

STATE OF ALABAMA )

COUNTY OF BALDWIN )

BALDWIN COUNTY, ALABAMA  
JUDGE ADRIAN T. JOHNS  
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**AMENDED DECLARATION OF CONDOMINIUM**

**OF**

**SUNSWEPT, A CONDOMINIUM**

This Declaration is made by SUNSWEPT CONDOMINIUM ASSOCIATION, INC., hereinafter referred to as the "Declarant", for itself, and for its heirs, successors, grantees, and assigns, for the purpose of maintaining a condominium, and establishing certain easements, covenants, and restrictions to run with the land.

**RECITALS**

Declarant is the Association that represents the interests of the Unit Owners who own an undivided interest in that certain real estate described in Article 4 of this Amendment, which is physically located in the County of Baldwin, State of Alabama, hereinafter referred to as the "Parcel".

The Parcel, together with all buildings, structures, improvements, and other permanent fixtures thereon, and all rights and privileges belonging or in any way pertaining thereto, was, by instrument dated May 14, 1982, and recorded among the records in the Office of the Judge of Probate, Baldwin County, Alabama, in Misc. Book 41, pages 1741 - 1766, formerly submitted to the provisions of the Alabama Condominium Ownership Act of 1973, § 35-8-1, et. seq. Code of Alabama, 1975. The Condominium is known as SUNSWEPT, a Condominium.

WHEREAS, the owners of units of SUNSWEPT, a Condominium, wish to amend and revise the Declaration of Condominium of Waterview Developments, Inc. to recognize and incorporate the provisions of the Alabama Uniform

Condominium Act of 1991, presently codified as § 35-8A-101, et. seq., Code of Alabama, 1975; and,

WHEREAS, notice of the subject matter of this proposed revision and amendment was included in a notice of the Annual Meeting given to all Unit Owners and mortgagees to be held on the 20<sup>th</sup> day of October, 2007; and,

WHEREAS, a resolution was adopted and approved prior to that time by a majority of the Board of Directors proposing the revision and amendments; and,

WHEREAS, the proposed revision and amendments were approved by a vote of more than fifty-one percent (51%) of the Board of Directors and by a vote of more than sixty-seven percent (67%) of the Unit Owners according to their proportional ownership, and by all mortgagees who are holders of mortgages which are liens on the Units of the approving Owners.

NOW, THEREFORE, the Amended Declaration of Condominium of SUNSWEPT, a Condominium shall hereinafter provide as follows:

**AMENDED DECLARATION OF CONDOMINIUM**  
**OF**  
**SUNSWEPT, A CONDOMINIUM**

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## **ARTICLE I DEFINITIONS**

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

1.01 "ACT" means the Alabama Uniform Condominium Act of 1991, Ala. Code Sections 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.

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.

1.04 "ASSOCIATION" means Sunswept Condominium Association, Inc., an Alabama not for profit corporation, and its successors, the entity responsible for the administration and management of the Condominium, and is the corporation organized in accordance with the Acts.

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

1.06 "BUILDINGS" means all structures or structural improvements located on the Parcel and forming part of the Condominium.

1.07 "BY-LAWS" means the duly adopted By-Laws of the Association.

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

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

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

1.11 "CONDOMINIUM" means SUNSWEEP, a Condominium, and consists of the Condominium Property as formerly submitted to the condominium form of ownership by the Declaration.

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

1.13 "CONDOMINIUM PROPERTY" or "PROPERTY" means all property, 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 "DECLARANT" means Sunswep Condominium Association, Inc.

1.15 "DECLARATION" means this Declaration as it may be amended from time to time.

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

1.17 "ELIGIBLE MORTGAGE HOLDERS" are those holders of a first mortgage on a unit estate who have submitted a written request that the Association notify them in accordance with the By-Laws of the Association.

1.18 "LIMITED COMMON ELEMENTS" 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 Residential Unit Owners.

1.20 "MORTGAGEE" means any holder and/or owner of a mortgage or vendor's lien encumbering a Unit.

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

1.22 "PERSON" means a natural person, a corporation, a partnership, a limited partnership, an association, a trustee, a joint venture, or other legal entity capable of holding title to real property.

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

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

1.25 "RESIDENTIAL" means used for dwelling or recreational purposes or both.

1.26 "UNIT" of "PRIVATE ELEMENT" shall have the same meaning as "Unit" is defined in the Act. The Units are designated on the Plans.

1.27 "UNIT OWNER" or "OWNER" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit and of the appurtenant undivided interest in the Common Elements as evidenced by a deed duly recorded in the Office of the Judge of Probate, Baldwin County, Alabama.

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

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

## **ARTICLE II SUBMISSION OF PROPERTY TO ACT**

By this Amended Declaration, the Declarant hereby resubmits the Real Property described in Section 4 to the Condominium form of ownership and provisions of the Acts.

## **ARTICLE III NAME AND ADDRESS**

The name of the condominium is SUNSWEPT, a Condominium. The Condominium is located at 25300 Perdido Beach Boulevard, Orange Beach,

Baldwin County, Alabama 36561.

