners, or their authorized representatives, or by the Directors at any reasonable time.

8.09. Order of Business. The order of business at Directors' meeting shall be:

Call of Roll

Proof of due notice of meeting

Reading and disposal of unapproved minutes

Reports of Officers and Committees

Election of Officers

Unfinished business

New business

Adjournment

**ARTICLE IX**  
**POWERS AND DUTIES OF THE DIRECTORS**

9.01. Specific Powers. The Board of Directors shall have the power to exercise all powers, duties, and authority vested in the Association by the Act, the Declaration, or these By-Laws, except for such powers and duties reserved thereby to the Members. The powers and duties of the Board shall include, but shall not be limited to, the following:

- (1) To elect and remove officers of the Association as hereinafter provided.
- (2) To administer the affairs of the Association and the Condominium Property.
- (3) To maintain bank accounts on behalf of the Association and to designate signatories required therefor.
- (4) To sell, lease, mortgage, or otherwise deal with Units acquired by the Association.
- (5) To pay the cost of all taxes and utilities assessed against the Condominium that are not assessed and billed to the owners of individual Units.
- (6) To borrow money on behalf of the Association when required in connection with the operation, care, upkeep, and maintenance of the Common and Limited Common Elements.
- (7) To estimate the amount of the annual budget and to make, levy, enforce, and collect Assessments against Unit Owners to defray the costs, expenses, and losses for the Condominium, and to provide adequate remedies for failure to pay such assessments.
- (8) To use the proceeds of the Assessments in the exercise of its powers



and duties.

(9) To maintain, repair, replace, and operate the Condominium Property, including the reasonable right of entry upon any unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the project and the right to grant permits, licenses, and easements over the common areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the project.

(10) To purchase insurance on the Property, and to purchase insurance for the protection of the Association and its Members, and the members of the Board of Directors and Officers of the Association.

(11) To reconstruct improvements after casualty and to further improve the Property.

(12) To make and amend reasonable Rules and Regulations respecting the use of the Property and the operation of the Condominium.

(13) To enforce by legal means the provisions of the Act, the Declaration, the Articles of Incorporation, these By-laws, and the Rules and Regulations for the use of the Property.

(14) To contract for the management of the Property and to delegate to such managing agent all powers and duties of the Association except such as are specifically required by the Declaration to have approval of the Board of Directors or the membership of the Association.

(15) To contract for the management or operation of portions of the Common Elements of the Condominium susceptible to separate management or operation, and to lease such portions.

(16) To retain attorneys and accountants.

(17) To employ personnel to perform the services required for proper operation of the Condominium.

(18) Except as prohibited in the Declaration or the Act, to purchase a Unit of Condominium for the purposes authorized in the Declaration.

(19) To maintain a class action and to settle a cause of action on behalf of owners with reference to the Common Elements, the roof and structural

components of a building or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a building as distinguished from such elements serving only one unit; and to bring an action and to settle same on behalf of two or more of the owners, as their respective interests may appear, with respect to any cause of action relating to the Common Elements or more than one condominium unit; all as the Board deems advisable.

(20) To procure such fidelity bonds, as the Board deems advisable, covering officers and employees of the Association handling and responsible for the Association's funds and personal property, and to procure Directors' and Officers' liability insurance, if the Board deems it advisable, and the premiums of such bonds and insurance shall be paid by the Association as common expenses.

9.02. Committees. The Board of Directors may, by resolution, appoint such committees as deemed appropriate in carrying out its purpose, and such committees shall have the powers of the Board of Directors for the management of the affairs and business of the Association to the extent provided in the resolution designating such a committee. Any such committee shall keep regular minutes of its proceedings and shall report the same to the Board of Directors.

9.03. Managing Agent. The Board of Directors shall be authorized to employ the services of a manager or managing agent, who may either be a Director, Officer, or employee of the Association, or an independent person or firm qualified to manage the Property and affairs of the Condominium under the supervision of the Board. The compensation paid to any such manager or managing agent shall be in the amount established from time to time by the Board.

