

STATE OF ALABAMA )  
COUNTY OF BALDWIN )

BALDWIN COUNTY, ALABAMA  
TIM RUSSELL PROBATE JUDGE  
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**AMENDED**  
**DECLARATION OF CONDOMINIUM**  
**OF**  
**SEACHASE, A CONDOMINIUM**

This Amended Declaration of Condominium of SeaChase, a Condominium, (hereinafter referred to as "Declaration"), is made on this the 17<sup>th</sup> day of December, 2010, by SeaChase Owners' Association, Inc., (hereinafter referred to the "Declarant"), an Alabama Non-Profit Corporation, pursuant to the provisions of the *Alabama Uniform Condominium Act of 1991, Code of Alabama, 1975, Sections 35-8A-101 through 417, as amended*, (hereinafter referred to as the "Act"), for the purpose of forming a condominium and establishing certain rights, titles, easements, covenants and/or restrictions to run with the subject property.

**RECITALS**

**WHEREAS**, Declarant represents all unit owners who hold title in fee simple to certain real estate described in Article III of this Amended Declaration of Condominium, as originally set forth in the original Declaration of Condominium of SeaChase, a Condominium, dated June 17, 1985, and recorded in Miscellaneous Book 54, Pages 1876, et. seq., in the Office of the Probate Judge of Baldwin County, Alabama, wherein SeaChase, a Condominium was submitted to the provisions of the *Alabama Condominium Ownership of 1973, Sections 35-8-1 et seq, Code of Alabama, 1975* and which is hereby referenced and incorporated herein as if fully set out and which is located at 25240 Perdido Beach Boulevard, Orange Beach, Baldwin County, Alabama 36561, hereinafter referred to as the "Parcel."

**WHEREAS**, Declarant does hereby resubmit the Parcel together with all the buildings, structures, improvements, and other permanent fixtures to be affixed

thereon, and all rights and privileges belonging or in any way pertaining thereto, to the provisions of the *Alabama Uniform Condominium Act of 1991, Code of Alabama, 1975, Sections 35-8A-101 through 417*. The condominium shall be known as SeaChase, a Condominium.

**WHEREAS**, Declarant further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Parcel or any part thereof, the condominium form of ownership; and intends that all future owners, occupants, mortgagees, and any other persons hereinafter acquiring an interest in the parcel shall hold that interest subject to the certain rights, easements, and privileges in the Parcel, and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct, and maintenance of the property, as hereinafter set forth.

**WHEREAS**, notice of the subject matter of this proposed revision and amendment was included in a notice of Special Meeting given to all unit owners to be held on the 2<sup>nd</sup> day of May, 2009; and

**WHEREAS**, the proposed revision and amendments were approved by the affirmative vote of not less than fifty-one percent (51%) of the members of the SeaChase Owners' Association, Inc., cast in person or by proxy at said meeting;

**NOW, THEREFORE**, the Declaration of Condominium of SeaChase, a Condominium shall hereinafter read as follows:

**AMENDED**  
**DECLARATION OF CONDOMINIUM**  
**OF**  
**SEACHASE, A CONDOMINIUM**

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## **ARTICLE I DEFINITIONS**

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

1.01 (a) "ACT" means the Alabama Uniform Condominium Act of 1991, Code of Alabama, 1975, Sections 35-8A-101, et seq,

(b) "ACTS" means the Alabama Uniform Condominium Act of 1991 and the Alabama Condominium Ownership Act of 1973, Code of Alabama, 1975, Sections 35-8-1 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, in Miscellaneous Book 54, Pages 783 et seq and the Restated Articles of Incorporation recorded simultaneously with this Amended Declaration 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 SeaChase Owners' Association, Inc., an Alabama non-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 SeaChase, a Condominium.

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

1.08 "COMMON ELEMENTS" means all portions of the Condominium other than the private 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 Common Elements over the amount of the Common Expenses.

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

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

1.13 "CONDOMINIUM PROPERTY", "PROPERTY" or "PARCEL" 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 SeaChase Owners' Association Inc., an Alabama non-profit corporation, and its successors and assigns.