#### **ARTICLE IV DESCRIPTION OF PROPERTY**

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

##### **DESCRIPTION**

Declarant is the fee simple owner of certain real property situated in Baldwin County, Alabama, described as follows:

*Commencing at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama; run thence South 00 degrees 09 minutes 30 seconds West a distance of 611.72 Feet to a point on the South line of Alabama Highway No. 182; run thence North 75 degrees 59 minutes East along the said South line a distance of 1524.0 feet to the point of beginning of the property herein described; continue thence North 75 degrees 59 minutes East along said South line a distance of 111.0 feet; run thence South a distance of 501.0 feet, more or less, to the margin of the Gulf of Mexico; run thence Southwestwardly along the margin of the Gulf of Mexico a distance of 111.0 feet, more or less; run thence North a distance of 505.0 feet, more or less, to the point of beginning.*

*Commencing at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama; run thence South 00 degrees 09 minutes 30 seconds West a distance of 611.72 Feet to a point on the South line of Alabama Highway No. 182; run thence North 75 degrees 59 minutes East along the said South line a distance of 1635.0 feet to the point of beginning of the property herein described; continue thence North 75 degrees 59 minutes East along said South line a distance of 89.0 feet; run thence South a distance of 497.0 feet, more or less, to the margin of the Gulf of Mexico; run thence Southwestwardly along the margin of the Gulf of Mexico a distance of*

*89.0 feet, more or less; run thence North a distance of 501.0 feet, more or less, to the point of beginning.*

4.02 The Building. The Condominium consists of one (1) Building comprised of sixty-four individual condominium units and one (1) Association Office (Unit #103) and includes access areas, parking areas, lawn areas, a swimming pool and all facilities located substantially as shown in the plans and plats heretofore recorded in the Office of the Judge of Probate, Baldwin County, Alabama.

4.03 Units. Each Unit shall include that part of the area and air space of a building which lies within the following described boundaries:

A. *Vertical Boundaries:* The vertical boundaries of each Unit shall be the plane of the interior surfaces of the Unit's perimeter walls, but does not include the sheetrock. At the window and exterior door openings, the vertical boundary extends to the interior surface of the door or window.

B. *Horizontal Boundaries:* The lower boundary of all Units is the upper surface of the concrete slab floor. The upper boundary of all Units is the interior surface of the ceiling material. The Units which are located upon the eighth and ninth floors shall also include that portion of the area and air space within the vertical boundaries of such Units which connect the eighth and ninth floors; such as the air space within stairwells within such Units and open areas between such floors within such Units.

C. Each Unit shall include the respective undivided interest in the Common Elements assigned thereto. Included with each Unit shall be any finishing materials applied or affixed to the interior surfaces of the common, exterior or interior walls, floors or ceilings (such as, but not limited to,

paint, wallpaper, vinyl wall or floor coverings and carpets), interior walls, and all utility pipes, lines, systems, fixtures or appliances servicing only that Unit (whether or not within the boundaries of that Unit), provided, however, that no pipes, drains, wires, conduits, ducts, flues and shafts contained within a Unit and forming a part of any system serving more than one Unit or the Common Elements shall be deemed to be part of said Unit.

D. *Units Numbered*: Each unit has been assigned a number which is indicated on the plans and plats heretofore recorded in the Office of the Judge of Probate, Baldwin County, Alabama.

4.04 *Private Elements*. The description and location of the private elements and the appurtenances thereto are determined with the aid of the plans therefor, attached hereto as Exhibit "B", and as follows:

That part of the Property intended for the exclusive ownership or possession of a Unit Owner. The Private Elements of each Unit shall consist of the following:

A. The airspace and the area of the building lying within the Unit boundaries;

B. The surfacing or finishing materials on the interior of exterior walls and on interior walls separating one Unit from another Unit and on the floors or ceiling;

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

D. All bathtubs, toilets and sinks, the range, garbage disposal, dishwasher, water heater, air conditioning and heating unit and like

fixtures and all hardware and interior lighting fixtures.

4.05 Common Elements. The common elements of the condominium include all parts of the condominium property not a part of the Private Elements as described above and include but are not limited to the following:

- A. The land described in Section 4;
- B. All central and appurtenant installations for services such as power, light, telephone, storm drains, sewer and water, TV cables, heat and air conditioning including all pipes, ducts, wires, cables and conduits used in connection therewith, whether located in common areas or in units, and all utility and mechanical equipment, buildings and spaces, which are not used or reserved for the exclusive use of certain units;
- C. All foundations, bearing walls, columns, roofs, exterior corridors, stairways and entrances and exits, walkways, ramps, elevators, fire alarm systems, floors (excluding finishing materials), and exterior walls (excluding interior finishing materials).
- D. All outdoor and exterior lights, excepting such as are placed on the balcony or patio assigned to the exclusive use of a unit;
- E. All yards, trees, curbs, walkways, gardens, lawn areas and landscaping;
- F. Recreation areas and facilities, including but not limited to the swimming pool and sundeck;
- G. Exterior steps, ramps, hand rails, stairs and stairwells;

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

I. All other parts of the Condominium Property existing for the common use or necessary to the existence, maintenance and safety of the Condominium;

M. All other items listed as such in the Alabama Condominium Ownership Act of 1973 and the Alabama Uniform Condominium Act of 1991.