## **ARTICLE X** **OFFICERS**

10.01. Election. The executive officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer. The officers shall be elected annually by the Board of Directors. Any two or more officers may be held

by the same person, except the President shall not also be the Secretary. All executive officers shall be elected from the duly elected or appointed Board members.

10.02. Term. Each officer shall hold office for the term of one year and until his successor shall have been appointed or elected and qualified, provided that any officer may succeed himself.

10.03. Special Appointments. The Board may appoint such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

10.04. Resignation and Removal. Any Officer may be removed from office either with or without cause by the vote of a majority of the Directors present at any meeting. Any Officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of receipt or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

10.05. Vacancies. A vacancy in any office shall be filled by a majority vote of the Directors at any meeting. An Officer elected to fill a vacancy shall hold office for term equal to the unexpired term of the Officer he succeeds.

10.06. Compensation. An Officer shall not receive any compensation for any service he may render to the Association as an Officer; provided, however, that any Officer may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties.

10.07. Duties of the President. The President, who shall be a Director, is the Chief Executive Officer of the Association, and shall have all of the powers and duties that are usually vested in the office of President of a condominium association, including, but not limited to the following powers:

- (1) To preside over all meetings of the Members and of the Board.
- (2) To sign as President all deeds, contracts, and other instruments that have been duly approved by the Board.
- (3) To call meetings of the Board whenever he deems it necessary in

accordance with the rules.

(4) To have the general supervision, direction and control of the affairs of the Association.

(5) To, along with the Secretary, prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

10.08. Duties of the Vice-President. The Vice-President, who shall be a Director, shall have all of the powers and duties that are usually vested in the office of Vice-President of a condominium association, including but not limited to the following powers:

(1) To perform the duties and exercise the powers of the President, in the absence or disability of the President.

(2) To assist the President in the exercise of his powers and the performance of his duties.

10.09. Duties of the Secretary. The Secretary, who shall be a Director, shall have all of the powers and duties that are usually vested in the secretary of a condominium association, including but not limited to the following powers:

(1) To keep a record of all meetings and proceedings of the Board and of the Members.

(2) To keep the seal of the Association, if any, and affix it on all papers requiring said seal.

(3) To prepare and serve such notices of meetings to the Board and the Members required either by law or by these By-Laws.

(4) To keep current records showing the Members of the Association together with their addresses.

(5) To sign as Secretary all deeds, contracts, and other instruments which have been duly approved by the Board, if said instrument requires a second Association signature.

(6) To, along with the President, prepare, execute, certify, and record amendments to the declaration on behalf of the Association.

10.10. Duties of Treasurer. The Treasurer shall be the financial officer of the Association, and shall have all powers and duties that are usually vested

the treasurer of a condominium association, including but not limited to the following powers:

- (1) To receive and deposit in such bank or banks as the Board may from time to time direct, all of the funds of the Association.
- (2) To be responsible for and supervise the maintenance of books and records to account for such funds and other Association assets.
- (3) To disburse and withdraw said funds as the Board may from time to time direct, and in accordance with prescribed procedures.
- (4) To prepare and distribute the financial statements for the Association.
- (5) To prepare a record of all receipts and expenditures.
- (6) To prepare an account for each unit, setting forth any shares of Common Expenses or other charges due, the due dates thereof, the present balance due and any interest in Common Surplus.

## **ARTICLE XI**

### **FISCAL MANAGEMENT**

11.01. Fiscal Year. The fiscal year of the Association shall be such as shall from time to time be established by the Association.

11.02. Annual Budget. The Board of Directors shall adopt a budget for each fiscal year in accordance with the Act. The annual budget of the Association shall be detailed and shall show the amounts budgeted by accounts and expense classifications. Expenses shall be estimated for each category and item of the Common Expenses. The budget shall also include reserve accounts for capital expenditures, deferred maintenance, reserves, and contingencies. The amount reserved shall be computed by means of a formula that is based on the estimated life and estimated replacement cost of each reserve item. The budget shall also set forth each Unit Owner's proposed Assessments for Common Expenses. Copies of the budget and proposed assessments shall be transmitted to each Member in accordance with the Act.