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

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

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

1.18 "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 by the By-Laws of the Association.

1.19 "LIMITED COMMON ELEMENTS" shall have the same meaning as is defined in the Act and as set out in the Declaration. As presently constructed SeaChase, a Condominium, does not have any Limited Common Elements.

1.20 "MEMBER" means a member of the Association, membership in which is confined to all of the record owners of units as set forth in the Declaration or Amendments thereto.

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

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

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

1.24 "PLANS" mean the site plan, floor plans, and elevations of the Condominium prepared by an independent registered engineer or registered architect, which are included in the original Declaration and marked Exhibit "C" and are expressly made a part hereof as though fully set out herein. The Plans contain a certification that the Plans contain all the information required by the Acts.

1.25 "REAL PROPERTY" means the Real Property which is submitted to the Condominium form of ownership as provided for herein.

1.26 "RESIDENTIAL" means used for dwelling or recreational purposes, or both.

1.27 "SPECIAL DECLARANT RIGHTS" shall have the same meaning as is defined in the Acts and as set out in the Declaration and Amendments thereto.

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

1.29 "UNIT OWNER" means any Person who owns a Private Unit but does not include a Person having an interest in a Unit solely as security for an obligation.

1.30 "UTILITY SERVICES" shall include, but not be limited, to electrical power, 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 use of any gender shall be deemed to include all genders.

## **ARTICLE II NAME**

The name by which this Condominium is to be known is SeaChase, a condominium. The Condominium is located at 25240 Perdido Beach Boulevard, in the City of Orange Beach, County of Baldwin, State of Alabama.

## **ARTICLE III REAL PROPERTY**

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 of lands and easement of SeaChase Center

Parcel A: Commencing at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama; run thence South 00 degrees-09'-30" 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'-00" East along said Highway No. 182, a distance of 1,024.2 feet to the Point of Beginning; continue thence North 75 degrees -59'-00" east along said Highway No. 182 a distance of 295.47 feet; run thence South 00 degrees-16'-52" West a distance of 156.0 feet; run thence South 45 degrees-16'-52" West a distance of 14.6 feet; run thence South 00 degrees -16'-52" West a distance of 288 feet, more or less, to the mean high tide line of the Gulf of Mexico; run thence in a Southwestwardly direction along said mean high tide line of the Gulf of Mexico to a point that is South 00 degrees-16'-52" West a distance of 143.44 feet; North 89 degrees-42'-08" West a distance of 20 feet; South 00 degrees-16'-52" West a distance of 72.47 feet; South 44 degrees-42'-08" East a distance of 36.77 feet, South 00 degrees-16'-52" West a distance of 324 feet, more or less, from the Point of Beginning; run thence North 44 degrees-42'-08" West a distance of 36.88 feet; North 00 degrees-16'-52" East a distance of 72.47 feet; run thence South 89 degrees-42'-08" East a distance of 20.0 feet; run thence North 00 degrees-16'-52" East a distance of 143.44 feet to the South right-of-way of said Alabama Highway No. 182 and the Point of Beginning.

Parcel B (Lands for Elevated Tennis Courts): Commence at the Northwest corner of Fraction Section 17, Township 9 South, Range 5 East; run thence South 00 degrees-09'-30" West a distance of 611.72 feet to the South right-of-way of Alabama Highway No. 182; run thence North 75 degrees-59'-00" East along the South right-of-way of said Alabama Highway No. 182, a distance of 824.0 feet; run thence South 00 degrees-16'-52" West a distance of 11.72 feet to the Point of Beginning; run thence South 89 degrees-43'-08" East a distance of 69.1 feet; run thence South 00 degrees-19'-41" West a distance of 122.0 feet; run thence North 89 degrees-43'-08" West a distance of 69.0 feet; run thence North 00 degrees-16'-52" East a distance of 122.0 feet to the Point of Beginning.