4.05 Limited Common Elements. All Common Elements serving exclusively a single Unit or one or more adjoining Units as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful occupants of such Unit or Units either in this Declaration, on the Plat or by the Board. Limited Common Elements shall include, but shall not be limited to, assigned parking spaces and balcony areas only for a specific Unit; storage areas appurtenant to a specific Unit; as well as air handlers, chimneys, pipes, ducts, electrical wiring and conduits located entirely within a Unit, or adjoining a Unit or Units, and serving only such Unit or Units; and such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows and entryways, and all associated fixtures and structures therein, as may lie outside the Unit boundaries.

4.06 Agreement. The acceptance of a deed or conveyance, or acquiring an interest in or lien upon any Unit, or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration of Condominium, the By-Laws and the Rules and Regulations of the Association, the Alabama Condominium Ownership Act of 1973 and the Alabama

Uniform Condominium Act of 1991, as they may be amended from time to time, are accepted and ratified by such owner, tenant and occupant or holder of an interest or lien, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or security interest or lease thereof. In the event of a conflict in any of the provisions of any of the Condominium's Governing Documents, the documents shall govern or control in the following order of preference: (1) the Acts, (2) the Declaration, (3) the Articles of Incorporation, (4) the By-Laws and (5) the Rules and Regulations of the Association.

## **ARTICLE V COMMON ELEMENTS**

5.01 Ownership. Each Unit Owner shall be entitled to the Fractional Ownership in the Common Elements allocated to the respective Unit as set forth in Exhibit "A". The ownership interests in the Common Elements shall be an undivided interest, and except as provided in the Acts 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. Each owner may use the common elements in accordance with the purposes for which the same are intended, without hindering or encroaching upon the lawful rights of the other Owners.

5.02 Use. Each Unit Owner shall have the right to use the Common Elements (except any portions of the Property subject to leases made or assigned to the Board or restricted to the exclusive use of and as an appurtenance to

another unit) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the respective Unit by such Unit Owner. The right to use the Common Elements shall be subject to, and governed by, the provisions of the Acts, Declaration, By-Laws, 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 By-Laws.

5.03 Share of Expenses. Each Unit Owner shall be assess and liable for a proportionate share of the Common Expenses, and the Proportionate share of Common Expenses shall be the same ratio as his fractional ownership in the Common Elements. Payment of Common Expenses shall be in such amounts and at such times as determined in the By-Laws. No Unit Owner shall be exempt from payment of his proportionate share of the Common Expenses by waiver or non-use or non-enjoyment of the Common Elements or by abandonment of his Unit. Common Expenses shall include, but shall not necessarily be limited to, expenditures made or liabilities incurred by the Association, together with payments or obligations to reserve

5.04 Late Payment of Assessments. Assessments for Common Expenses and Limited Common Expenses, and installments thereon, paid on or before thirty (30) days after the date when due shall bear no interest, but all sums not paid on or before thirty (30) 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 of Directors, 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 the account shall be first applied to such late 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 this Declaration and the By-Laws, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws and Rules and Regulations of the Association.

5.05 *Liens for Assessments.* The Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements and upon the goods, furniture and effects belonging to the Unit Owner and located in such Unit, which lien shall secure, and does secure, the moneys due for all Assessments now or hereafter levied or subject to being levied against the Unit 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, and which lien shall also secure all costs and expenses, including reasonable attorney's fees, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant undivided interest in the Common Elements. The lien herein granted to the Association shall be effective from and after the time of recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama, and no further recordation of any claim of lien under this Section is required. The said lien for non-payment of assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except only (1) tax lien on the unit in favor of the State, County, municipality or any special district, and (2) all sums unpaid on a first mortgage of record.

5.06 *Set-Off of Rents for Payment of Debt.* Since the debt is subject to an automatic lien, it is due absolutely and without contingency and is therefore subject to set-off on behalf of the Association and, therefor, the Board of Directors, in its sole discretion, and, if it believes it is necessary to obtain satisfaction of the Unit Owner's debt, may attach any and all rental, lease and any other use of premises payments which are derived from the occupancy of the delinquent unit owner's unit by individuals or entities other than the unit owner. The Board shall

serve notice on the Unit Owner at least five (5) days before the Board can attach said rental, lease or any other use of premises payments and make demand for said monies and direct payment to be made to the Association.

5.07 Priority of Lien. The Association shall have a lien for nonpayment of Common Expenses and Limited Common Expenses as is provided by the Act. In any suit for the foreclosure of a lien for Assessments, the Association shall be entitled to rental from the Unit Owner from the date on which the payment of any Assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said Unit, without notice to the Unit Owner. The rental required to be paid shall be equal to the rental charged on comparable type of dwelling Units in the area in which the Condominium is located. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at a rate set by the Board of the Association but in no case shall said interest exceed the maximum legal rate on any such advances made for such purposes. All Persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien granted to the Association. A lien for Common Expenses shall not be affected by any sale or transfer of a Unit, except as herein provided. A sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall extinguish a subordinate lien for Assessments which became payable prior to such sale or transfer; provided, however, a sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall not extinguish the lien of the Association to the extent of the Common Expense Assessments based on the periodic budget adopted by the Association pursuant to the Act which would have become due in the absence of acceleration during the six (6) months immediately preceding the institution of an action to enforce the lien. However, any such delinquent

Assessments, which were extinguished pursuant to the foregoing provision, may be reallocated and assessed to all of the Units as a Common Expense. Any such sale or transfer pursuant to foreclosure does not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any Assessments made thereafter.

