

COUNTY OF BALDWIN  
STATE OF ALABAMA

DECLARATION OF CONDOMINIUM  
OF  
EMERALD SKYE, A CONDOMINIUM

REC'D # 24500  
BALDWIN COUNTY  
PROPERTY DEPARTMENT  
JAN 5 4 08 PM '95  
DEL. FILED 81524-621  
Alabama State

THIS DECLARATION, made this 8<sup>th</sup> day of December, 1994, by EMERALD SKYE, INC., an Alabama corporation, herein called the "DEVELOPER", for itself, its successors, grantees and assigns.

RECITALS

1. The DEVELOPER is the fee simple Owner of that certain parcel of Real Property situated in the County of Baldwin, State of Alabama, hereinafter more particularly described, and intends to improve said Real Property in the manner set out herein.
2. The DEVELOPER proposes to establish a Condominium pursuant to the provisions of the Alabama Uniform Condominium Act of 1991.
3. The Condominium will consist of one (1) building containing a total of thirty-six (36) Residential Units and one (1) Commercial Unit, together with access, parking and appurtenant facilities herein described.

NOW, THEREFORE, the DEVELOPER, hereby makes the following Declaration.

DEFINITIONS

The terms used in this Declaration and in the Bylaws shall have the meanings stated in the Alabama Uniform Condominium Act of 1991, and as follows, unless the context otherwise requires:

- 1.01. "ACT" means the Alabama Uniform Condominium Act of 1991, Code of Alabama (1975), Section 35-8A-101, et seq.
- 1.02. "ARTICLES" means the Articles of Incorporation of the Association, recorded in the office of the Judge of Probate of Baldwin County, Alabama, identified as EXHIBIT "C" attached hereto and made a part hereof as if set out fully herein.
- 1.03. "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.

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- 1.04. "ASSOCIATION" means EMERALD SKYE CONDOMINIUM OWNERS ASSOCIATION, INC., an Alabama not for profit corporation, and its successors, and is the corporation organized under the ACT.
- 1.05. "BOARD" means the Board of Directors of the Association.
- 1.06. "BUILDING" means all structures or structural improvements located on the REAL PROPERTY and forming part of the CONDOMINIUM.
- 1.07. "BYLAWS" means the duly adopted BYLAWS of the ASSOCIATION, identified as EXHIBIT "D" attached hereto and made a part hereof as if set out fully herein.
- 1.08. "COMMON ELEMENTS" means all portions of the condominium other than the UNITS.
- 1.08. "COMMON EXPENSES" means expenditures made by or financial liabilities of the ASSOCIATION, together with any allocations to reserves.
- 1.10. "COMMON SURPLUS" means the excess of all receipts of the Association arising out of the COMMON ELEMENTS over the amount of the COMMON EXPENSES.
- 1.11. "CONDOMINIUM" means EMERALD SKYE, a condominium, and consists of the CONDOMINIUM PROPERTY submitted to the CONDOMINIUM form of ownership by this DECLARATION.
- 1.12. "CONDOMINIUM DOCUMENTS" means the DECLARATION, BYLAWS, ARTICLES and all rules and regulations adopted by the ASSOCIATION and all exhibits attached thereto as the same may be amended from time to time.
- 1.13. "CONDOMINIUM PROPERTY" or "PROPERTY" means all property, both real, personal or mixed, which is submitted to the CONDOMINIUM form of ownership as provided for herein and includes the REAL PROPERTY and all improvements now existing or hereafter placed thereon and all easements, rights, interests or appurtenances thereto, and all personal property now or hereafter used in connection therewith.
- 1.14. "DECLARATION" means this DECLARATION of CONDOMINIUM and any amendments thereto which may be made from time to time.
- 1.15. "DEVELOPER" means EMERALD SKYE, INC., an Alabama corporation, and its successors and assigns.
- 1.16. "DEVELOPMENT" shall have the same meaning as "CONDOMINIUM PROPERTY" or "PROPERTY".
- 1.17. "ELIGIBLE MORTGAGEE" means any MORTGAGEE who has submitted to the ASSOCIATION a written request for notice of any proposed action concerning the CONDOMINIUM.
- 1.18. "LIMITED COMMON ELEMENT" shall have the same meaning as is defined in the ACT and as set out in the DECLARATION.
- 1.19. "MEMBER" means a member of the Association, membership in which is confined to Unit Owners.
- 1.20. "MORTGAGEE" means any lender holding a mortgage or vendor's lien on any part or all of the CONDOMINIUM PROPERTY.

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

1.22. "PERSON" means a natural person, a corporation, a partnership, a limited partnership, the Association, a Trustee, or other legal entity.

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

1.24. "REAL PROPERTY" means the REAL PROPERTY which is submitted to the CONDOMINIUM form of ownership as provided herein.

1.25. "SPECIAL DECLARANT RIGHTS" shall have the meaning as is defined in the ACT and as set out in the DECLARATION.

1.26. "UNIT" or "PRIVATE ELEMENT" shall have the meaning as "UNIT" is defined in the ACT. The UNITS are designated on the PLANS and include CONDOMINIUM RESIDENTIAL UNITS and a CONDOMINIUM COMMERCIAL UNIT.

A CONDOMINIUM RESIDENTIAL UNIT is a UNIT which will be used as a single family residence as provided for in the DECLARATION. The CONDOMINIUM RESIDENTIAL UNITS shall be located on levels two (2) through seven (7), inclusive, in the BUILDING. A CONDOMINIUM RESIDENTIAL UNIT shall be identified by placing the letter "R" in front of the number of the UNIT.

The CONDOMINIUM COMMERCIAL UNIT is a UNIT which shall be used for business or commercial purposes as provided for in this DECLARATION. The CONDOMINIUM COMMERCIAL UNIT shall be located on the first level (ground level) of the building. The CONDOMINIUM COMMERCIAL UNIT shall be identified by placing the letter "C" in front of the number of said unit.

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

1.27. "UNIT OWNER" means any person (including the DEVELOPER) who owns a Unit but does not include a person having an interest in a Unit solely as security for an obligation.

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

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

NAME

2.01. The name by which this CONDOMINIUM is to be known EMERALD SKYE, a condominium. The CONDOMINIUM is located at 28034 Highway 182, in the City of Orange Beach, County of Baldwin State of Alabama.

THE REAL PROPERTY

3.01. The REAL PROPERTY owned by the DEVELOPER which herewith submitted to the CONDOMINIUM form of ownership is the parcel of REAL PROPERTY lying and being in Baldwin County, Alabama and is more particularly described in EXHIBIT "A", which is attached hereto and expressly made a part hereof as though fully set forth herein.

The REAL PROPERTY is subject to the following:

- A. Interest created by or limitations and restrictions imposed on the use of the REAL PROPERTY as established by the Federal Coastal Zone Management Act or other Federal law or regulation.
- B. Zoning, planning, and other restrictions or regulations upon the use of the REAL PROPERTY as may be imposed by the Town of Orange Beach or any other governmental authorities having jurisdiction over the REAL PROPERTY.
- C. All ad valorem taxes and assessments.
- D. The rights of eminent domain or governmental rights of police power.
- E. The rights of the public, if any, to use any part of the beach, including any part of the land lying between the body of water of the Gulf of Mexico and the boundary line of the REAL PROPERTY as granted by Alabama law.
- F. The nature and extent of the riparian rights, shore rights, littoral rights, and accretions incident to the REAL PROPERTY or title to that portion of the REAL PROPERTY, if any, lying below the mean high tide line of the Gulf of Mexico.

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- G. Any easements which may be granted to public authorities and/or utility companies to provide for utility lines, equipment, etc., for utilities serving the CONDOMINIUM.
- H. Easements or claims of easements not shown by the public records.
- I. Encroachments, overlaps, boundary line disputes, and any other matter which would be disclosed by an accurate survey and inspection of the REAL PROPERTY.
- J. Terms and conditions of all permits and licenses of Federal, state, and local government, including applicable agencies and departments and private and quasi governmental agencies having jurisdiction over the REAL PROPERTY.

#### PURPOSE

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

#### DEVELOPMENT PLAN

5.01. Plans. The improvements are substantially completed in accordance with the PLANS, as evidenced by the Certificate of Completion executed by an independent registered architect or registered engineer.

5.02. Easements. Easements are reserved to the DEVELOPER throughout the COMMON ELEMENTS as may be reasonably necessary for the purpose of discharging the DEVELOPER'S obligations or exercising any SPECIAL DECLARANT RIGHTS.

Each of the following easements are reserved to the Association for the benefit of the UNIT OWNERS, their guests and lessees and is a covenant running with the REAL PROPERTY:

A. Utilities and Drainage. Easements are reserved throughout the CONDOMINIUM PROPERTY as may be required for UTILITY SERVICES and drainage in order to adequately serve the CONDOMINIUM; provided, however, such easements to a UNIT shall be only in accordance with the PLANS or as the improvements are constructed, unless approved in writing by the UNIT OWNER. Each UNIT shall have an easement as may be required to drain the CONDOMINIUM PROPERTY adequately. Each UNIT OWNER shall have an easement in common with the OWNERS of all other UNITS to use all pipes, wires, ducts, cables, conduits, public utility lines and other COMMON ELEMENTS located in any of the other UNITS and serving his UNIT. Each UNIT shall be subject to an easement in favor of the OWNERS of all other UNITS to use all pipes, ducts, cables, wires, conduits, public utility lines and other COMMON ELEMENTS serving such other UNITS and located in such UNIT. The Association shall have a right of access to each UNIT to inspect the same, to remove violations therefrom, and to maintain, repair or replace the COMMON ELEMENTS contained therein or elsewhere on the CONDOMINIUM PROPERTY; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the UNIT OWNERS permitted use of the UNIT, and except in the event of emergency, entries shall not be made without prior notice to the UNIT OWNER.