Parcel C (Tennis Court Access Easement): Commence at Northwest corner of Fractional Section 17, Township 9 South, Range 5 East; run thence South 00 degrees-09'-30" West a distance of 611.72 feet to the South of the right-of-way of Alabama Highway No. 182; run thence North 75 degrees-59'-00" East along the South right-of-way of said Alabama Highway No. 182, a distance of 824.0 feet; run thence South 00 degrees-16'-52" West a distance of 133.72 feet to the Point of Beginning; continue thence South 00 degrees-16'-52" West a distance of 32.75 feet; run thence South 89 degrees-43'-08" East a distance of 174.0 feet; run thence North 00 degrees-16'-52" East a distance of 7.0 feet; run thence North 89 degrees-42'-08" West a distance of 147.50 feet; run thence North 00 degrees-16'-52"

East a distance of 25.75 feet; run thence North 89 degrees-43'-08" West a distance of 26.5 feet to the Point of Beginning.

Description of Lands of SeaChase West

Commence at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama; run thence South 00 degrees-09'-30" West for a distance of 611.72 feet to a point on the South line of Alabama Highway No. 182; run thence North 75 degrees-59'-00" East along the South right-of-way of said Alabama Highway No. 182 for 824.00 feet to the Point of Beginning; continue thence North 75 degrees-59'-00" East for 200.2 feet; run thence South 00 degrees-16'-52" West for 143.44 feet; run thence North 89 degrees-43'-08" West for 20.0 feet; run thence South 00 degrees-16'-52" West for 66.56 feet; run thence South 44 degrees-43'-04" East for 36.77 feet; run thence South 00 degrees-15'-52" West for 331 feet, more or less, to the mean high tide line of the Gulf of Mexico; run thence in a Southwesterly direction along said mean high tide line of said Gulf of Mexico to a point that is South 00 degrees-16'-52" West and 578 feet, more or less, from the Point of Beginning; run thence North 00 degrees-16'-52" East for 578 feet, more or less, to the South right-of-way line of said Alabama Highway No. 182 and the Point of Beginning.

LESS AND EXCEPT:

TENNIS COURT: Commencing at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama; run thence South 00 degrees-09'-30" 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'-00" East along said Highway No. 182, a distance of 824.0 feet to the Point of Beginning; continue thence North 75 degrees-59'-00" East along said Highway No. 182 a distance of 77.4 feet; run thence 00 degrees-16'-52" West for 149.11 feet; run thence North 89 degrees-43'-08" West for 75.0 feet; run thence North 00 degrees-16'-52" East for 130.0 feet to the South right-of-way of said Alabama Highway No. 182 and the Point of Beginning.

Description of Lands of SeaChase East

Commence at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama; run thence South 00 degrees-09'-30" West for a distance of 611.72 feet to a point on the South line of Alabama Highway No. 182; run thence North 75 degrees-59'-00" East along the South right-of-way of said Highway No. 182 for 1524 feet to the Point of Beginning; run thence South 75 degrees-59'-00" West along the South right-of-way of said Alabama Highway No. 182 for 204.33 feet; run thence South 00 degrees-16'-52" West for 388 feet, more or less, to the mean high tide line of the Gulf of Mexico; run thence in a Northeasterly direction along said mean high tide line of the Gulf of Mexico to a point that is South 00 degrees-16'-52" West and 542 feet, more or less, from

*the Point of Beginning; run thence North 00 degrees-16'-52" East for 542 feet, more or less, to the South right-of-way line of said Alabama Highway No. 182 and the Point of Beginning.*

#### **ARTICLE IV PURPOSE**

The Declarant hereby submits the Real Property described above 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 Act.

#### **ARTICLE V 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. The Plans are recorded as set out in the original Declaration, in the Office of the Probate Judge, Baldwin County, Alabama and said Plans are expressly made a part hereof as though fully set out herein.

5.02 Agreement. Each Person or entity who shall acquire any Unit in the Condominium or interest in or lien upon any such Unit, shall be deemed by accepting a conveyance of or otherwise acquiring such Unit interest or lien, to have agreed and consented, within the meaning of this Declaration and of the Act, to be bound by the terms and provisions hereof.