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

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

## **ARTICLE VI THE ASSOCIATION**

6.01 Name. The name of the Association of the owners of the units of SUNSWEPT, a Condominium is the SUNSWEPT CONDOMINIUM ASSOCIATION, INC.

6.02 Powers and Duties. The operation and administration of the Condominium shall be by the Association, pursuant to the Acts. The Association shall be a not for profit corporation and shall be responsible for the maintenance, repair, replacement, administration, and operation of the Property. The Association shall have all the powers and duties set forth in the Acts, as well as all the powers and duties granted to or imposed on it under the By-Laws, this Declaration and other Condominium documents as they may be amended from time to time. The Association shall have the power to purchase a Unit of the Condominium. Without limiting the foregoing, the Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other person or persons. Also, without limiting any of the foregoing, the Association shall have a reasonable right of entry upon any Unit to make emergency repairs and to do other work reasonable necessary for the proper maintenance and operation of the project and further, shall have the right to grant permits, licenses, and easements over the common areas for utilities, proper maintenance or operation of the project. The Board of Directors shall have the authority and the duty to levy and enforce the collection of general and specific assessments for common expenses, and is further authorized to provide adequate remedies for failure to pay such assessments.

The Association shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or non-exercise of its powers. It 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, 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 of the Condominium have a common interest.

6.03 Membership. Each Unit Owner shall be a member of the Association so long as he is a Unit Owner. A Unit Owner's membership shall automatically terminate when he ceases to be a Unit Owner and by the delivery to the Association of a certified copy of the instrument establishing the change in ownership. The membership of a Unit Owner cannot be assigned or transferred in any manner except as an appurtenance to his Unit.

6.04 Voting Rights. Each unit shall be entitled to one (1) vote, the numerical value of which shall be the percentage assigned to the unit of which the member is the owner. The vote for a unit shall be cast by the owner thereof, or, in the case of a corporate owner, by the officer or employee thereof designated as the voting representative of such unit, or, in the case of a multiple owner, by the voting representative of such unit, all as provided in the By-Laws. Owners of more than one (1) unit shall be entitled to a vote for each unit owned. However, should the Association be a Unit Owner, it shall not have the voting right for that unit. The aggregate number of votes for all members of the Association is set forth in Exhibit "A".

6.05 Suspension of Member's Rights. No member may vote at any meeting of the General Membership nor may a Member be elected to or serve on the Board of Directors nor may any Member, their guests or renters, use the common area amenities, if payment by such Member of any financial obligation to the Association is delinquent more than sixty (60) days and the amount necessary to

bring the account current has not been paid at the time of such meeting or election or intention to use the common area amenities.

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

6.07 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.

6.08 Board of Directors. The affairs of the Association shall be conducted by a Board of Directors which shall consist of such number not less than three (3) nor more than 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. The Directors shall be elected in accordance with the By-Laws, as amended. Each Director shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed, as provided for in the By-Laws, as amended. No Director shall serve, in any capacity, on the Board of Directors, use the common area amenities or vote at any meeting or election, if payment by such Director of any financial obligation to the Association is delinquent more than sixty (60) days.

6.09 Indemnification. Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases wherein the Director or officer

is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

6.10 Limitation of Liability. Notwithstanding the liability of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage caused by a latent (e.g., hidden, concealed or dormant) 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.

6.11 Contracts. Any professional management contract entered into by the Association must contain provisions that the contract may be terminated without penalty for any or without any cause and upon not more than ninety (90) days notice to the other party by the Association at any time. This provision shall not apply to contracts for essential utility services.

6.12 Availability of Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act. The Association shall make reasonably available in the county where the Condominium is located for examination by Unit Owners, prospective purchasers, first Mortgagees and insurers of the first Mortgagees of any Unit, or their authorized agents, current copies of the Declaration, By-Laws, Rules and Regulations and other books, records, financial statements and the most recent annual financial statement of the Association, provided, however, that no individual Unit Owner's personal, financial or accounting records shall be examined without the written permission of the individual Owner. Reasonably

available shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

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

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

6.15 Emergency Borrowing. During times of emergency, the Board of Directors may, from time to time, borrow money at their sole discretion for emergency expenses that cannot be paid from the annual assessments for Common Expenses and to assess the unit owners without the approval of the unit owners for the repayment of the borrowed funds.

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

7.01 Residential Use. Each Unit or any two or more adjoining Units used together shall be used only as a residence and shall be occupied only by the resident and his family and their guests as a residence and for no other purpose. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit an Occupant from (1) maintaining his personal professional library, (2) keeping his personal business or professional records or accounts, or (3) handling telephone calls or correspondence relating to his personal business or profession. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions. No unit may be divided or subdivided into a smaller unit without first amending this Declaration to allow therefor.

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

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

7.04 Lawful Use. No offensive or unlawful use shall be made of the Condominium Property, nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies that require maintenance, modification, or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the Condominium Property concerned. The Condominium Property shall not be used for any commercial purposes other than leasing purposes as set forth in Section 7.05.