11.03. Adoption of the Annual Budget. The Board of Directors shall

prepare or cause to be prepared a proposed annual budget for each fiscal year of the Association. Within thirty (30) days after adoption of any proposed budget for the condominium, the Board shall provide a copy of the budget to all Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) days nor more than thirty (30) days after delivery or mailing of the proposed budget to the Unit Owners. Unless at that meeting a majority of all the Unit Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board. The Board shall furnish copies of the final annual budget to each Unit Owner within thirty (30) days after the adoption.

11.04.     Assessments. Assessments for Common Expenses shall be made in accordance with the Declaration, the Act, and these By-Laws. Assessments shall be collected by the Association on a monthly basis as follows: On or before the first day of each month of the fiscal year for which the Assessments are made, each Unit Owner shall pay one-twelfth (1/12th) of his share of the Common Expenses for such year as shown by the annual budget. The assessments of the Common Expenses shall be as set forth in the Declaration, but the yearly assessment for Common Expenses each Unit Owner shall be in proportion to his respective ownership interests in the Common Elements. The Board of Directors may cause to be sent to each Unit Owner, on or before the first day of each month, a statement of the monthly Assessment. However, the failure to send or receive such monthly statement shall not relieve the Unit Owner of his obligation to make timely payment of the monthly Assessment. If the Board shall not approve an annual budget or shall fail to determine new monthly Assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay the amount of his monthly Assessment as last determined. No Unit Owner shall be relieved of his obligation to pay his Assessment by abandonment of his Unit or lack of use of the Common or Limited Common Elements.

11.05.     Reserve for Replacements. The Association shall establish and

maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and those Limited Common Elements which the Association may be obligated to maintain. The fund shall be maintained out of regular assessments.

11.06. Depository. The depository of the Association shall be such bank or banks and/or savings and loan associations as shall be designated from time to time by the Directors and in which monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Directors.

11.07. Lien for Expenses. If any Unit Owner shall fail or refuse to make any payment of the Common Expenses or other assessment or fine imposed against him when due, the amount due, together with costs, reasonable attorney's fees, and interest thereon at the maximum percentage rate as may then be permitted under the laws of the State of Alabama, from and after the date said Common Expenses or other assessments or fines become due and payable in accordance with applicable law, shall constitute a lien on the interest of the Unit Owner in the Property.

11.08. Priority of Lien. Any lien of the Owners Association shall be the subject to the rules of priority as stated in the Declaration and other applicable state laws.

11.09. Acceleration of Assessment Installments. In accordance with the provisions of the Act, if an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

11.10. Default.

(1) In the event an owner of a unit does not pay any sums, charges or assessments required to be paid to the Association within thirty days (30) days from the due date, the Association may foreclose the lien encumbering the unit created by non-payment of the required monies in the same fashion as mortgage liens on real estate are foreclosed; provided that thirty (30) days prior notice of the intention to foreclose shall be mailed, postage prepaid, to the Unit Owner and to

all persons having a mortgage lien or other interest of record. The Association shall be entitled to the appointment of a Receiver, if it so requests. The Association shall have the right to bid in the unit at a foreclosure sale and to acquire, hold, mortgage and convey the same. In lieu of foreclosing its lien, the Association may bring suit to recover a money judgment, brought by or on behalf of the Association against a Unit Owner, and the losing defendant shall pay the cost thereof, together with a reasonable attorney's fee.

(2) If the Association becomes the owner of a unit by reason of foreclosure, it shall offer said unit for sale and at such time as a sale is consummated it shall deduct from such proceeds all sums of money due it for monthly assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the re-sale of the unit, which shall include but not be limited to advertising expenses, real estate brokerage fees, abstract or title insurance costs, and expenses necessary for the repairing and refurbishing of the unit in question. All monies remaining after deducting the foregoing items of expenses shall be returned to the former owner of the unit in question.