5.03 Easements. Easements are reserved throughout the condominium property as may be required for utility services in order to adequately serve the condominium; provided, however, such easements to a unit shall be only in accordance with the plans and specifications for the buildings or as the buildings are constructed, unless approved in writing by the unit owner. Each unit owner shall have an easement in common with the owners of 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. 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 in any building.

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, wires, ducts, cables, 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 the Common Elements.

D. Access. Each Unit shall have an easement for pedestrian traffic over, through, and across sidewalks, paths, walks, lobbies, elevators, stairways, walkways and lanes, and passage ways, as the same may from time to time exist in the Common Elements; and 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 an exclusive easement 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.

## **ARTICLE VI THE UNITS**

6.01 *Private Elements.* The description of the private elements and the appurtenances thereto are determined with the aid of the plans therefore, attached to this Declaration as Exhibit "B", and as follows:

A. *Units Numbered.* SeaChase, a Condominium, contains 187 individual condominium units located in three concrete and steel towers designated as SeaChase Center, SeaChase West and SeaChase East. Each unit is numbered so that the first digits contain the floor number and the unit location on each floor, and the last digit is a letter designating the tower, e.g., "C" for Center, "W" for West and "E" for East. The individual unit ownership interest in the common elements is attached hereto and made a part hereof as Exhibit "A".

B. *Units.* Each tower contains four different types of residential units. Type "A" units contain approximately 1,341 square feet, exclusive of balcony and approximately 176 square feet in the balcony area for a total square footage of approximately 1,517 square feet. Type "B" units contain approximately 1,542 square feet exclusive of balcony and approximately 178 square feet of balcony for a total square footage of approximately 1,720 square feet. Type "C" units contain approximately 1,675 square feet exclusive of balcony and approximately 265 square feet of balcony for a total square footage of approximately 1,940 square feet. The "Penthouse" units vary in size from approximately 1,357 square feet to approximately 3,716 square feet including the balcony area. Each unit also contains a storage room immediately outside of and adjacent to the entrance door to the unit.

The type "A-1", "B-1" and "C-1" Units located in SeaChase East contain more square feet than the "A", "B" and "C" Units described above. Type "A-1" Units contain 1,420 square feet, type "B-1" Units contain 1,634 square feet and type "C-1" Units contain 1,965 square feet, all exclusive of the balcony area.

C. *Units, SeaChase Center.* SeaChase Center contains 56 units on 12 floors and is the center tower of the property. Located within this tower

are 22 Type "A" Units, 10 Type "B" Units, 21 Type "C" Units and 3 "Penthouse" Units. SeaChase Center was Phase I of the Development and was completed in June 1985.

D. Units, SeaChase West. SeaChase West contains 73 units on 15 floors (there is no 13<sup>th</sup> floor) and is the westerly most tower of the property. Located within this tower are 28 Type "A" Units, 13 Type "B" Units, 27 Type "C" Units and 5 "Penthouse" Units. SeaChase West was Phase II of the Development and was completed in May 1986.

E. Units, SeaChase East. SeaChase East contains 58 units on 12 floors and is the easterly most tower of the property. Located within this tower are 20 Type "A-1" Units, 9 Type "B-1" Units, 19 Type "C-1" Units and 10 "Penthouse" Units. SeaChase East was Phase III of the Development and was completed in April 1994.

F. Parking Spaces. Except for the "Covered Parking Spaces" described below, SeaChase condominium has OPEN PARKING and access to the same shall be for the joint use of SeaChase Center, SeaChase West and SeaChase East. Matters relating to the use of open parking and access to open parking shall be regulated by the SeaChase Owners' Association, Inc., in its Rules and Regulations as they may be changed from time to time.

G. Covered Parking Spaces. Fifty-two (52) covered parking spaces (26 in SeaChase Center and 26 in SeaChase East) have been provided for any purchaser of a unit in SeaChase, a Condominium. The purchaser of any covered parking space has exclusive use of the space and transfer of the space may be with the sale of the condominium unit or the space may be transferred to any other SeaChase unit at any time. The rights to the covered parking space are permanent and shall only terminate upon termination of the Condominium pursuant to the Act. The covered parking spaces will be maintained by the SeaChase Owners' Association, Inc.