B. Encroachments. If any portion of the COMMON ELEMENTS encroaches upon any UNIT, or if any UNIT encroaches upon any other UNIT or upon any portion of the COMMON ELEMENTS as a result of the construction of any Building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any BUILDING, a valid easement for the encroachment and for the maintenance of the same shall exist so long as such BUILDING stands. In the event any BUILDING, any UNIT, any adjoining UNIT, or any adjoining COMMON ELEMENT shall be partially or totally destroyed as a result of fire, or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the COMMON ELEMENTS upon any UNIT or of any UNIT upon any other UNIT or upon any portion of the COMMON ELEMENTS due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such BUILDING or BUILDINGS shall stand.

C. Support. Each UNIT shall have an easement of support and of necessity and shall be subject to an easement of support and of necessity in favor of all other UNITS, and COMMON ELEMENTS.

D. Access. Each UNIT shall have an easement pedestrian traffic over, through, and across sidewalks, walks, lobbies, elevators, stairways, walkways and lanes, and passage ways, as the same may from time to time exist in the COMMON ELEMENTS; and for ingress and egress over, through and across such portions of the COMMON ELEMENTS as may from time to time be paved and intended for such purposes, 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 non-exclusive 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. The UNIT OWNERS and/or the ASSOCIATION are expected to have a non-exclusive right of ingress and egress over a portion of the property west of and adjacent to the REAL PROPERTY for the limited purpose of access to and from the CONDOMINIUM from Highway 152; such right of ingress and egress will be subject to matters similar to Section 3.01 (A) through (J) above and other matters of record in the Office of the Judge of Probate of Baldwin County, Alabama.

5.03. General Description of Improvements. The CONDOMINIUM PROPERTY consists essentially of one (1) building, together with automobile parking areas, lawn and, landscaping, and other facilities as more particularly set forth in the PLANS. The BUILDING contains seven (7) levels (stories) including one (1) ground level. The ground level (story) or first floor will consist of various storage and equipment rooms, automobile parking spaces, and a CONDOMINIUM COMMERCIAL UNIT. The next levels (stories) two (2) through seven (7), inclusive, will contain CONDOMINIUM RESIDENTIAL UNITS. This is only one (1) type of CONDOMINIUM RESIDENTIAL UNIT which is more specifically described in the DECLARATION OF CONDOMINIUM and on the PLANS. The amenities that DECLARANT anticipates including in the CONDOMINIUM include exterior corridors, maintenance room, and equipment rooms.

5.04. Units. (Private Elements). Each UNIT is assigned a number or letter or a combination thereof, which is indicated the PLANS so that no UNIT bears the same designation as any other UNIT. The legal description of each UNIT shall consist of the identifying number or letter or a combination thereof as shown on the PLANS, the name of the CONDOMINIUM, the name of the County in which the UNIT is situated, the name of the office in which this DECLARATION is recorded, and the book and page number where the first page of this DECLARATION is recorded, the description and location of the particular UNITS and the appurtenances are determined with the aid of the PLANS. The UNIT boundaries are determined as follows:

A. Horizontal Boundaries. (Planes). The upper and lower boundaries extended to their planar intersections with the vertical boundaries of each UNIT shall be:

- (1) Upper Boundary. The horizontal plane of the unfinished lower interior surface of the uppermost ceiling.
- (2) Lower Boundary. The horizontal plane of the unfinished upper interior surface of the floor.

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

5.05. Type of Units. The different types of UNITS are more specifically shown on the PLANS and are generally described as follows:

A. Condominium Residential Units. Generally these UNITS have one (1) bedroom, plus a bunk bed area, one (1) bathroom, a living area, and a kitchen and contain approximately seven hundred sixty-three (763) square feet of living area.

B. Condominium Commercial Unit. The CONDOMINIUM COMMERCIAL UNIT contains approximately four hundred sixty-four (464) square feet of private area, consisting of a large open area, a private office, a bathroom, and storage space. This Condominium Commercial Unit is located on the Ground Floor and is shown on the Ground Floor Plan attached to this Declaration. There is one (1) CONDOMINIUM COMMERCIAL UNIT in the CONDOMINIUM.

5.06. Unit Ownership. Each UNIT OWNER shall be entitled to the exclusive ownership and possession of his UNIT, which shall be owned in fee simple. Each UNIT OWNER shall have the unrestricted right of ingress and egress to his UNIT, which right shall be an appurtenance to his UNIT. Each UNIT OWNER is subject to all the rights and duties assigned to UNIT OWNERS under the terms of the CONDOMINIUM DOCUMENTS. The DEVELOPER shall enjoy the same rights and shall have the same duties (as any other UNIT OWNER) with respect to UNITS owned by the DEVELOPER. 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 and on interior walls separating one UNIT from another UNIT.
- C. The structural components and surfacing materials of all interior walls located within the boundaries of the UNIT.

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

E. All bathtub, toilet and sinks, the range, stove top, refrigerator, dishwasher, garbage disposal, stack washer and dryer, air conditioning and heating units, lighting fixtures and all hardware and interior and exterior wall fixtures except those exterior lighting fixtures assigned to the common use of the CONDOMINIUM, and the power meter and its appurtenances.

F. All interior trim and finishing materials.

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

5.08. Changes. The DEVELOPER reserves the right to change the interior design and arrangement of any or all UNITS owned by it.

5.09. Common Elements. Any right, title or interest in a UNIT shall automatically carry with it as an appurtenance and without the necessity of specific reference thereto its respective undivided share of the COMMON ELEMENTS and a right to use the COMMON ELEMENTS in conjunction with the other UNIT OWNERS. The COMMON ELEMENTS of the CONDOMINIUM are all portions of the CONDOMINIUM other than the UNITS and will include the common areas and facilities located substantially as shown on the PLANS. Such common areas and facilities will include the following:

A. All of the REAL PROPERTY.

B. All improvements and parts of the REAL PROPERTY which are not a UNIT or PRIVATE ELEMENT.

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C. All parking areas (even if assigned to the exclusive use of a UNIT), driveways and other means of ingress and egress.

D. The mechanical systems and installations providing service to a BUILDING, or to any UNIT, such as electrical power, gas, light, hot and cold water, central water heating system, heating and air conditioning, sanitary and storm sewer facilities, and including all lines, pipes, ducts, flues, chutes, conduits, cables, wires, and all other apparatus and installations in connection therewith, whether located in the COMMON ELEMENTS or in the UNITS, except when situated entirely within a UNIT for service only of that UNIT.

E. All tangible personal property required for the maintenance and operation of the CONDOMINIUM and for the common use and enjoyment of the UNIT OWNERS.

F. All foundations, slabs, columns, beams and supports of the BUILDING and such component parts of exterior walls and walls separating UNITS, roofs, floors and ceilings as are not described herein as PRIVATE ELEMENTS.

H. Lawn areas, landscaping, walkways, sidewalks, curbs and steps.

I. Exterior steps, ramps, handrails, stairs and stairwells.

J. All tanks, pumps, pump houses, wells, motors, fans, compressors and control equipment, fire fighting equipment, elevator equipment, and garbage equipment which are not reserved for the use of certain OWNERS.

K. All area outdoor and exterior lights metered to individual UNITS and supports and all entrance and related type signs.

L. The patios, balconies, terraces, porches, storage areas, and doorsteps or stoops affixed to each UNIT, though designated as a LIMITED COMMON ELEMENT.

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

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

5.10. Limited Common Elements. The LIMITED COMMON ELEMENTS located on the PROPERTY and the UNIT to which they are assigned are as follows:

(A) The patio, balcony, terrace, or porch abutting each CONDOMINIUM RESIDENTIAL UNIT (but not the balcony walkway north of any RESIDENTIAL UNIT, which said balconies are COMMON ELEMENTS but not LIMITED COMMON ELEMENTS) are LIMITED COMMON ELEMENTS appurtenant to those UNITS to which they attach and whose use is restricted to UNITS they are appurtenant. Doonsteps 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. The maintenance, repair, upkeep, and replacement of each patio, balcony, terrace, or porch, storage area and the doonsteps or stoops, if any, providing access thereto shall be the exclusive responsibility of the UNIT OWNER to which that patio, balcony, terrace, or porch and storage area shall be appurtenant. The boundary lines of each patio, balcony, terrace, or porch and storage area attached to a UNIT are the interior vertical surfaces thereof and the exterior unpainted finished surface of the perimeter baluster or railing abutting the patio, balcony, terrace, or porch.