7.05 Leases. Units may be leased by the Unit Owners, provided, however; (1) that such lease and the rights of any tenant thereunder is hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Units and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including eviction; and (2) only entire units may be rented and occupied only by the proposed tenants consisting of not more than two (2) persons per bedroom and two (2) persons per convertible sofa bed. The Unit Owner shall furnish to the leasing or renting party copies of the Rules and Regulations of the Association. It is expressly understood that the Owner or Owners shall at all times remain primarily liable to the Association for all common expenses and all assessments or other charges made against the leased or rented unit and the liability of the Unit Owner under this Declaration shall continue.

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

7.06 Right to First Refusal. 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 refusal.

7.07 Restrictions on Mortgaging Units. Anything construed in any of the

condominium documents notwithstanding, there shall be no restrictions of a Unit Owner's right to mortgage his unit.

7.08 Miscellaneous Restrictions.

- A. No waste shall be committed in or on the Common Elements.
- B. Except as expressly provided in this Declaration, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.
- C. No parking space, driveway or other area shall be used for the storage of any boat, boat trailer, house trailer, camper, RV, or any other sort of towed vehicle, commercial trailer or object. No gas or charcoal barbecue grills are permitted for use on or under any porch or walkway nor can these items be stored inside any areas of the building structure.
- D. 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. 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. Nothing shall be done or kept in any Unit or in the Common Element which will increase the rate of insurance for the property without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in or on the Common Elements which will result in the cancellation of insurance of any Unit or any part of the Common Elements or which will be in violation of any law.

F. No structure of a temporary nature, such as but not necessarily limited to a trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Property at any time temporarily or permanently; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the Buildings or any portion thereof.

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

H. Parking of vehicles in driveways and parking areas shall be subject to the Rules and Regulations of the Board applicable thereto.

I. 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.

J. 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.

K. No renter of a Unit shall keep any animals or pets of any kind in any Unit or on or in any area of the Condominium Property.

L. The storage areas on the Property, except those inside the Units, shall be part of the Common Elements and are subject to such Rules and Regulations as the Board of Directors may prescribe.

M. All valid laws, zoning ordinances and regulations of all

governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the Condominium Property concerned.

N. Each Unit Owner shall keep and maintain the interior of his unit in good condition and repair, including all appliances, the entire air conditioning system (including compressors, ducts and vents) serving the Unit (whether the same is inside or outside the Unit), and all electrical systems, water lines and other fixtures located within the Unit.

O. No Unit Owner or Occupant shall play upon, or allow to be played upon, any musical instrument, or permit to be operated a musical system in any Unit or on the Property between the hours of 11:00 p.m. and the following 9:00 a.m., if such sound system may tend to disturb or annoy other Occupants of the buildings nor shall any Occupant or Unit Owner commit or permit any immoral or illegal act in his Unit or on the Property.

P. Neither the Board or the Association shall take or permit to be taken any action that unlawfully discriminates against one or more Unit Owners.

## **ARTICLE VIII EASEMENTS**

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

8.01 Utilities. Utility easements are reserved throughout the Condominium Property as may be required for utility services in order to adequately serve the condominium, provided, however, such easement to a unit shall only be in accordance with the recorded plans and specifications for the buildings. 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 the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other units and located in such unit. The Board of Directors shall have a right of access to each unit to inspect same, to remove violations therefrom, and to maintain, repair or replace the common elements contained therein or elsewhere in any building and the Association shall retain a key to each unit to accomplish the aforesaid.

8.02 Ingress and Egress. Each Unit shall have an easement for pedestrian traffic over, through, and across sidewalks, paths, walks, lobbies, elevators, stairways, walkways and lanes, and like passageways, as the same may from time to time exist on the Common Elements: and for vehicular traffic over, through, and across such portions of the Common Elements as from time to time may be paved and intended for such purposes, but the same shall not give or create in any person the right to park on any portion of the Condominium Property not designated as a parking areas. This easement shall be nonexclusive and shall include the right of ingress and egress to a public street or highway upon and over Common Elements providing such access and as shown on the Plans. Parking on the grassy areas of the Condominium Property is strictly prohibited.

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

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

8.05 Encroachment. 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 any event the building, any Unit, any adjoining Unit, or any adjoining Common Elements, shall be partially or totally destroyed as a result of fire, or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon another Unit or upon any portion of this Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such building shall stand.

## **ARTICLE IX MAINTENANCE, ALTERATION, AND IMPROVEMENTS**

The responsibility for the maintenance of the condominium property shall be as follows:

### 9.01 Units.

A. By the Association. The responsibility of the Association shall be as follows:

- i. To maintain, repair and replace all portions of a unit,

except interior surfaces and surfacing materials, contributing to the support of the building, which portions shall include but not be limited to the outside walls of the building and all fixtures thereon; and boundary walls of units, floors, load-bearing columns and load-bearing walls.

ii. To maintain, repair and replace all conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services which are contained in the portions of a unit maintained by the Association, and all such facilities contained within a unit which service part or parts of the condominium other than the unit within which contained.

iii. To maintain, repair, replace, clean and sanitize the common elements.

iv. To maintain and replace all balconies and balcony railings.

v. To repair all incidental damage caused to a unit in the performance of any of the foregoing work.