6.02 Unit Boundaries. Each private condominium unit (element) includes that part of the building in which such unit is located, as shown on the drawings attached hereto and made a part hereof as Exhibit "B". The upper and lower boundaries of each unit shall be the following boundaries extended to an intersection(s) with the perimetrical boundaries. The upper boundary shall be the horizontal plane of the lower surfaces of the concrete ceiling slab, exclusive of paint; and the lower boundary shall be the horizontal plane of the upper surfaces of the concrete floor slab, exclusive of carpet, tile or other floor covering.

The perimetrical or vertical boundaries of each unit shall be the interior planes of the interior walls bounding the unit (exclusive of sheet work - sheet rock - drywall board or material and wall covering), the outer planes of unit access doors, and the interior planes of exterior walls bounding the unit (exclusive of sheet work - sheet rock - drywall board or material and wall covering). Where there is attached to the building a balcony or other portion of the building serving only the unit being bounded, the unit's boundary shall extend to include all of such balcony or structure and fixtures thereof. All outer planes of glass doors and windows (but not access doors) shall be partially common and partially private elements with the Owners' Association being responsible for maintenance, repair or replacement of such windows and doors necessary to prevent substantial moisture from entering the space between the exterior walls of the buildings and the interior planes of exterior walls or other maintenance, repair or replacement necessary for structural reasons. The Unit Owner shall be responsible for replacing any cracks, breakage, fogging or other damage to or condition of these glass doors or windows. The Association shall also be responsible for one (1) replacement of the railings on unit balconies for each unit as funds become available. The Unit Owner shall continue to be responsible for all of the repair and maintenance of such railings. After the completion of the replacement of all railings for all units in a building, the Unit Owner shall then have full responsibility for repair, maintenance or replacement for such railings.

Each unit includes its own air conditioning, heating and water heating equipment servicing the unit including the wires or pipes connected thereto until

such point that such wires or pipes service more than one unit; whether the wires or pipes are within the unit boundaries described above. Where fixtures serving an individual unit are installed partially within or partially without the plane or boundaries of the unit, the entire fixture(s) shall be deemed to be wholly within the unit and subject to the exclusive control of the owner of the unit. The air conditioning system serving each unit is part of the private elements of the unit even though it is placed in the common areas on the roof of each tower. Each unit owner shall have the rights of access for repair and replacement of his air conditioning system.

6.03 Unit Ownership. Each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit Owner shall have the unrestricted right of ingress to and egress from 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.

## **ARTICLE VII THE COMMON ELEMENTS**

7.01 Common Elements. The common elements of the condominium includes all parts of the condominium property outside of the private elements, as described above, being the facilities located substantially as shown upon the plans hereto attached, and include, but are not limited to, the following:

- A. The land, subject to the exceptions set out therein.
- B. All central and appurtenant installations for services such as power, light, telephone, storm drains, sewer and water, television 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. Automobile parking spaces whether or not assigned to the exclusive use of any unit owner and other areas of the parking lot.
- D. All outdoor and exterior lights.
- E. Manager's office and built-up roof.
- F. All attics, foundations, columns, girders, beams and supports of buildings, and such component parts of walls, roofs, floors and ceilings as are not located within the units.
- G. Lawn areas, landscaping, trees, curbs, fences and walkways.
- H. Recreation areas and facilities, including but not limited to, the swimming pools, sun deck, whirlpools, saunas, tennis courts, meeting room, public restrooms, lobby and reception area, gazebos and entrance guard house.
- I. Exterior steps, ramps, handrails, stair and stairwells.
- J. All tanks, pump houses, wells, motors, fans, compressors and control equipment, fire fighting equipment, garbage equipment, elevators and equipment which are not reserved for the use of certain units.
- K. All retaining walls, sea walls, bulkheads and jetties, and all areas for refuse collection or disposal.
- L. All other parts of the development existing for the common use or necessary to the existence, maintenance and safety of the development
- M. All other items listed as such in the Alabama Uniform Condominium Act, and located on the Property that do not conflict with the above A through L.