(B) The first level (ground floor) includes thirty-nine (39) storage rooms. These storage rooms are LIMITED COMMON ELEMENTS. Thirty-six (36) of these storage rooms are appurtenant to the thirty-six (36) RESIDENTIAL UNITS. The particular storage room that is appurtenant to any particular CONDOMINIUM RESIDENTIAL UNIT bears the same identification number as the CONDOMINIUM RESIDENTIAL UNIT, preceded by the letters "RS", which stand for RESIDENTIAL STORAGE. For example, RS 13, as shown on the PLANS, is storage room number 13 and is appurtenant to CONDOMINIUM RESIDENTIAL UNIT number R 13. The storage rooms shown on the PLANS as CS-A, CS-B and CS-C are the three storage rooms appurtenant to the COMMERCIAL CONDOMINIUM UNIT. The maintenance, repair, upkeep, and replacement of all of these thirty-nine (39) storage rooms shall be the responsibility of the ASSOCIATION.

#### COMMON ELEMENTS

6.01. Ownership. The percentage/fraction of undivided interest in each UNIT in the COMMON ELEMENTS is shown as follows:

<u>Unit</u>	<u>Percentage/Fraction</u>
C 01	1/37
R 11	1/37
R 12	1/37
R 13	1/37

R 14	1/37
R 15	1/37
R 16	1/37
R 21	1/37
R 22	1/37
R 23	1/37
R 24	1/37
R 25	1/37
R 28	1/37
R 31	1/37
R 32	1/37
R 33	1/37
R 34	1/37
R 35	1/37
R 36	1/37
R 41	1/37
R 42	1/37
R 43	1/37
R 44	1/37
R 45	1/37
R 48	1/37
R 51	1/37
R 52	1/37
R 53	1/37
R 54	1/37
R 55	1/37
R 58	1/37
R 61	1/37
R 62	1/37
R 63	1/37
R 64	1/37
R 65	1/37
R 66	1/37

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For purposes of percentage of ownership in the COMMON ELEMENTS, percentage of COMMON EXPENSES, and percentage of COMMON SURPLUS, and voting on all matters requiring action by the OWNERS, the percentages/fractions shall govern. The ownership interest 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.

6.02. Use. Each UNIT OWNER shall have the right to the COMMON ELEMENTS (except any portions thereof designated LIMITED COMMON ELEMENT and restricted to the exclusive use of and as an appurtenance to a UNIT and subject to any portion subject to leases made by or assigned to the BOARD and the exclusive and semiexclusive parking spaces and areas) in conjunction with the OWNERS of other UNITS as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the CONDOMINIUM PROPERTY. The right to use the COMMON ELEMENTS shall be subject to and governed by the provisions of the ACT, CONDOMINIUM DOCUMENTS, and the Rules and Regulations of the Association. 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.

6.03. Share of Common Expenses and Limited Common Expenses. Each UNIT OWNER shall be assessed and is individually liable for a proportionate share of the COMMON EXPENSES and the proportionate share of the COMMON EXPENSES shall be the same ratio as the UNIT OWNER'S percentage ownership in the COMMON ELEMENTS as the case may be. Each UNIT OWNER shall be assessed and is individually liable for the LIMITED COMMON EXPENSES in connection with the patio, balcony, terrace, or porch and storage area and the doorsteps or stoops, if any, as set out in Paragraph 5.14 above. Payment of COMMON EXPENSES and LIMITED COMMON EXPENSES shall be in such amounts and at such times as determined in the BYLAWS. Assessments shall be collected by the ASSOCIATION on a monthly basis. No UNIT OWNER shall be exempt from payment of his or her proportionate share of the COMMON EXPENSES or LIMITED COMMON EXPENSES by waiver or non-use or non-enjoyment of the COMMON ELEMENTS or LIMITED COMMON ELEMENTS, or by abandonment of his UNIT. COMMON EXPENSES and LIMITED 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. All UNITS will be subject to full ASSESSMENTS not later than sixty (60) days following the first conveyance by the DEVELOPER of a UNIT.

6.04. Late Payment of Assessments. ASSESSMENTS for COMMON EXPENSES and LIMITED COMMON EXPENSES, and installments thereon, paid on or before fifteen (15) days after the date when due shall bear no interest, but all sums not paid on or before fifteen (15) days after the date when due shall bear such late charges, penalties, interest and other costs and expenses, at a rate set by the Board, but not to exceed the maximum legal rate, together with all expenses, including Attorney's fees incurred by the Association in any undertaking to collect such unpaid Assessments and expenses. All payments upon account shall be first applied to such charges, penalties, interests and other costs and expenses, including Attorney's fees, and then to the Assessment payment due. The ASSOCIATION may, in the manner provided for in the BYLAWS, after notice and an opportunity to be heard, levy reasonable fines for violations of the DECLARATION, BYLAWS, and rules and regulations of the ASSOCIATION.

6.05. Lien for Assessments. The Association is hereby granted a lien upon each UNIT and its appurtenant undivided interest in COMMON ELEMENTS and upon the goods, furniture and effects belonging to the UNIT OWNER and located in such UNIT, which lien shall secure and does secure the moneys due for all Assessments now or hereafter levied or subject to being against the UNIT OWNER which lien shall also secure such late charges, penalties and interest, if any, which may be due on the amount of any delinquent ASSESSMENT owing to the ASSOCIATION, which lien shall also secure all costs and expenses, including

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reasonable attorney's fee, which may be incurred by the ASSOCIATION in enforcing this lien upon said UNIT and its appurtenant undivided interest in the COMMON ELEMENTS.

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

6.07. Disposition of Surplus. Each UNIT shall carry with it a proportionate share of COMMON SURPLUS or LIMITED COMMON SURPLUS, as the case may be, and the proportionate share of COMMON SURPLUS or LIMITED COMMON SURPLUS shall be the same ratio as that UNIT OWNER'S percentage ownership of the COMMON ELEMENTS or LIMITED COMMON ELEMENTS; or in the alternative, such surplus or any portion thereof may be added to a reserve fund for maintenance, repair, and

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replacement of the COMMON ELEMENTS or the LIMITED COMMON ELEMENTS, as the case may be, at the sole discretion of the Association.

#### THE ASSOCIATION

7.01. Powers and Duties. The operation and administration of the CONDOMINIUM shall be by the ASSOCIATION of the UNIT OWNERS, pursuant to the provisions of the ACT. The ASSOCIATION shall be a not for profit Alabama corporation incorporated by Articles of Incorporation recorded in the office of the Judge of Probate of Baldwin County, Alabama. The ASSOCIATION shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or nonexercise of its powers. The ASSOCIATION shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of UNIT OWNERS of the CONDOMINIUM with reference to the COMMON ELEMENTS or the LIMITED COMMON ELEMENTS, the roof and structural components of a BUILDING or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a BUILDING as distinguished from mechanical elements serving only a UNIT; and with reference to any and all other matters in which all the UNIT OWNERS have a common interest. The ASSOCIATION shall have all the powers and duties set forth in the ACT, as well as all the power, and duties granted to or imposed on it under the BYLAWS and other CONDOMINIUM DOCUMENTS as they may be amended from time to time. The ASSOCIATION is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other PERSON or PERSONS. The ASSOCIATION shall have a reasonable right of entry upon any UNIT to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the DEVELOPMENT and further, shall have the right to grant permits, licenses, and easements over the common areas for utilities, roads, and other purposes; reasonably necessary or useful for the proper maintenance or operation of the DEVELOPMENT. The Board shall have the authority and duty to levy and enforce the collection of general and specific Assessments for COMMON EXPENSES and LIMITED COMMON EXPENSES and is further authorized to provide adequate remedies for failure to pay such Assessments.

7.02. Name. The name of the Association shall be EMERALD SKYE CONDOMINIUM OWNERS ASSOCIATION, INC.

7.03. Members. Each UNIT OWNER shall be a MEMBER of the Association so long as he is a UNIT OWNER. A UNIT OWNER'S membership shall immediately terminate when he ceases to be a UNIT OWNER. The membership of a UNIT OWNER cannot be assigned or transferred in any manner except as an appurtenance to his UNIT.

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7.04. Voting Rights. Each UNIT shall be entitled to one (1) vote, which vote is not divisible, the numerical value of which shall be the percentage of undivided interest in the COMMON ELEMENTS assigned to the UNIT of which the MEMBER is the OWNER. The vote for a UNIT shall be cast by the OWNER thereof in the manner provided for herein and in the BYLAWS. However, should the Association be a UNIT OWNER, it shall not have the voting right for that UNIT.

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

7.06. Restraint upon Assignment of Shares in Assets. The share of a MEMBER in the funds and assets of the ASSOCIATION cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his UNIT.

7.07. Board of Directors. The affairs of the ASSOCIATION shall be conducted by a Board of Directors which shall consist of such number not fewer than three (3) nor more than seven (7) 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.

7.08. Indemnification. Every Director and every officer of the ASSOCIATION shall be indemnified by the ASSOCIATION against all expenses and liabilities, or any settlement thereof, including 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

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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.

7.08. 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.