B. By the Unit Owner. The responsibility of the unit owner shall be as follows:

i. To maintain, repair and replace all portions of the unit except the portions to be maintained, repaired and replaced by the Association. Such shall be done without disturbing the rights of other unit owners.

ii. Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the building and/or the exterior of the balconies assigned to the exclusive use of the unit owner and/or the exterior of the balcony railings surrounding the balcony area assigned to the exclusive use of the unit owner.

iii. To maintain the surfacing materials within the unit. All windows forming part of a perimeter wall of a Unit shall be cleaned and washed at the expense of the Unit Owner.

iv. To maintain, repair and replace all heating, air conditioning, utility and mechanical equipment, and all sewer and water lines; including all pipes, ducts, wires, cables and conduits used in connection therewith, which are for the exclusive use of the unit, whether or not located within the boundaries of the unit.

v. To maintain, repair and replace the interior appurtenances of the unit, including but not limited to the floor coverings, wall coverings, window shades and screens, draperies, furniture, furnishings, light fixtures, and all appliances and private elements located therein.

vi. To promptly report in writing to the Association any defect or need for repairs, the responsibility for the remedying of which is that of the Association.

vii. To be responsible for the cost of all incidental damage caused to the common elements in the performance of the foregoing work.

C. Alteration and Improvement. Neither a Unit Owner or the Association shall make any alterations in the portions of a unit or building which are not to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do any work which would jeopardize the safety or soundness of the building, or impair any easement, without first obtaining approval in writing of the owners of all other units in the building concerned and the approval of the Board of Directors of the Association.

9.02 Common Elements.

A. By the Association. The maintenance and operation of the common elements shall be the responsibility and the expense of the Association.

B. Alteration of Project. Construction of any additional building or structural alterations or additions to any structure, different in any material respect from the original plats and plans, and different from the maintenance, repair or reconstruction after casualty of any common element, shall be undertaken by the Association only pursuant to an amendment to this Declaration, duly executed by or pursuant to the vote of not less than seventy-five percent (75%) of the Unit Owners and accompanied by the written consent of the record owners of liens affected thereby, and in accordance with completed plans and specifications therefor first approved in writing by the Board; and promptly upon completion of such additional building or structural alteration or addition to any structure, the Association shall duly record or file of record in the office of the Judge of Probate of Baldwin County, Alabama, such amendment together with a complete set of the plans of the condominium, as so altered, certified "as built" by a licensed or registered engineer or architect.

## **ARTICLE X INSURANCE**

10.01 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.

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

10.03 Copies to Mortgagees. One (1) copy of each insurance policy, and of all endorsements thereto, shall be furnished by the Association to any first Mortgagee requesting a copy.

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

10.05 Coverage. The Association is required to maintain the following insurance coverage:

A. Property and Casualty Insurance. The Association must obtain, maintain, and pay the premiums upon, as a Common Expense, the property insurance required by the Act for condominium structures with horizontal boundaries and, by way of addition, 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, building service equipment and supplies, and other personal property belonging to the Association. All references herein to a "master" or "blanket" type of policy of

property insurance are intended to denote single entity Condominium insurance coverage. In addition, the insurance obtained under this section shall include coverage of the Units themselves. Fixtures or equipment located within a Unit (regardless of whether or not such Property is a part of the Common Elements) must be covered by such "master" or "blanket" policy, but the coverage need not include improvements and betterments installed by Unit Owners. If reasonably available, the insurance policy shall include an "All In One" endorsement which shall include coverage of appliances (including stoves, cooking ranges, refrigerators, dishwashers, clothes-washers and dryers, to the extent such appliances comprised a part of the Unit on the date of this Declaration or were replacement items for such original appliances), air conditioners, and all fixtures contained within the Units. The policy shall be in an amount deemed appropriate by the Association but not less than the greater of eighty percent (80%) of the actual cash value of the insured Property at the time the insurance is purchased or such greater percentage of such actual cash value as may be necessary to prevent the applicability of any coinsurance provision at any renewal date, exclusive of land, excavation, foundation, and other items normally excluded from property policies. The policy shall include an "Agreed Amount Endorsement" or its equivalent and, if available, an "Inflation Guard Endorsement." If there shall be a construction code provision that requires changes to undamaged portions of the Condominium Property even when only part of the project is destroyed by an insured hazard, the policies shall include construction code endorsements. The property insurance policy shall provide, as a minimum coverage and protection against:

- i. Loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement;

ii. 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.

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 and 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 one million dollars (\$1,000,00.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, if reasonably available, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of law suits 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.

C. Flood Insurance. If any, part of the Condominium Property shall be deemed to be in a special flood hazard area, as defined by the Federal

Emergency Management Agency or other governmental agency, the Association shall, if reasonably available, obtain, maintain and pay the premiums 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:

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

ii. 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.

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, if reasonably available, to protect against loss of money by dishonest acts on the parts 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 "employees," or similar terms or expressions. The premiums on all bonds required herein to be maintained by the management agent shall be paid by the management agent. The bond shall 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.

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.

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

10.07 Provisions. Insurance coverage, if reasonably available, must comply with the requirements of the Act and this Declaration 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, pro-ratio 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:

i. 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

ii. 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

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

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

10.09 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.