7.02 Limited Common Elements. SeaChase, a Condominium, does not have any limited common elements.

7.03 Surfaces. An owner shall not be deemed to own the studs and structural components of the perimeter walls and/or of load-bearing walls. An owner, however, shall be deemed to own and shall have the exclusive right and duty to repair, maintain, replace, paint, repaint, tile, wax, paper or otherwise finish and decorate the surfacing materials on the interior of the exterior walls and on the interior walls separating a unit from other units, and, the surfacing materials of the floors of his unit, and all appurtenant installations, including all pipes, ducts, wires, cables and conduits used in connection therewith for services such as power, light, telephone, sewer, water, heat, air conditioning and television, whether located in the boundaries of the unit or in the common areas; and all ceilings and partition walls. An 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 that are accessible from the unit or the attached balcony.

7.04 Balconies. Balconies are considered part of the unit to which they are attached and except for the Association's one-time replacement of the balcony rails, balconies are the total responsibility of the Unit Owner (See Section 6.02 of this Amended Declaration). Balconies are not included in the total square footage of the unit for Ownership in Common Elements purposes (See Exhibit A of this Amended Declaration).

Unit Owners shall be required to install and pay for hurricane shutters protecting sliding glass doors facing the Gulf of Mexico and sliding glass doors of master bedrooms in the East Tower only and such shutters shall meet design standards approved by the Board of Directors of SeaChase Owners Association, Inc. and such installation shall be subject to inspection by the Board of Directors or its designee. When the sliding glass doors and windows facing the Gulf of Mexico in the East Tower have been replaced with new doors and windows which meet the Orange Beach, Alabama Code specifications at the time of installation, the units in the East Tower shall no longer be required to have hurricane shutters. The balconies of Units may no longer be covered with carpet and must be covered with tile compatible with the tile coverings of other SeaChase balconies and, each time tile is installed or replaced on a Unit, the



balcony shall be treated with a protective coating as prescribed by the Board of Directors.

7.05 Ownership. A schedule setting forth the percentage of undivided interest of each Residential Unit in the Common Elements is attached hereto and marked Exhibit "A" and is incorporated by reference herein. The percentage of undivided interest of each Residential Unit in the Common Elements is determined by dividing the approximate total number of square feet of the interior area of each Residential Unit by the total number of square feet of the interior area in all Residential Units. Such percentages of undivided interests may be rounded where appropriate. 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 as set out in Exhibit "A" 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.

7.06 Act Controls. All present and future owners, tenants and occupants of units shall be subject to and shall comply with the provisions of the Act, this Declaration, the By-Laws, Articles and Rules and Regulations as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any unit shall constitute an agreement that the provisions of the Act, this Declaration, the By-Laws and the Rules and Regulations, as may be amended from time to time, are accepted and ratified by such owner, tenant and occupant, 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 of estate in such unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof In the event of a conflict in any of the

provisions of any such documents, the documents shall govern or control in the following order of the preference: (I) the Act; (ii) the Declaration; (iii) the Articles of Incorporation of the Association; (iv) the By-Laws of the Association; and (v) the Rules and Regulations of the Association.

7.07 Exclusive Ownership. Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner shall be entitled to an undivided interest in the common elements in the percentages expressed in this Declaration, which percentages of undivided interest of each owner shall have a permanent character and shall not be altered without the consent of all owners and lien holders of record of units affected by such alterations expressed in an amended Declaration, duly recorded. The percentage of the undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. 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.

7.08 Use. The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, guests 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 the 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.

7.09 Enforcement. Failure of any owner to comply strictly with the provisions of this Declaration, the By-Laws and the Rules and Regulations shall be grounds for an action to recover sums due, or damages, or injunctive relief, or any or all of them. Such actions may be maintained by the Association on its own behalf or on behalf of the unit owners aggrieved. In any case of flagrant or repeated violation by a unit owner, he may be required by the Association to give

sufficient surety or sureties for his future compliance with the provisions of this Declaration, the By-Laws and the Rules and Regulations. Nothing herein prevents, in a proper case, an independent action by an aggrieved unit owner for such relief.