7.10. Bylaws. The ASSOCIATION and its MEMBERS shall be governed by the BYLAWS.

7.11. Proviso. Subject to the provisions herein, until the earlier of (i) sixty (60) days after conveyance of seventy-five percent (75%) of the UNITS which may be created to UNIT OWNERS other than the DEVELOPER; or (ii) two (2) years after the DEVELOPER, its successors or assigns have ceased to offer UNITS for sale in the ordinary course of business; the BYLAWS and rules adopted by the DEVELOPER shall govern and the DEVELOPER shall have the exclusive right to appoint, remove, and designate the officers and members of the BOARD OF DIRECTORS, and neither the UNIT OWNERS nor the ASSOCIATION nor the use of the CONDOMINIUM PROPERTY by UNIT OCCUPANTS shall interfere with the completion of the contemplated improvements and the sale of the UNITS. The DEVELOPER may voluntarily surrender the right to appoint and remove officers and members of the BOARD; but, in that event, the DEVELOPER may require, for the duration of the period of DEVELOPER control, that specified actions of the ASSOCIATION or BOARD, as described in a recorded instrument executed by the DEVELOPER, be approved by the DEVELOPER before they become effective. Provided, however, not later than ninety (90) days after conveyance of twenty-five percent (25%) of the UNITS which may be created to UNIT OWNERS other than the DEVELOPER, at least one (1) member and not less than twenty-five percent (25%) of the members of the BOARD must be elected by UNIT OWNERS other than the DEVELOPER. Not later than ninety (90) days after conveyance of fifty percent (50%) of the UNITS which may be created to UNIT OWNERS other than the DEVELOPER, not less than thirty-three and one-third percent of the members of the BOARD must be elected by UNIT OWNERS other than the DEVELOPER. Except as provided for in the ACT, not later than the termination of any period of DEVELOPER control, the UNIT OWNERS shall elect a BOARD of at least three (3) members, at least a majority of whom must be UNIT OWNERS other than the DEVELOPER.

The DEVELOPER may make such use of the unsold UNITS and of the common areas and facilities as may facilitate such completion and sale, including but not limited to showing of the PROPERTY and the display of signs. The DEVELOPER may maintain sales offices, management offices, leasing and operations offices, and models in any UNIT of the CONDOMINIUM or on COMMON ELEMENTS in the CONDOMINIUM without restriction as to the number, size, or location of said sales offices,

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management offices, leasing and operations offices, and models. The DEVELOPER shall be permitted to relocate said sales offices, management offices, leasing and operations offices, and models from one UNIT location to another or from one area of the COMMON ELEMENTS to another area of the COMMON ELEMENTS in the CONDOMINIUM. The DEVELOPER may maintain signs on the COMMON ELEMENTS advertising the CONDOMINIUM. The rights of the DEVELOPER as provided for in this paragraph shall cease and terminate ten (10) years from the date of the recording of this DECLARATION in the office of the Judge of Probate of Baldwin County, Alabama.

7.12. Contracts. If entered into before the BOARD elected by the UNIT OWNERS pursuant to the ACT takes office, any management contract, employment contract, or lease of recreational or parking areas or facilities and any other contract or lease between the ASSOCIATION and the DEVELOPER may be terminated without penalty and upon not less than ninety (90) days notice to the other party by the ASSOCIATION at any time after the BOARD elected by the UNIT OWNERS pursuant to the ACT takes office.

7.13. 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 and/or guarantors of first MORTGAGES of any UNIT, or their authorized agents, current copies of the DECLARATION, BYLAWS, 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. Any ELIGIBLE MORTGAGEE shall have the right to have prepared at its expense an audited financial statement of the ASSOCIATION.

7.14. Reserve Fund and Working Capital Fund.

A. Reserve Fund. The ASSOCIATION shall establish and maintain an adequate reserve fund for the replacement of improvements to the COMMON ELEMENTS and LIMITED COMMON ELEMENTS which the ASSOCIATION is obligated to maintain. The fund shall be maintained out of regular ASSESSMENTS for COMMON ELEMENTS and LIMITED COMMON EXPENSES.

B. Working Capital Fund. The ASSOCIATION shall also have a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services. The PURCHASE AND ESCROW AGREEMENT for any UNIT (in connection with the original sale of any UNIT by the DEVELOPER) shall require the purchaser thereunder to pay to the

ASSOCIATION at closing a sum equal to a two month installment of ASSESSMENTS as a nonrefundable contribution to the initial working capital fund, which payment shall not be considered as advance payments of regular ASSESSMENTS. The working capital fund shall be transferred to the ASSOCIATION for deposit into a segregated account when control of the ASSOCIATION is transferred to the UNIT OWNERS. The DEVELOPER is prohibited from using working capital funds to defray any of the DEVELOPER's expenses, reserve contributions, or construction costs or to make up any budget deficits while the DEVELOPER is in control of the ASSOCIATION.

#### MAINTENANCE

8.01. Maintenance by the Association. The ASSOCIATION is responsible for maintenance, repair, and replacement of the COMMON ELEMENTS.

8.02. Maintenance by Unit Owner. Each UNIT OWNER is responsible for the maintenance, repair, and replacement of his UNIT. Each UNIT OWNER is responsible for the maintenance, repair, and replacement of the LIMITED COMMON ELEMENTS, if any, attached to his UNIT as provided in Paragraph 5.14, above.

8.03. Addition, Alteration and Improvement of the Common Elements. Except as may be prohibited by the ACT, after the completion of the improvements included in the COMMON ELEMENTS or LIMITED COMMON ELEMENTS which are contemplated by this DECLARATION, there shall be no addition, alteration, change, or further improvement of COMMON ELEMENTS or LIMITED COMMON ELEMENTS without prior approval of the ASSOCIATION.

8.04. Unit Owner's Covenants. Each UNIT OWNER covenants and agrees as follows:

- A. To perform all maintenance, repairs, and replacements that are the UNIT OWNER's obligations under this DECLARATION and the ACT.
- B. To pay for all the UNIT OWNER's utilities, including electricity, gas, and telephone used within the UNIT and all taxes levied against the UNIT OWNER's UNIT.
- C. Not to make, or cause to be made, any repairs to any plumbing, heating, ventilation or air conditioning systems located outside the UNIT OWNER's UNIT but required to be maintained by the UNIT OWNER pursuant to the provisions hereof, except by licensed plumbers or electricians authorized to do such work by the ASSOCIATION or its agent.
- D. Not to make any addition or alteration to a UNIT or to the COMMON ELEMENTS or to the LIMITED COMMON ELEMENTS or to do any act that would impair the structural soundness or safety of any part of the CONDOMINIUM PROPERTY. Structural alterations within a UNIT may be made only with the written consent of the ASSOCIATION.

E. To make no alterations, additions, improvements, repairs, replacements, or changes to the COMMON ELEMENTS or the LIMITED COMMON ELEMENTS or to any outside or exterior portion of the BUILDING, specifically including, but not limited to screening or enclosing balconies, installing garage or other exterior doors or affixing out shutters to windows without the prior written consent of the ASSOCIATION. If consent is granted, the UNIT OWNER shall use only a licensed contractor who shall comply with the Rules and Regulations with respect to the work which may be adopted by the ASSOCIATION; this provision shall not, however, prohibit the COMMERCIAL CONDOMINIUM UNIT OWNER from using its employees to do such work if such work is performed by the COMMERCIAL CONDOMINIUM UNIT OWNER for the ASSOCIATION. The UNIT OWNER shall be liable for all damages to another UNIT and to the COMMON ELEMENTS or LIMITED COMMON ELEMENTS caused by any contractor employed by such UNIT OWNER or by the subcontractor or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise.

F. To allow the ASSOCIATION, its delegates, agents, or employees at all reasonable times to enter into any UNIT or LIMITED COMMON ELEMENT for the purpose of maintaining, inspecting, repairing, or replacing 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.

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

H. To reimburse the ASSOCIATION for any repairs or replacements which are made necessary because of abuse or negligent use by a UNIT OWNER of the CONDOMINIUM PROPERTY, the cost of such repair or replacement may be assessed against such UNIT OWNER.

I. To comply with all of the obligations of a UNIT OWNER under the ACT.

8.05. Contracts for Maintenance. The ASSOCIATION may enter into a contract with any firm, PERSON or corporation, or may join with other entities in contracting for the maintenance and repair of the CONDOMINIUM PROPERTY, and may delegate to such agent all or any portion of the powers and duties of the ASSOCIATION, except such as are specifically required by the CONDOMINIUM DOCUMENTS to have the approval of the MEMBERS of the ASSOCIATION. This paragraph shall be subject to the provisions of Paragraph 7.12, above.

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8.06. Exterior Surface. The ASSOCIATION shall determine the exterior color scheme of the CONDOMINIUM PROPERTY and shall be responsible for the maintenance thereof, except as may be otherwise be provided for herein. No UNIT OWNER shall paint any exterior surface or add or replace anything thereon or affix thereto without the written consent of the ASSOCIATION.

#### INSURANCE

9.01. Purchase of Insurance. Commencing not later than the time of the first conveyance of a UNIT to a person other than the DEVELOPER, the ASSOCIATION shall maintain insurance upon the CONDOMINIUM PROPERTY to the extent reasonably available as provided for in the ACT and as follows.