11.11. Supplemental Assessments. If during the course of any fiscal year, it shall appear to the Board that the monthly Assessments, as determined in the annual budget, are insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency. Copies of the supplemental budget shall be delivered to each Unit Owner, and thereupon a supplemental Assessment shall be made to each Unit Owner for his proportionate share of the supplemental budget.

11.12. Annual Statement. Within Sixty (60) days after the end of each fiscal year, the Board shall cause to be furnished to each Unit Owner, a statement for the year so ended showing the receipts and expenditures of the Association, and such other information as the Board may deem desirable.

11.13. Accounting Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirements of



the Act. The Board shall cause to be kept, in accordance with generally accepted accounting principles, a record of all receipts and expenditures; and a separate account for each Unit showing the Assessments or other charges due, the due dates thereof, the present balance due, and any interest in common surplus. Such records shall be open to inspection by Unit Owners and his authorized agents at reasonable times.

11.14. Information. The Association shall be required to make available to Unit Owners, lenders, and to holder, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, or other Rules and Regulations concerning the Project, and the books, records, financial statements of the Association. "Available" means available for inspection, upon requests, during normal business hours or under other reasonable circumstances. In addition to the above, any holder of a first mortgage is entitled, upon written request, to a financial statement for the immediately preceding fiscal year.

11.15. Fidelity Bonds. Fidelity bonds shall be required by the Board from all officers and employees of the Association and from any manager handling or responsible for Association funds and from any employee, agent or subcontractor of a manager handling or responsible for Association funds. The amount of such bonds shall be determined by the Directors, but shall be at least the amount of one hundred and fifty percent (150%) of the total annual Assessments against Members for recurring expenses. The premiums on such bonds shall be paid by the Association.

11.16. Lender's Notices. Upon written request to the Owners Association, identifying the name and address of the holder, insurer or guarantor and the unit number of address, any mortgage holder, insurer, or guarantor shall be entitled to timely written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage.

(b) Any 60-day delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds the mortgage.

(c) A lapse, cancellation, or material modification of any insurance

policy or fidelity bond maintained by the Owner's Association.

(d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

## **ARTICLE XII**

### **OWNER OBLIGATIONS AND COVENANTS**

12.01. Assessment. Every owner of any Unit in the Condominium shall contribute pro rata toward the expense of administration, maintenance, alteration, repair and improvement of the Condominium, as provided in the Articles, the Declaration or these By-Laws. Each assessment against a Unit shall also be the personal obligation of the Owner at the time the assessments fell due. Such personal obligation shall not pass to successors in title unless assumed by such successors, or required by applicable law.

12.02. Maintenance and Repair. Every owner or any unit in the Condominium shall promptly perform all maintenance and repair work, as provided in the Articles, the Declaration or these By-Laws. Any owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common areas or facilities damaged through the owner's fault.

12.03. Use. The Condominium Property shall be utilized in accordance with the provisions of the Declaration, these By-Laws, and the rules and Regulations of the Association.

## **ARTICLE XIII**

### **RULES AND REGULATIONS**

13.01. Rules and Regulations. The Board of Directors may from time to time adopt, modify, amend, or add to rules and regulations concerning the use of the Condominium Property; provided, however, that a majority of the Members may overrule the Board with respect to any such rules and regulations or modifications thereof or any amendments or additions thereof. Copies of such rules and regulations, or any amendments, additions, or modifications, shall be

delivered to each Unit Owner not less than fourteen (14) days prior to the effective date thereof. No rule or regulation that is in conflict with the Condominium Documents shall be adopted.

#### **ARTICLE XIV** **AMENDMENTS TO THE BY-LAWS**

14.01. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

14.02. Adoption. These By-Laws may be altered, amended, or appealed or new By-Laws may be adopted by the majority vote of the members, at a membership meeting, at which a quorum of members are present.

14.03. Prohibited Amendments. No amendment that is in conflict with the Articles, the Declaration, or the Act shall be adopted and no amendment that is in conflict with the Articles, the Declaration, the Condominium Documents of the Master Association or Act shall be adopted.

14.04. Recording. Any amendment shall become effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in accordance with the Act.