10.10 Insurance Trustee. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their Mortgagees as their interest may appear, and shall provide that all proceeds covering Property losses shall be paid to the Association, as Insurance Trustee for each of the Unit Owners in the percentages as established by the Declaration, which said Association, for the purpose of these provisions, is herein referred to

as the Insurance Trustee. The duty of the Insurance Trustee shall be to receive such proceeds as are paid, and hold the same in trust for the purpose elsewhere stated herein and for the benefit of the Unit Owners and their Mortgages. 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 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.

10.11 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 as follows:

A. Owners and Mortgagees. Proceeds shall be applied in accordance with the Act.

B. Mortgagee Participation. 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.

10.12 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 damage for when 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 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.

## **ARTICLE XI RECONSTRUCTION OR REPAIR AFTER CASUALTY**

11.01 Determination to Reconstruct or Repair. Any portion of the Condominium for which insurance is required under this Declaration for which it 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 covering health or safety; or
- C. Eighty percent (80%) of the Unit Owners, including every owner of a Unit or assigned Limited Common Element which will not be rebuilt;

vote not to rebuild. The cost of repair or replacement of a Common Element in excess of insurance proceeds in reserves is a Common Expense as provided in this Declaration.

11.02 Plans. Any reconstruction or repair must be substantially in accordance with the Act.

11.03 Responsibility. Notwithstanding any provisions to the contrary in this Declaration and in accordance with Section 35-8A-313 of the Act and Section 10.05 (A) herein, the responsibility of reconstruction and repair after casualty shall be that of the Association.

11.04 Estimate of Cost. As soon as practical 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.

11.05 Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, Assessments shall be made in accordance with the Act. 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.

11.06 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 in accordance with the Act.

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 retained by the Association and shall be solely utilized for the payment of the common expenses of the Association.

## **ARTICLE XII TERMINATION**

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

common in undivided shares equal to the fractional undivided interest in the common elements assigned to each Unit.

### **ARTICLE XIII**

#### **EMINENT DOMAIN/CONDEMNATION**

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

13.02 Proceeds. The proceeds and awards for such taking shall be deemed proceeds from insurance on account of the casualty and shall be deposited with the Association as Insurance Trustee. Even though the awards may be payable to a Unit Owner, the Unit Owner shall deposit the awards with the Association as Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, an Assessment shall be made against a defaulting Unit Owner in the amount of his award, or the amount of such award shall be set off against the sums hereafter made payable to such Unit Owner.

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

disbursements of funds by the Association after damage to the Common Elements.

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

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

#### **ARTICLE XIV NOTICE OF LIEN OR SUIT**

14.01 Notice of Lien. A Unit Owner shall give notice in writing to the Secretary of the Association of every lien on his unit, other than liens for

Mortgages, taxes, and special assessments, within five (5) days after the Unit Owner's receipt of notice thereof.

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

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

## **ARTICLE XV RULES AND REGULATIONS**

15.01 Compliance. Each Unit Owner and the Association shall be governed by and shall comply with the terms of the Condominium documents and the rules and regulations applicable to the Condominium Property. Ownership of a Unit subjects the Unit Owner to compliance with provisions of the Declaration, the Articles, the By-Laws, the Rules and Regulations of the Association, and any contract with the Association as a party, as well as to any amendments to any of the foregoing. Failure of the Unit Owner to comply therewith shall entitle the Association 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 Acts.

15.02 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 laws of the State of Alabama, including the imposition of reasonable fines (after reasonable notice and opportunity to be heard) from time to time as set forth in the By-Laws.

In the event a Unit Owner fails to maintain his Unit in the manner required in the Condominium documents and any rules and regulations of the Association, the Association, through the Board of Directors, shall have the right to assess the Unit Owner and the Unit for the sums necessary to do the work required to effect compliance and to collect, and enforce the collection of a Special Assessment therefore as provided in this Declaration. In addition, the Association shall have the right, for itself and its employees and agents, to enter such Owner's Unit and perform the necessary work to effect compliance.

15.03 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.

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

## **ARTICLE XVI**

### **GENERAL PROVISIONS PERTAINING TO MORTGAGES**

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

written notice of:

- A. Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage.
- B. Any 60-day delinquency in the payment of Assessments or charges owned by the Owner of any Unit on which it holds the mortgage.
- C. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

Additionally, the Association agrees to provide to any holder of a first mortgage on a unit in the Condominium upon request the following rights:

- A. the right to inspect the books and records of the Association during normal business hours; and
- B. the right to receive a copy of an annual audited financial statement (if performed) of the Association within 10 days following the receipt of such statement for the prior year.

16.02 Blanket Mortgages. The entire Condominium Property, or some or all of the Units included therein, may be subjected to a single or blanket mortgage constituting a first lien thereon created by a recordable instrument executed by all of the Owners of the Property or Units covered thereby. Any Unit included under the lien of such mortgage may be sold or otherwise conveyed or transferred subject thereto. Any such mortgage shall provide a method whereby any Unit Owner may obtain a release of his Unit from the lien of such mortgage and a satisfaction and discharge in recordable form upon payment to the holder of the mortgage of a sum equal to the reasonable proportionate share attributable to his

Unit of the then outstanding balance of unpaid principal and accrued interest, and any other charges then due and unpaid. The proportionate share of the mortgage required to be paid for release shall be determined by provisions pertaining thereto stated in the mortgage, or, if the mortgage contains no such provisions, then according to the proportionate share of the common elements of the Condominium attributable to such Unit or Units.