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

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

9.04. Authorization to do Business and Ratings. All policies of insurance must be issued by companies specifically authorized by the laws of the State of Alabama to transact such business. Any company issuing any such policy must have a "B" general policyholder rating or a financial performance index of "6" or better in the Best's Key Rating Guide, or an "A" or better rating from Demotech, Inc.; provided, however, that policies issued by Lloyd's of London will be acceptable and policies issued by a carrier not meeting the above requirements are acceptable if the particular issues are covered by 100% reinsurance with a company that does meet said requirements.

9.05. Coverage. The ASSOCIATION is required to maintain the following insurance coverage:

A. Property and Casualty. The ASSOCIATION must obtain, maintain, and pay the premiums upon, as a COMMON EXPENSE, the property insurance required by the ACT and as follows. The type of policy shall be a "master" or "blanket" type policy of property insurance covering all of the COMMON ELEMENTS (except land, foundation, excavation, and other items usually excluded from coverage) including fixtures, to the extent they are part of the COMMON ELEMENTS of the CONDOMINIUM PROPERTY, building service equipment and supplies, and other personal property and supplies belonging to the ASSOCIATION. All references herein to a "master" or "blanket" type of policy of property insurance are intended to denote single entity CONDOMINIUM insurance coverage. In addition, any fixtures, equipment, or other personal property within the UNITS which are to be financed by a first MORTGAGEE (regardless of whether or not such PROPERTY is a part of the COMMON ELEMENTS) must

be covered by such "master" or "blanket" policy, if required by said first MORTGAGEE and/or by the ACT. The policy shall be in an amount of not less than one hundred percent (100%) of the insurable replacement cost of the PROPERTY, exclusive of land, excavation, foundation, and other items normally excluded from property policies. The policy shall include (i) an "Agreed Amount Endorsement" or its equivalent, (ii) if available, an "Inflation Guard Endorsement", (iii) a "Building Ordinance or Law Endorsement", and (iv) steam boiler and machine coverage endorsement if available for the CONDOMINIUM'S central water heater. The property insurance shall provide, as a minimum coverage and protection against:

- (1) Loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement;
- (2) All other perils which are customarily covered with respect to condominiums similar in construction shall be obtained so as to meet the requirements of the ACT; and,
- (3) All perils covered by the standard "all risk" endorsement, unless the policy includes the "broad form" covered causes of loss.

B. Liability Insurance. The ASSOCIATION must obtain, maintain, and pay the premiums upon, as a COMMON EXPENSE, a comprehensive general liability insurance policy, including medical payments insurance, as required by the ACT and covering all the COMMON ELEMENTS, commercial space owned or leased by the ASSOCIATION, and public ways of the CONDOMINIUM. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location, and use. However, such coverage shall be, if reasonably available, for at least five million dollars (\$5,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence, and in no event less than \$1,000,000.00. Coverage under this policy shall include, if reasonably available, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the COMMON ELEMENTS, and legal liability arising out of lawsuits related to employment contracts of the ASSOCIATION. The policy shall also include, if reasonably available, coverage for protection against, water damage liability and, if applicable, elevator collision and garage keepers liability. If required by any first mortgage holder and, if reasonably available, the policy shall include protection against such other risks as are customarily covered with respect to CONDOMINIUMS similar in construction, location and use, including but not limited to host liquor liability, employers liability insurance, contractual and all written contract insurance and comprehensive automobile liability insurance. If such policy does not include "severability of interests" the policy must include a specific endorsement that precludes the insurer's denial of an owner's claim because of negligent acts of the ASSOCIATION or other OWNERS.

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C. Flood Insurance. If any part of the CONDOMINIUM PROPERTY shall be deemed to be in a special flood hazard area, as defined by the Federal Emergency Management Agency or other governmental agency, the ASSOCIATION shall obtain, maintain, and pay the premiums upon, as a COMMON EXPENSE, a "master" or "blanket" type of flood insurance policy. The policy shall cover the COMMON ELEMENTS falling within the designated flood hazard area. The insurance shall be in an amount deemed appropriate by the ASSOCIATION, but not less than an amount equal to the lesser of:

(1) One Hundred percent (100%) of the insurable value of the PROPERTY located within the flood hazard area, including fixtures, equipment and other personal property within any UNIT (but excluding land, foundations, excavations, and other items usually excluded from such coverage); 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.

The deductible shall not exceed the lesser of \$5,000.00 or one percent (1%) of the policy's face amount.

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

E. Fidelity Bonds. The ASSOCIATION shall obtain, maintain and pay the premiums upon, as a COMMON EXPENSE, a fidelity bond to protect against loss of money by dishonest acts on the part of all officers, directors and employees of the ASSOCIATION and all other persons handling, or responsible for, funds of the ASSOCIATION or funds administered by the ASSOCIATION. Where a management agent has the responsibility for handling or administering funds of the ASSOCIATION, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the ASSOCIATION. The fidelity bond shall name the ASSOCIATION as the obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the ASSOCIATION or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than one hundred and fifty percent (150%) of the estimated annual COMMON EXPENSES. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employee," or similar terms or expressions. The premiums on all bonds required herein to be maintained by the management agent shall be paid by the management agent. The bond shall provide that the ASSOCIATION and any first MORTGAGEE shall be given ten (10) days written notice before the policy/bond may be cancelled or modified for any reason.

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F. Other Insurance. The ASSOCIATION shall obtain other insurance required by the ACT and shall have authority to obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable. The premiums for such insurance shall be a Common Expense.

If the insurance described above which is required to be maintained is not reasonably available, the ASSOCIATION promptly shall give notice of that fact to be hand delivered or sent prepaid by United States Mail to all UNIT OWNERS.

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

9.07. Provisions. Insurance coverage must comply with the requirements of the ACT, this DECLARATION, and the applicable requirements (even if such requirements are in addition to those required in the ACT or this DECLARATION) of the Federal Home Loan Mortgage Corporation and The Federal National Mortgage Association as they apply to condominium loans, and shall in substance and effect:

A. Provide that the policy shall be primary, even if the UNIT OWNER has other insurance that covers that same loss, and further provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any UNIT OWNER.

B. Contain no provision relieving the insurer from liability for a loss occurring because the hazard to 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.

C. Provide that such policy may not be canceled or substantially modified and the insurer may not refuse to renew said policy (whether or not requested by the ASSOCIATION) except by the insurer giving at least thirty (30) days prior written notice thereof to the ASSOCIATION, the UNIT 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.

D. Contain a waiver by the insurer of any right of subrogation to any right of the ASSOCIATION, or either against the OWNER or lessee of any UNIT.

E. Contain a standard MORTGAGEE clause which, among any other provisions included in a standard mortgage clause, shall:

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

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(2) Provide that such insurance as to the interest of any MORTGAGEE shall not be invalidated by any act or neglect of the ASSOCIATION or UNIT OWNERS or any PERSONS under any of them; and

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

F. Provide that the insurance will not be prejudiced by any acts or omissions of UNIT OWNERS.

G. Provide that any Insurance Trust Agreement will be recognized.

H. Except with respect to flood insurance, provide for a deductible of not greater than the lesser of \$10,000.00 or one percent (1%) of the policy face amount.

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

9.09. Insurance Premiums. Insurance premiums maintained by the ASSOCIATION shall be paid by the ASSOCIATION as a COMMON EXPENSE. Should the ASSOCIATION fail to pay such insurance premiums when due, or should the ASSOCIATION fail to comply with other insurance requirements of a MORTGAGEE, the MORTGAGEE shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance. To the extent of any money so advanced, the MORTGAGEE shall be subrogated to the Assessment and the lien rights of the ASSOCIATION as against the individual UNIT OWNERS for the payment of such item of COMMON EXPENSE.

9.10. Insurance Trustee; Shares of Proceeds. All insurance policies purchased by the ASSOCIATION shall be for the benefit of the ASSOCIATION and the UNIT OWNERS and their MORTGAGEES (when appropriate, the policies may name the Federal National Mortgage Association as MORTGAGEE or the servicer of the MORTGAGE, and when the servicer is named as the MORTGAGEE, its name should be followed by the phrase "its successors and assigns") as their interest may appear, and shall provide that all proceeds covering PROPERTY losses shall be paid to the ASSOCIATION, as Insurance Trustee for each of the UNIT OWNERS in the percentages as established by the DECLARATION, which said ASSOCIATION, for the purpose of these provisions, is herein referred to as the Insurance Trustee. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the UNIT OWNERS and their MORTGAGEES. The Insurance Trustee shall have the power (and each UNIT OWNER hereby appoints the Trustee for this purpose as attorney-in-fact) to adjust all claims arising under insurance policies purchased by the ASSOCIATION; to bring suit thereon in its

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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 the rights, powers, and privileges of the ASSOCIATION and each UNIT OWNER and any other holder of an insured interest in the CONDOMINIUM PROPERTY under such insurance policies, however, the actions of the Insurance Trustee shall be subject to the approval of any first MORTGAGEE if the claim shall involve more than one UNIT, and if only one UNIT is involved, such actions shall be subject to approval of any first MORTGAGEE holding a mortgage and encumbering such UNIT.