#### **ARTICLE XV** **MISCELLANEOUS**

15.01. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of gender shall be deemed to include all genders.

15.02. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these By-laws or the intent of any provision hereof.

15.03. Parliamentary Rules. Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Act,

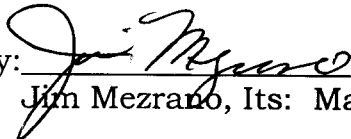
the Declaration, or these By-Laws.


15.04. Conflicts. In the event of any conflict between the provisions of these By-Laws and the Declaration, the Declaration shall govern, except to the extent the Declaration is inconsistent with the Act.

15.05. Compliance. These By-Laws are set forth to comply with the requirements of the Alabama Nonprofit Corporation Act and the Alabama Uniform Condominium Act of 1991, and shall be considered an appendage to the Declaration filed prior hereto into accordance with said Acts. In case any of these By-Laws conflict with the provisions of said statutes, it is hereby agreed and accepted that the provisions of the Acts will apply.

The foregoing By-Laws were adopted as the By-Laws of PERDIDO DUNES TOWER CONDOMINIUM OWNERS ASSOCIATION, INC. this the 4<sup>th</sup> day of January, 2006.

PERDIDO DUNES TOWER  
CONDOMINIUM OWNERS ASSOCIATION,  
INC.

By:   
Jim Mezrano, Its: Managing Member

By:   
Laura Ward, Its: Managing Member

STATE OF ALABAMA )

COUNTY OF BALDWIN )

I, TYSON W WHITE SIDE the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Jim Mezrano and Laura Ward whose names as Managing Members of PERDIDO DUNES TOWER CONDOMINIUM OWNERS ASSOCIATION, INC., is signed to the foregoing instrument and who are known to me, acknowledged before me on this day, that being informed of the contents of said instrument, they, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal this the 4<sup>th</sup> day of January, 2006.



Tyson W Whiteside  
Notary Public  
My Commission Expires: 6/29/09

*This Instrument Prepared by:*  
Daniel H. Craven, P.C.  
Post Office Drawer 4489  
Gulf Shores, Alabama 36547  
Voice: 251-968-8170  
Fax: 251-968-4837

**ARTICLES OF INCORPORATION**  
**OF**  
**PERDIDO DUNES TOWER CONDOMINIUM OWNERS ASSOCIATION, INC.**  
**A Non-Profit Corporation**

By these Articles of Incorporation, the undersigned natural person, over the age of nineteen (19), acting as the incorporator for the purpose of forming a not for profit corporation under the Alabama Nonprofit Corporation Act, §10-3-1- et seq., Code of Alabama (1975) and the Alabama Uniform Condominium Act of 1991, §35-8A-101 et seq., Code of Alabama (1975), verifies as follows:

**ARTICLE I**  
**NAME AND DEFINITIONS**

The name of the corporation shall be PERDIDO DUNES TOWER CONDOMINIUM OWNERS ASSOCIATION, INC. The corporation is herein referred to as the "Association", and the terms used herein shall have the meaning for each stated in the Alabama Nonprofit Corporation Act, §10-3-1 et seq., Code of Alabama (1975) and the Alabama Uniform Condominium Act of 1991, §35-8A-101 et seq., Code of Alabama (1975) (hereinafter referred to as the "Acts") and the Declaration of Condominium of PERDIDO DUNES TOWER, a condominium as recorded in the Public Records of Baldwin County, Alabama, unless the context otherwise requires.

**ARTICLE II**  
**PURPOSE**

The Association is organized for the purpose or purposes of transacting any and all lawful business, including but not limited to the following:

- (1) To maintain, operate and manage the condominium known as

PERDIDO DUNES TOWER, a condominium located in the City of Orange Beach, Baldwin County, Alabama, and to do all things incident, necessary, convenient, expedient, ancillary, or in aid of the accomplishment of the foregoing.

(2) To own, operate, lease, sell, trade, or otherwise deal with such property, real or personal, as may be necessary or convenient in the administration of the Condominium.