## **ARTICLE XVII COVENANT AGAINST PARTITION**

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

## **ARTICLE XVIII AMENDMENT OF THE DECLARATION**

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

18.02 Adoption. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by members having not less than twenty percent (20%) of the total percentage values of those votes entitled to be cast at a meeting, and after being so proposed and thereafter approved by one of such bodies, it must then be approved by the other to become effective. Directors and members not present at the meeting considering the amendment may express their approval or disapproval in writing provided such approval or disapproval is delivered to the Secretary at or prior to the meeting. Such approvals must not be by less than a majority of the Directors and by the

affirmative vote of the unit owners of units to which at least two-thirds (2/3) of the votes in the Association have been allocated.

18.03 Eligible Mortgagee's Implied Consent. Implied consent and approval may be assumed when an eligible mortgagee fails to submit a response to any written proposal for an amendment with thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, return receipt requested.

18.04 Prohibited Amendments. No amendment that is in conflict with the Acts shall be adopted. No amendment may change, alter or eliminate any private individual unit or effect any change in the percentage of the ownership of the common elements attributable to that unit, unless all of the owners and record mortgage holders of such unit shall agreed, in writing, to such amendment.

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

## **ARTICLE XIX MISCELLANEOUS**

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

19.02 Covenants, Conditions and Restrictions. All provisions of the

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

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

19.04 Taxation of Condominium Parcels. The assessment and taxation of the Condominium Property shall be governed by the Acts.

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

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

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

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

19.09 Captions and Construction. 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.

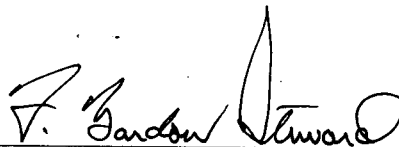
19.10 Costs and Attorney's Fees. In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be awarded by the Court.

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

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

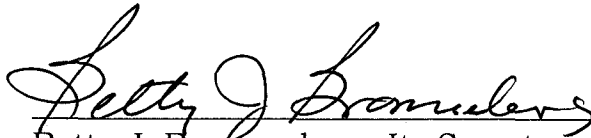
IN WITNESS WHEREOF, the Declarant has caused this amended Declaration of Condominium to be executed on this the 25<sup>th</sup> day of October, 2007.

SUNSWEPT CONDOMINIUM ASSOCIATION, INC.

A handwritten signature in black ink, appearing to read "F. Gordon Steward", is written over a horizontal line.

BY: F. Gordon Steward, Its President

ATTESTED:

  
BY: Betty J. Bronnenberg, Its Secretary


STATE OF ALABAMA )

COUNTY OF BALDWIN )

I, a Notary Public, in and for said County in said State, hereby certify that F. Gordon Steward, whose name as President, respectively, of SUNSWEPT CONDOMINIUM ASSOCIATION, INC., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said non-profit corporation on the day the same bears date.

Given under my hand and seal on this the 25<sup>th</sup> day of October, 2007.



  
Notary Public

My Commission Expires: 7/8/09

STATE OF ALABAMA )

COUNTY OF BALDWIN )

I, a Notary Public, in and for said County in said State, hereby certify that Betty J. Bronnenberg, whose name as Secretary, respectively, of SUNSWEPT CONDOMINIUM ASSOCIATION, INC., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said non-profit corporation on the day the same bears date.



Given under my hand and seal on this the 25<sup>th</sup> day of October, 2007.

Tyson W. Whiteside  
Notary Public

My Commission Expires: 7/8/09

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

## EXHIBIT A

### PERCENTAGE OF OWNERSHIP INTEREST OF COMMON ELEMENTS

<u>Unit</u>	<u>Percentage</u>	<u>Unit</u>	<u>Percentage</u>
101	1.93	503	1.47
102	1.47	504	1.03
103*	1.47	505	1.03
104	1.03	506	1.47
106	1.47	507	1.47
107	1.47	508	1.93
108	1.93	601	1.93
201	1.93	602	1.47
202	1.47	603	1.47
203	1.47	604	1.03
204	1.03	605	1.03
205	1.03	606	1.47
206	1.47	607	1.47
207	1.47	608	1.93
208	1.93	701	1.93
301	1.93	702	1.47
302	1.47	703	1.47
303	1.47	704	1.03
304	1.03	705	1.03
305	1.03	706	1.47
306	1.47	707	1.47
307	1.47	708	1.93
308	1.93	801	2.25
401	1.93	801A	1.10
402	1.47	802	2.15
403	1.47	803	2.15
404	1.03	804	1.60
405	1.03	805	1.60
406	1.47	806	2.15
407	1.47	807	2.15
408	1.93	808	2.25
501	1.93	808A	1.10
502	1.47		

\* Since this Unit is owned by the Association, the Unit has no voting rights.

## **EXHIBIT B**

To the extent that this Exhibit B does not conflict with the Amended Declaration of Condominium of SUNSWEPT, a Condominium, this Exhibit B adopts all previously recorded filings, exhibits and amendments, including, but not limited to, all drawings, plats and plans of the condominium development as recorded in the records of the Office of the Judge of Probate, Baldwin County, Alabama.

**EXHIBIT C**

Amended By-Laws of  
SUNSWEPT CONDOMINIUM ASSOCIATION, INC.