9.11. Shares of Proceeds. The ASSOCIATION as Insurance Trustee shall receive such insurance proceeds as are paid to it and shall hold the same in trust for the purposes stated herein and for the benefit of the UNIT OWNERS and their MORTGAGEES in the following shares:

A. Common Elements. An undivided share of the proceeds on account of damage to COMMON ELEMENTS shall be held for each UNIT OWNER, with such share's portion of the total proceeds being the same percentage as the share of the COMMON ELEMENTS appurtenant to his UNIT.

B. Units and Limited Common Elements. Except as provided elsewhere in this DECLARATION,

(1) When the CONDOMINIUM PROPERTY is to be restored, the proceeds shall be held for the UNIT OWNERS of damaged UNITS and damaged LIMITED COMMON ELEMENTS, with the share of each in the total proceeds being in the proportion that the cost of repairing the damage suffered by such UNIT OWNER bears to the total cost of repair, which cost shall be determined by the Board.

(2) When the CONDOMINIUM PROPERTY is not to be restored, the proceeds shall be held for the UNIT OWNERS in the undivided shares that are the same as their respective shares in the COMMON ELEMENTS.

C. Mortgages. 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 of whether or not any damaged PROPERTY shall be reconstructed or repaired except as may be specifically provided to the contrary elsewhere in this DECLARATION.

9.12. Distribution of Proceeds. Proceeds of insurance policies received by the ASSOCIATION as Insurance Trustee shall be distributed to or for the benefit of the beneficial OWNERS:

A. Reconstruction or Repair. First, if the damages for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs

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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.

B. 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 remaining proceeds 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.

9.13. General. To the extent that any insurance program specifications (including limits of liability, endorsements, and deductible maximums) required under Article 9 are not customarily met by prudent owners associations of comparable condominiums located on the Alabama Gulf Coast, are unduly expensive to meet, or require coverage which is not reasonably available, then less stringent insurance program specifications shall be permitted hereunder so long as the same comply with (a) the ACT and, (b) if any mortgage then encumbering any Unit is insured by either the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"), with the requirements of said FNMA or FHLMC as the same pertain to said mortgage.

#### RECONSTRUCTION OR REPAIR AFTER CASUALTY

10.01. 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:

- A. The CONDOMINIUM is terminated in accordance with the ACT;
- B. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or
- C. Eighty percent (80%) of the UNIT OWNERS, including every owner of UNIT or assigned LIMITED COMMON ELEMENT which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of a COMMON ELEMENT in excess of insurance proceeds in reserves is a COMMON EXPENSE as provided in this DECLARATION.

10.02. Plans. Any reconstruction or repair must be substantially in accordance with the ACT and in accordance with the PLANS for the original improvements or as the CONDOMINIUM PROPERTY was last constructed; or if not, then according to PLANS approved by the Board of Directors of the ASSOCIATION and by one hundred percent (100%) of the UNIT OWNERS.

10.03. Responsibility. If the damage is only to those parts of a UNIT or LIMITED COMMON ELEMENTS for which the responsibility of maintenance and repair is that of the UNIT OWNER, then the UNIT OWNER shall be responsible for

reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the ASSOCIATION.

10.04. Estimate of Cost. Immediately after a casualty causing damage to the CONDOMINIUM PROPERTY for which the ASSOCIATION has the responsibility of maintenance and repair, the ASSOCIATION shall obtain reliable and detailed estimates of the cost to rebuild or repair.

10.05. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair of the UNIT and LIMITED COMMON ELEMENTS by the ASSOCIATION, ASSESSMENTS shall be made against the UNIT OWNERS who own the damaged PROPERTY or have the exclusive right to use the LIMITED COMMON ELEMENT attached to his UNIT, and against all UNIT OWNERS in the case of damage to common areas and facilities in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the UNIT OWNERS who own the damaged UNIT and have exclusive right to use the LIMITED COMMON ELEMENTS attached to his UNIT, and against all UNIT OWNERS in the case of damage to common areas and facilities in sufficient amounts to provide funds for the payment of such costs. Such Assessments against UNIT OWNERS for reconstruction and/or repair of damage to UNITS and LIMITED COMMON ELEMENTS shall be in proportion to the cost of reconstruction and repair of their respective UNITS or LIMITED COMMON ELEMENTS. Such Assessments for reconstruction and/or repair of damage to common areas and facilities shall be in proportion to the OWNER's share in the COMMON ELEMENTS. Assessments for reconstruction and repair may be collected, and the collection enforced, in the same manner as provided for Assessments elsewhere herein.

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

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

B. Unit Owner. If there is a balance of insurance proceeds after the payment of the cost of reconstruction and repair that are the responsibility of the ASSOCIATION, this balance shall be distributed to UNIT OWNERS of damaged UNITS or damaged LIMITED COMMON ELEMENTS who are responsible for the reconstruction and repair of the damaged portions of their UNITS or LIMITED COMMON ELEMENTS. The distribution to each UNIT OWNER shall be made in the proportion that the estimated

costs of reconstruction and repair of such damage to his UNIT or LIMITED COMMON ELEMENT bears to the total of such estimated costs in all damaged UNITS and LIMITED COMMON ELEMENTS. However, no UNIT OWNER shall be paid an amount in excess of such estimated cost for his UNIT or LIMITED COMMON ELEMENT. If there is a first MORTGAGEE, the distribution shall be paid to the UNIT OWNER and to the first MORTGAGEE jointly.

C. Surplus. It shall be presumed that the first moneys distributed 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.

#### EMINENT DOMAIN

11.01. Proceeds. The taking of a portion of a UNIT or of the COMMON ELEMENTS by eminent domain shall be deemed to be a casualty and the determination as to whether the CONDOMINIUM will be reconstructed or repaired or continued after condemnation will be determined in the manner provided for in the ACT and under Reconstruction or Repair after casualty and the awards for such taking shall be deemed proceeds from insurance on account of the casualty and shall be deposited with the ASSOCIATION as Insurance Trustee. 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.

11.02. Disbursement of Funds. If the CONDOMINIUM is terminated after condemnation, the proceeds of the condemnation awards will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in this DECLARATION for the distribution of insurance proceeds if the CONDOMINIUM is terminated after damage to the COMMON ELEMENTS. If the CONDOMINIUM is not terminated after condemnation, the size of the CONDOMINIUM PROPERTY will be reduced and the PROPERTY damaged by the taking will be made usable in the manner provided by the ACT and as provided below. The proceeds of such award shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the ASSOCIATION after damage to the COMMON ELEMENTS.

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

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A. 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 extended for restoration by the ASSOCIATION and be assessed against the UNIT OWNER as an Assessment.

B. Distribution of Surplus. The balance of the award, if any, shall be distributed to the OWNER of the UNIT and to any first MORTGAGEE of a UNIT, the remittance being made payable jointly to the UNIT OWNER and any such first MORTGAGEE.

C. Adjustment of Shares in Common Elements. If the floor area of the UNIT is reduced by the taking, the percentage representing the share in the COMMON ELEMENTS, the COMMON EXPENSES and the COMMON SURPLUS appertaining to the UNIT shall be reduced in accordance with the ACT.

11.04 Unit Made Unhabitable. If the taking is of the entire UNIT, or so reduces the size of the UNIT that it cannot be used practically or lawfully for any purpose permitted by the DECLARATION, the award for the taking of the UNIT shall be used for the following purposes in the order stated, and the following changes shall be effected in the CONDOMINIUM:

A. Payment of Award. The award shall be paid first to any first MORTGAGEE in an amount sufficient to pay off its mortgage on such UNIT; and then jointly to the UNIT OWNER and other MORTGAGEES of the UNIT in an amount not to exceed the market value of the CONDOMINIUM parcel immediately prior to the taking as diminished by any sums from the award previously reserved for any first MORTGAGEE; and the balance, if any, to the repairing and replacing of the COMMON ELEMENTS damaged by the taking.

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

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

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D. Assessments. If the balance of the award (after payments to the UNIT OWNER and such OWNERS' MORTGAGEES as above provided) for the taking is not sufficient to finance the alteration of the remaining portion of the UNIT for use as a part of the COMMON ELEMENTS, the additional funds required for such purposes shall be raised by Assessments against all the UNIT OWNERS who will continue as OWNERS of UNITS after the changes in the CONDOMINIUM effected by the taking. Such Assessments shall be made in proportion to the shares of those UNIT OWNERS in the COMMON ELEMENTS after the changes effected by the taking.

E. Arbitration. If the market value of a CONDOMINIUM parcel prior to the taking cannot be determined by agreement between the UNIT OWNERS, MORTGAGEES of the UNIT, and the ASSOCIATION within thirty (30) days after notice by either party, the value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination on an average of their appraisals for the CONDOMINIUM parcels; and a judgment of specific performance on the decision rendered by the arbitrators may be entered into any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all OWNERS of UNITS prior to the taking in proportion to the shares of the OWNERS in the COMMON ELEMENTS as they exist prior to the changes effected by the taking.