### **ARTICLE III** **POWERS**

3.01. Implied Powers. The Association shall have all of the common law and statutory powers of a not for profit corporation which are not in conflict with the purposes of the Association as set forth in this Article, the Declaration of Condominium and the Acts.

3.02. Specific Powers. In furtherance of the purposes of the Association, the Association shall have all of the powers set forth in the Acts, and all of the powers reasonably necessary to operate the Condominium pursuant to the Declaration of Condominium, including but not limited to the following irrevocable rights, powers, and authority:

(1) To enforce the covenants and restrictions contained in the Declaration, and to make, establish, and enforce reasonable Rules and Regulations governing the administration, management, and use of the Condominium Property;

(2) To establish a budget for the operations of the Condominium; to designate those expenses which shall constitute the Common Expenses of the Condominium; to make, levy, and collect assessments against Unit Owners of the Condominium to provide the funds to pay for Common Expenses of the Condominium as provided for in the Condominium documents and in the Act; and to use and expend the proceeds of Assessments in the exercise of the

powers and duties of the Association;

(3) To maintain, repair, replace, and operate those portions of the Condominium Property that the Association has the duty or right to maintain, repair, replace, and operate under the Condominium Documents;

(4) To have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any Common Elements or Limited Common Elements therein or accessible therefrom, or, to have immediate access at any time as may be necessary for making emergency repairs necessary to prevent damage to any other Unit or Units;

(5) To contract for the management of the Condominium Property and to delegate to such agent(s) all or some of the powers, duties, and responsibilities of the Association;

(6) To employ personnel to perform the services required for proper operation of the Condominium;

(7) To purchase and maintain all forms of insurance on the Condominium Property for the protection of the Association and its members;

(8) To reconstruct the Condominium Property after casualty or other loss;

(9) To make additional improvements on and to the Condominium Property;

(10) To approve or disapprove the transfer, mortgage, and ownership of Units to the extent such power is granted to it under the Condominium Documents;

(11) To retain legal counsel at the expense of the Association and to enforce by legal action the provisions of the Condominium Documents and the Rules and Regulations of the Association;

(12) To acquire, by purchase or otherwise, Units in the Condominium, and to hold, lease, mortgage, and convey the same;



(13) To lease or license the use of Common Elements and Limited Common Elements in a manner not inconsistent with the rights of Unit Owners;

(14) To pay taxes and assessments which are liens against any part of the Condominium other than individual Units (unless the individual Units are owned by the Association) and the appurtenances thereto, and to assess the same against the Units;

(15) To pay the cost of all power, water, sewer, trash, garbage, and other utility services rendered to the Condominium and not billed to the individual Units;

(16) To adopt and establish By-Laws for the operation of the Condominium Association.

#### **ARTICLE IV** **ASSOCIATION FUNDS AND PROPERTY**

The Association shall pay no dividend, and shall distribute no part of its income to its Members, Directors, or Officers. Nevertheless, the Association may pay compensation in a reasonable amount to its Members, Directors, and Officers for services rendered, and it may confer benefits on its Members in conformity with the Declaration of Condominium and the purposes of the Association. On termination, the Association may make distributions to its Members as permitted by law, and no such payment, benefit, or distribution shall be deemed to be a dividend or distribution of income. All funds and property acquired by the Association and all proceeds therefrom shall be held and used for the benefit of the Members of the Association in accordance with the provisions of the Declaration, these Articles and the By-Laws.

## **ARTICLE V** **MEMBERS**

5.01. Qualification. The Members of the Association shall consist of all of the Unit Owners of record in the Condominium.

5.02. Certification of Membership. This Corporation shall issue no shares of stock of any kind or nature whatsoever.

5.03. Change in Membership. Change of membership in the Association shall be established by the recording in the public records of Baldwin County, Alabama, of a deed or other instrument establishing a record title to a Condominium Unit, and delivery to the Association of a certified copy of such instrument. The new Unit Owner designated by such instrument shall thereupon become a Member of the Association, and the membership of the prior Unit Owner shall thereby be terminated.

5.04. Transfer of Membership. The membership of a Member in the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance to such Member's Unit.