**ARTICLE VIII**  
**LIABILITY FOR COMMON EXPENSE AND ASSESSMENTS**

8.01 Share of Common Expenses and Other 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 set forth in Exhibit "A" of this Amended Declaration. Payment of Common Expenses and other expenses shall be in such amounts and at such times as determined in the By-Laws. Assessments shall be collected by the Association on a monthly basis. 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 accounts.

8.02 Late Payment of Assessments. Assessments, paid on a monthly basis, for Common Expenses and installments thereon, paid on or before ten (10) days after the date when due shall bear no interest, but all sums not paid on or before ten (10) 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 to 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 and shall be consistent with the provisions of the By-Laws. All payment upon 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 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.

8.03 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. The lien secures all 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 recording of any claim of lien under this Section is required. All such liens for assessments shall be subordinate to any lien for taxes, the lien of any mortgage of record and any other lien recorded prior to the time of the recording of this Amended Declaration of Condominium.

8.04 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, therefore, 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.

8.05 Priority of Lien. The Association shall have a lien for nonpayment of 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.

8.06 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, as the case may be, at the sole discretion of the Board.

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

8.08 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.

8.09 Foreclosure. The Association's lien may be foreclosed in the manner of a mortgage with a power of sale.

## **ARTICLE IX THE ASSOCIATION**

9.01 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 Acts. The Association shall be a not for profit Alabama corporation incorporated by Articles of Incorporation recorded in the Office of the Judge of Probate of Baldwin County, Alabama. The Association shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or non-exercise of its powers. The Association shall have exclusive authority and power to maintain a class-action and to settle a cause of action on

behalf of Unit Owners of the Condominium with reference to the Common Elements, 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 Acts, as well as all the powers and duties granted to or imposed on it under the By-Laws and other Condominium Documents as they may be amended from time to time, The Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other Person or Persons. The Association shall have a reasonable right of entry upon any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance 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. The Association shall have the power to purchase a unit at the condominium. Acting through its Board of Directors, the Association may borrow money when required in connection with the operation, care, upkeep, repair, restoration and maintenance of the Common Elements and may, through its Board of Directors, pledge or assign as collateral or security for any loan, assessments which may have been approved, or which may be approved thereafter, by the Owners as provided for in the governing documents of the Association.

9.02 Name. The name of the Association shall be SeaChase Owners' Association, Inc.

9.03 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.

9.04 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 By-Laws. Should the Association be a Unit Owner, it shall not have the voting rights appurtenant to that Unit. Voting rights may be exercised by Eligible Mortgage Holders of a unit pursuant to the By-Laws.

9.05 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.

9.06 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, limited liability company, partnership or limited partnership, the officer, member, partner, 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), managing member (in the case of a limited liability company), 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 (1) Person or by a corporation, limited liability company, 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.

9.07 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.

9.08 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 twelve (12) 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. Membership on the Board shall be limited to members.

9.09 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. 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.

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

9.11 By-Laws. The Association and its Members shall be governed by the By-Laws.

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

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

## **ARTICLE X MAINTENANCE**

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

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

iv. The Association does have a reasonable right of entry upon any private unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Condominium.

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

I. To maintain, repair and replace all portions of his unit except the portions to be maintained, repaired and replaced by the Association.

ii. Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the building.

iii. To maintain the surfacing materials within the unit.

iv. To maintain, repair and replace the 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 his unit, whether or not located within the boundaries of his unit To maintain, repair and replace the interior appurtenances of his unit,

including but not limited to the floor coverings, wall coverings, window shades, draperies, furniture, furnishing light fixtures, and all appliances located therein.

v. 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.

(vi.) To be responsible for the cost of all incidental damage caused to the common elements or other units in the performance of the foregoing work. The cost of such repair or replacement may be assessed against such Unit Owner.

vii. To allow the Association, its delegates, agents or employees at all reasonable times to enter into any unit for the purposes of maintaining, inspecting, repairing or replacing 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 and to correct the same; or, to determine compliance with the provisions of the Condominium Documents.