11.05. Taking of Common Elements. Awards for the taking of COMMON ELEMENTS shall be used to make the remaining portion of the COMMON ELEMENTS usable in the manner approved by the Board of Directors; provided that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner required elsewhere in this DECLARATION for further improvement of the COMMON ELEMENTS. The balance of the awards for the taking of the COMMON ELEMENTS, if any, shall be distributed to the UNIT OWNERS in the shares in which they own the COMMON ELEMENTS, after adjustment of these shares on account of the condemnation, except that if a CONDOMINIUM UNIT is encumbered by a first mortgage, the distribution shall be paid jointly to the OWNER and the first MORTGAGEE of the CONDOMINIUM UNIT.

11.06 Authority of Insurance Trustee. The insurance trustee shall have the power (and each UNIT OWNER hereby appoints such trustee for this purpose as attorney-in-fact) to adjust all claims for an eminent domain taking; to bring suit in connection therewith; to deliver releases on payment of claims; to compromise and settle such claims; and otherwise to exercise all the rights, powers and privileges of the ASSOCIATION and each UNIT OWNER and any other holder of a taken interest in the CONDOMINIUM PROPERTY.

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

### USE RESTRICTIONS

The use of the CONDOMINIUM PROPERTY shall be in accordance with the provisions of this DECLARATION and with the following provisions so long as the CONDOMINIUM exists.

#### 12.01. Units.

A. Each CONDOMINIUM RESIDENTIAL UNIT shall be occupied and used by a family, their employees, and guests only as a residence and for the furnishing of services and facilities herein provided for the enjoyment of such residence. The foregoing restrictions as to residence, however, shall not be construed in such manner as to prohibit a UNIT OWNER from:

- (i) Maintaining his personal professional libraries;
- (ii) Keeping his personal business or professional records or accounts;
- (iii) Handling his personal business or professional telephone calls or correspondence.

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

B. The CONDOMINIUM COMMERCIAL UNIT shall be occupied as a business or commercial establishment by the record title holder of said UNIT and shall be used by the record title holder's agents, servants, invitees, licensees, and patrons. The use of the CONDOMINIUM COMMERCIAL UNIT shall at all times comply with the various ordinances and zoning regulations promulgated by the governmental authority having jurisdiction and the various rules and regulations promulgated by the BOARD OF DIRECTORS of the ASSOCIATION. This paragraph shall not prohibit a CONDOMINIUM COMMERCIAL UNIT OWNER from leasing his UNIT, provided the UNIT OWNER complies with this DECLARATION. Provided, however, the restrictions contained in this DECLARATION pertaining to the UNIT shall not prohibit the OWNER of the UNIT from using the UNIT as a RESIDENTIAL UNIT and for residential purposes in the same manner as CONDOMINIUM RESIDENTIAL UNIT OWNERS.

#### 12.02. Miscellaneous Restrictions.

A. Nothing shall be stored in or upon the COMMON ELEMENTS or LIMITED COMMON ELEMENTS without prior consent of the BOARD except in storage areas or as otherwise herein expressly provided;

B. Nothing shall be done or kept in any UNIT or in the COMMON ELEMENTS which will increase the rate of insurance for the PROPERTY without the prior written consent of the BOARD. No UNIT OWNER shall permit anything to be done or kept in his UNIT or, 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.

C. No waste shall be committed in or on the COMMON ELEMENTS.



D. Each UNIT OWNER shall provide and maintain garbage and trash receptacles as may be directed by the BOARD, and all garbage and trash shall be kept in said receptacles.

E. No UNIT OWNER or occupant shall disturb or annoy other occupants of the CONDOMINIUM PROPERTY nor shall any occupant or UNIT OWNER commit or permit any nuisance, noxious, offensive, immoral or illegal act in his UNIT or on the PROPERTY.

F. Subject to the DEVELOPER'S RIGHT to erect certain signs as provided in DEVELOPMENT RIGHTS under the DECLARATION, no sign of any kind shall be displayed to the public view on or from any UNIT or the COMMON ELEMENTS without the prior written consent of the BOARD or the written consent of the Managing Agent acting in accordance with the BOARD'S direction. Provided, however, the OWNER of the CONDOMINIUM COMMERCIAL UNIT may display such signage immediately outside the COMMERCIAL UNIT and elsewhere in the CONDOMINIUM to identify the CONDOMINIUM COMMERCIAL UNIT and direct visitors thereto so long as said signage complies with all valid laws, zoning ordinances, and regulations, if any, of all governmental bodies having jurisdiction thereof.

G. Except as expressly provided hereinabove, nothing shall be altered or constructed in or removed from the COMMON ELEMENTS, except upon the written consent of the BOARD.

H. 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.

I. Outdoor drying of clothes, bedding, or similar items is not permitted.

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

K. Except within individual UNITS, no planting, transplanting, or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the PROPERTY, except as approved by the BOARD.

L. 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.

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

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

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repair of the CONDOMINIUM PROPERTY shall be the same as the responsibility for the maintenance and repair of the CONDOMINIUM PROPERTY concerned.

O. Neither the BOARD nor the ASSOCIATION shall take or permit to be taken any action that unlawfully discriminates against one or more UNIT OWNERS.

12.03. Pets. No animals or pets of any kind shall be kept in any UNIT or any PROPERTY of the CONDOMINIUM except with the written consent of and subject to the rules and regulations adopted for keeping such pets by the BOARD OF DIRECTORS of the ASSOCIATION; provided that such consent may be terminated without cause at any time by the BOARD OF DIRECTORS of the ASSOCIATION. 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 or an unreasonable disturbance, said animal or pet shall be permanently removed from the PROPERTY within three (3) days from the day the owner receives the written notice from the BOARD OF DIRECTORS of the ASSOCIATION. The Owner of any pet or animal shall be liable for any and all damage caused by such animal or pet to any part of the CONDOMINIUM PROPERTY or to any other PROPERTY operated by the ASSOCIATION.

12.04. Employees. No employee, customer, or patron of a UNIT OWNER shall be allowed either to use any of the facilities which are COMMON ELEMENTS of the CONDOMINIUM PROPERTY or to use any of the PROPERTY owned or operated by the ASSOCIATION.

12.05. Use of Common Elements. The COMMON ELEMENTS shall be used in accordance with this DECLARATION and only by the UNIT OWNERS and their agents, tenants, family members, invitees, and licensees for access, ingress to, and egress from the respective UNITS and for such other purposes incidental to the use of the UNITS. However, other areas designated for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the COMMON ELEMENTS shall not be obstructed, damaged, or unreasonably interfered with by any UNIT OWNER, and shall be subject to any lease, concession, or easement, presently in existence or entered into by the Board at some future time, affecting any part or all of said COMMON ELEMENTS.

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

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12.07. Leases. Entire UNITS may be leased by the UNIT OWNERS; provided, however, that such lease and the rights of any tenant thereunder are hereby made expressly subject to the provisions of the CONDOMINIUM DOCUMENTS and 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; provided however that any rules or regulations promulgated by the ASSOCIATION shall not (i) set a minimum rental period of less than overnight or a maximum rental period or (ii) materially limit the practicability of a UNIT OWNER to rent his UNIT. All leases or rental agreements must be in writing. No individual rooms within any UNIT may be rented. Anything to the contrary notwithstanding, the DEVELOPER, and its assigns, retain the right to maintain sales offices, management offices, leasing and operations offices and models on the CONDOMINIUM property as provided in Paragraph 7.11 above.

12.08. Regulations. Reasonable regulations concerning the use of the CONDOMINIUM PROPERTY may be made by the DEVELOPER and amended from time to time by the Board of Directors of the ASSOCIATION; provided, however, that all such amendments thereto shall be approved by not less than a majority of the votes of the ASSOCIATION before such shall become effective. MEMBERS not present at meetings considering such regulations or amendments thereto may express their approval or disapproval in writing. Copies of such regulations or amendments thereto shall be furnished by the ASSOCIATION to all UNIT OWNERS and residents of the CONDOMINIUM upon request.

12.09. Parking. One (1) automobile parking space shall be made available to each UNIT OWNER, but specific parking spaces are not assigned to UNIT OWNERS.

12.10. No Restrictions on Mortgaging Units. Anything construed in any of the CONDOMINIUM DOCUMENTS to the contrary, there shall be no restrictions on the right of a UNIT OWNER to mortgage his UNIT.

#### AMENDMENT

13. This DECLARATION and the ASSOCIATION Articles of Incorporation and Bylaws may be amended only by the affirmative vote or agreement of the OWNERS of at least sixty-seven percent (67%) of the UNITS. Additionally, material changes to these CONDOMINIUM DOCUMENTS shall require the approval of ELIGIBLE MORTGAGEES who represent at least fifty-one percent (51%) of the UNITS subject to mortgages held by ELIGIBLE MORTGAGEES. A change to any of the provisions governing the following would be considered as material:

voting rights;

increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;

reductions in reserves for maintenance, repair, and replacement of common elements;

responsibility for maintenance and repairs;

reallocation of interests in the general or limited common elements, or rights to their use;

redefinition of any unit boundaries;

convertibility of units into common elements or vice versa;

expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;

hazard or fidelity insurance requirements;

imposition of any restrictions on the leasing of units;

imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;

restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or

any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Additionally, all amendments must be made in accordance with the provisions of the ACT.