5.05. Meetings. The By-Laws, subject to any proviso therein, shall provide for an annual meeting of Members and may provide for regular and special meetings other than the annual meeting.

5.06. Voting. The owner of each Unit shall be entitled to the number of votes specified in the Declaration of Condominium for that unit. The manner of exercising voting rights shall be determined by the By-Laws.

## **ARTICLE VI** **DIRECTORS**

6.01. Number. The property, business, and affairs of the Association shall be managed by a Board of Directors consisting of the number of Directors determined by the By-Laws, but which shall consist of not less than three

Directors and not more than five Directors. Except as may otherwise be provided in the By-Laws, each Director shall be a person entitled to cast a vote in the Association.

6.02. Election. Directors may be designated or elected and removed, and vacancies on the Board of Directors shall be filled as provided in the By-Laws.

6.03. Authority. All of the duties and powers of the Association existing under the Condominium Act, the Declaration of Condominium, these Articles, and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors, or employees, subject only to approval by Unit Owners when such approval is specifically required by the Condominium Act, the Declaration of Condominium, these Articles, or the By-Laws.

6.04. Initial Director. The names and addresses of the Directors, who shall hold office until the election or appointment of their successors, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Jim Mezrano	8500 Carrington Lake Cove Trussville, Alabama 35173
Laura Ward	Post Office Box 279, Lowndesboro, Alabama 36752
Alan Dane	3347 Castle Crest Drive Birmingham, Alabama 35216

## **ARTICLE VII** **OFFICERS**

The affairs of the Association shall be administered by the officers designated in accordance with the By-Laws. The names and addresses of the officers who shall serve until the election or appointment of their successors in accordance with the By-Laws are as follows:

<u>NAME</u>	<u>OFFICE</u>	<u>ADDRESS</u>
Jim Mezrano	President	8500 Carrington Lake Cove Trussville, Alabama 35173
Alan Dane	Vice President	3347 Castle Crest Drive Birmingham, Alabama 35216
Laura Ward	Secretary/Treasurer	Post Office Box 279 Lowndesboro, Alabama 35752

### **ARTICLE VIII** **DURATION**

The duration of the Association shall be perpetual; provided, however, that the Association shall be terminated by the termination of the Condominium in accordance with the terms of the Declaration of Condominium.

### **ARTICLE IX** **REGISTERED OFFICE AND AGENT**

The initial registered office of the Association is 2514 County Road 40 East, Lowndesboro, Alabama 35752, and the name of the initial agent at that address is Laura Ward.

### **ARTICLE X** **INCORPORATOR**

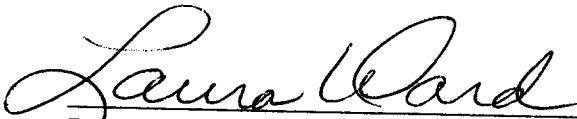
The name and address of the Incorporator of the Association is:

<u>NAME</u>	<u>ADDRESS</u>
Laura Ward	Post Office Box 279 Lowndesboro, Alabama 35752

IN WITNESS WHEREOF, the Incorporator has hereto affixed her

signature this 4<sup>th</sup> day of January, 2006.

**INCORPORATOR**

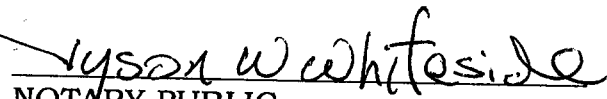
  
**LAURA WARD**

STATE OF ALABAMA )

COUNTY OF BALDWIN )

I, a Notary Public, the undersigned authority, a Notary Public in and for said County and State, hereby certify that LAURA WARD, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that being informed of the contents of said conveyance, she has executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 4<sup>th</sup> day of January, 2006.

  
**NOTARY PUBLIC**

My Commission Expires: 6/29/09

*This Instrument Prepared By:*  
Daniel H. Craven  
Attorney at Law  
Post Office Box 4489  
Gulf Shores, AL 36547  
Voice: 251-968-8170  
Fax: 251-968-4837