C. Alteration and Improvement. No unit owner shall make any alterations in the portions of a unit or building which are to be maintained by the Association, or to 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 as per sub-paragraph 10.02 B.

#### 10.02 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. Additions, Alterations and Improvements. There shall be no significant alteration or further improvements of the common elements without the prior approval of unit owners holding seventy-five percent (75%)

of voting rights of the Association; provided, however, that any alteration or improvements of the common elements bearing the approval of unit owners entitled to cast a majority of votes in the Association, and which does not prejudice the rights of any owners not consenting, may be done if the owners who do not approve are relieved from the initial cost thereof. There shall be no change in the share and rights and obligations of a unit owner in the common elements which are altered or further improved, whether or not the unit owner contributes to the initial cost thereof. Any such alteration or addition shall be done in accordance with complete plans and specifications therefor first approved in writing by the Board; and promptly upon completion of such additional building or structural alteration or addition to any structure, the Association shall duly record or file of record in the Office of the Judge of Probate of Baldwin County, Alabama, an amendment, together with a complete set of plans of the condominium, as so altered, certified "as built" by a licensed or registered engineer or architect. Such alterations may result in a change in the nature of an original intended use of a portion of the common elements to another intended use.

10.03 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.

10.04 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 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.

## **ARTICLE XI INSURANCE**

11.01 Purchase of Insurance. The Association shall maintain insurance upon the Condominium Property to the extent reasonably available as provided for in the Act and as follows.

11.02 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.

11.03 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.

11.04 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.

11.05 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 Acts 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, pools, landscaping 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. Such other risks as from time to time shall be covered with respect to buildings similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.

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 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 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 applicable.

C. Flood Insurance. The Association shall obtain, maintain and pay the premiums upon, as a Common Expense, a "master" or "blanket" policy of flood insurance on the buildings and other property covered by the required form of the policy. 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 Insurance. The Association shall obtain, maintain and pay the premiums upon, as a Common Expense, fidelity insurance coverage, 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 insurance coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The fidelity insurance policy 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 the fidelity insurance policy. However, in no event may the aggregate amount of such insurance be less than one hundred and fifty percent (150%) of the estimated annual Common Expenses. The fidelity insurance policy shall contain waivers by the issuers 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 fidelity insurance coverage required herein to be maintained by the management agent shall be paid by the management agent. The insurance policy shall provide that the Association and any eligible mortgage holder shall be given ten (10) days written notice before the policy/bond may be cancelled or modified for any reason.

F. Other Insurance. The Board of Directors of 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.

11.06 Individual Insurance. Nothing contained herein shall be construed to prevent a Unit Owner from obtaining any insurance he deems necessary for his own benefit and coverage.

11.07 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, any Unit Owner, agent, assignee, licensee, guest or business invitee.

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 eligible mortgage holder 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.

11.08 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.

11.09 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.

11.10 Insurance Trustee, Share of Proceeds. 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 the Unit Owners and their mortgages, 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.

11.11 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.

11.12 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. If the damage 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 shall be distributed to the Unit Owners.

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 XII  
RECONSTRUCTION OR REPAIR AFTER CASUALTY**

12.01 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 section 35-8A-218 of 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 the owner of every Unit which will not be rebuilt; vote not to rebuild.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

12.02 Plans. Any reconstruction or repair after casualty must be substantially in accordance with the plans and specifications for the original structure, or as the structure was last constructed, or according to plans approved by the Board of Directors of the Association.

12.03 Responsibility. If the damage is only to those parts of a unit 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 in accordance with section 35-8A-313 of the Act and this Amended Declaration.

12.04 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.

12.05 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 in Article VIII of this Amended Declaration.

12.06 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 Directors of the Association.

B. 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 Unit Owners as a credit or a refund or allocated for capital expenditures as determined by the Board of Directors.

**ARTICLE XIII  
EMINENT DOMAIN**

13.01 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 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.

13.02 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.

13.03 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:



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 expended 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.

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

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

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