#### PURCHASE OF CONDOMINIUM UNIT

##### BY ASSOCIATION

14.01. Decision. The decision of the ASSOCIATION to purchase a CONDOMINIUM UNIT shall be made by the Board of Directors without the approval of the MEMBERS except as provided in this Article.

14.02. Limitation. If at any time the ASSOCIATION is already the OWNER of or has agreed to purchase one or more CONDOMINIUM UNITS, it may not purchase any additional CONDOMINIUM UNITS without the prior written approval of MEMBERS holding seventy-five percent (75%) of the votes of those MEMBERS eligible to vote thereon, except as provided in this Article. A MEMBER whose CONDOMINIUM UNIT is the subject matter of the proposed purchase shall be ineligible to vote thereon. Notwithstanding the foregoing, however, the foregoing limitations shall not apply to CONDOMINIUM UNITS either to be purchased at public sale resulting from a foreclosure of the ASSOCIATION'S lien for delinquent Assessments 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 UNIT in accordance with this Article, or as the result of a sale pursuant to the foreclosure of:

(1) A lien on the CONDOMINIUM UNIT for unpaid taxes;

- (2) a lien of a mortgage;
- (3) the lien for unpaid Assessments;
- (4) or any other judgment lien or lien attaching to such CONDOMINIUM UNIT by operation of law.

#### NOTICE OF LIEN OR SUIT

15.01. Notice of Lien. A UNIT OWNER shall give notice in writing to the Secretary of the ASSOCIATION of every lien on his CONDOMINIUM UNIT, other than liens for first mortgages, current taxes, and special Assessments, within five (5) days after he receives notice of the attaching of the lien.

15.02. Notice of Suit. A UNIT OWNER shall give notice in writing to the Secretary of the ASSOCIATION of every suit or other proceeding that may directly affect the title to his CONDOMINIUM UNIT, with such notice to be given within five (5) days after the UNIT OWNER obtains knowledge thereof.

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

#### RULES AND REGULATIONS

16.01. Compliance. Each UNIT OWNER and the ASSOCIATION shall be governed by and shall comply with the terms of the CONDOMINIUM DOCUMENTS and the rules and regulations applicable to the CONDOMINIUM PROPERTY. Ownership of a UNIT subjects the UNIT OWNER to compliance with provisions of the DECLARATION, the ARTICLES, the BYLAWS, the Rules and Regulations of the ASSOCIATION, and any contracts to which the ASSOCIATION is a party, as well as to any amendments to any of the foregoing. Failure of the UNIT OWNER to comply therewith shall entitle the ASSOCIATION or other UNIT OWNERS to an action for damages or injunctive relief, or both, in addition to other remedies provided in the CONDOMINIUM DOCUMENTS and the ACT.

16.02. Enforcement. The ASSOCIATION, through the Board of Directors, is hereby empowered to enforce the CONDOMINIUM DOCUMENTS and all rules and regulations of the ASSOCIATION by such means as are provided by the ACT, including the imposition of reasonable fines (after reasonable notice and opportunity to be heard) from time to time as set forth in the 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 therefor as provided in this DECLARATION. In addition, the ASSOCIATION shall

have the right, for itself and its employees and agents, to enter such OWNER'S UNIT and perform the necessary work to effect compliance. UNIT OWNERS shall have the right to enforce the provisions of the CONDOMINIUM DOCUMENTS and decisions of the ASSOCIATION against the ASSOCIATION, and, if aggrieved, against other UNIT OWNERS.

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

16.04 No Waiver of Rights. The failure of the ASSOCIATION or any UNIT OWNER to enforce any covenant, restriction, or other provision of the ACT, the CONDOMINIUM DOCUMENTS, or any rules and regulations adopted pursuant thereto shall not constitute a waiver of the right to do so.

#### GENERAL PROVISIONS PERTAINING TO MORTGAGES

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

- A. Any condemnation or casualty loss that affects either a material portion of the DEVELOPMENT 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 ASSOCIATION.
- D. Any proposed action that requires the consent of a specified percentage of mortgage holders.

17.02. Blanket Mortgages. The entire CONDOMINIUM PROPERTY, or some or all of the UNITS included therein, may be subjected to a single or blanket mortgage constituting a first lien thereon created by a recordable instrument executed by all of the OWNERS of the PROPERTY or UNITS covered thereby. Any UNIT included under the lien of such mortgage may be sold or otherwise conveyed or transferred subject thereto. Any such mortgage shall provide a method whereby any UNIT OWNER may

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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.

#### TERMINATION

18. The termination of the CONDOMINIUM may be effected in accordance with the provisions of the ACT and by agreement of (i) UNIT OWNERS of UNITS to which at least ninety percent (90%) of the votes in the ASSOCIATION are allocated and (ii) the holders of first mortgages who represent at least sixty-seven percent (67%) of the votes of the UNITS that are subject to mortgages held by ELIGIBLE MORTGAGEES. The agreement shall be evidenced by a written instrument executed in the manner required for a deed and recorded in the public records of Baldwin County, Alabama. After termination of the CONDOMINIUM the UNIT OWNERS shall own CONDOMINIUM PROPERTY and all assets of the ASSOCIATION as tenants in common in undivided shares.

#### COVENANT AGAINST PARTITION

19. There shall be no judicial or other partition of the CONDOMINIUM PROPERTY or any part thereof, nor shall DEVELOPER or 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.

#### MISCELLANEOUS

20.01. Intent. It is the intent of the DEVELOPER to create a CONDOMINIUM pursuant to the ACT. In the event that the CONDOMINIUM created by this DECLARATION shall fail in any respect to comply with the ACT, then the common law as the same exists on the filing date of this DECLARATION shall control, and the CONDOMINIUM hereby created shall be governed in accordance with the laws of the State of Alabama, the BYLAWS, the ARTICLES, and all other instruments and exhibits attached to or made a part of this DECLARATION.

20.02. Covenants, Conditions and Restrictions. All provisions of the CONDOMINIUM DOCUMENTS shall, to the extent applicable and unless otherwise expressly therein provided to the contrary, be perpetual and be construed to be covenants running with the land and with every part thereof and interest therein; and all of the provisions of the CONDOMINIUM DOCUMENTS

shall be binding on and inure to the benefit of any OWNER of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representative, successors, and assigns, but said provisions are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All UNIT OWNERS and OCCUPANTS shall be subject to and shall comply with the provisions of the CONDOMINIUM DOCUMENTS and any rules and regulations promulgated thereunder.

20.03. Severability. The invalidity in whole or in part of any covenant or restriction or any paragraph, subparagraph, sentence, clause, phrase, word, or other provision of this DECLARATION, the ARTICLES, the BYLAWS, any rules and regulations of the ASSOCIATION promulgated pursuant thereto, and any exhibits attached hereto, as the same may be amended from time to time, or the ACT, or the invalidity in whole or in part of the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase, word or other provision shall not affect the remaining portion thereof.

20.04. Notice. The following 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 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 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 or 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 or by a post office certificate of mailing.

20.05. Governing Law. Should any dispute or litigation arising between any of the parties whose rights or duties are affected or determined by the CONDOMINIUM DOCUMENTS 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.

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

20.07. Restatement. 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

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of the CONDOMINIUM DOCUMENTS and any rules and regulations promulgated thereunder are fair and reasonable in all material respects.

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

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

IN WITNESS WHEREOF, EMERALD SKYE, INC., an Alabama corporation, has caused this instrument to be executed on this the 8<sup>th</sup> day of December, 1994.

EMERALD SKYE, INC., an Alabama Corporation

BY: [Signature]  
JULIAN B. MACQUEEN  
Its: President

STATE OF Alabama  
COUNTY OF Mobile

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that JULIAN B. MACQUEEN, whose name as President of the EMERALD SKYE, INC., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand this the 8<sup>th</sup> day of December, 1994.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 12/17/95  
(NOTARIAL SEAL)

ROBERT NICHOLS  
NOTARY PUBLIC

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EXHIBIT "A" TO  
DECLARATION OF CONDOMINIUM  
DESCRIPTION OF REAL PROPERTY

That part of Lots 4, 5, and 6 of Russell's Subdivision, being more particularly described as follows: Commencing at the Northwest Corner of Lot 3, of said Russell's Subdivision; Thence run N 75° 00' 00" E along the northerly boundary of Lots 3, 4, 5, and 6 a distance of 300.00 feet to the POINT OF BEGINNING; Thence S 75° 00' 00" W, a distance of 100.00 feet to a point; Thence S 00° 16' 00" W, a distance of 73.06 feet to a point; Thence N 89° 44' 00" E, a distance of 20.90 feet to a point; Thence S 00° 16' 00" W, a distance of 90.00 feet to a point; Thence N 89° 44' 00" W, a distance of 35.27 feet to a point; Thence S 00° 16' 00" W, a distance of 258 feet, more or less, to the margin of the Gulf of Mexico; Run thence Northeasterly along said margin, a distance of 114 feet, more or less, to a point of intersection with a line that bears S 00° 16' 00" W from the POINT OF BEGINNING; Thence N 00° 16' 00" E, a distance of 393.92 feet, more or less, to the POINT OF BEGINNING. Said property containing 0.9196 acres, more or less.

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