DECLARATION OF CONDOMINIUM OF PHOENIX GULF TOWERS, A CONDOMINIUM

BALDWIN COUNTY, ALABAMA
HARRY D'OLIVE, JR. PROBATE JUDGE
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TABLE OF CONTENTS

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THIS DECLARATION, is made this the 27th day of June, 2023, by PHOENIX GULF TOWERS, LLC, an Alabama limited liability company, hereinafter called "DEVELOPER," for its successors, grantees and assigns.

RECITALS

1. The Developer is the fee simple Owner of that certain parcel of Real Property situated in the County of Baldwin, State of Alabama, hereinafter more particularly described, and intends to improve said Real Property in the manner set out herein.

2. The Developer proposes to establish a Condominium pursuant to the provisions of the Alabama Uniform Condominium Act of 1991. The Condominium shall be known as Phoenix Gulf Towers, a condominium.

3. The Developer proposes to develop the Condominium in two (2) phases, but reserves the right and option, in its sole discretion, to complete only the phase or phases which market or other relevant conditions may dictate and to remove from this condominium those lands shown on the site plan as Phase II.

4. Phase I consists of one (1) building containing a total of ninety-six (96) Residential Units, together with access, parking and appurtenant facilities herein described, and other non-residential units as shown on the Plans.

5. The Developer may improve that part of the Real Property shown on the Site Plan as Phase II by constructing thereon additional Condominium Units, which said improvements may be submitted to the Condominium form of ownership and use by amendment or amendments to this Declaration.

6. It is the intent of the Developer that should all or a portion of the property reserved for development be submitted to the terms of this Declaration by amendment or amendments hereto as Phase II, as hereinafter provided, such property shall be operated and administered as a Condominium Property in the same manner as Phase I.

7. Phase I of the Condominium will be created by the recording of this Declaration, which may be amended by the Developer as herein provided without requiring the approval or consent of any of the Unit Owners for the purpose of adding Phase II to development.

NOW, THEREFORE, the Developer, hereby makes the following Declaration as to the division and use to which said real property and improvements thereon may be put, hereby specifying that said Declaration shall constitute covenants to run with the land and shall be binding upon Developer, it successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees, or assigns.

DEFINITIONS

1. 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. "ACT" means the Alabama Uniform Condominium Act of 1991, *Code of Alabama* (1975), Section 35-8A-101, et seq., as amended.

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 proportionate share of the funds required for the payment of the Common Elements which from time to time may be levied against each Unit Owner.

1.04. "ASSOCIATION" means PHOENIX GULF TOWERS OWNERS ASSOCIATION, INC., an Alabama not for profit corporation, and its successors, and is the corporation organized under the ACT.

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

1.06. "BUILDING" means all structures or structural improvements located on the Real Property and forming part of the Condominium.

1.07. "BY-LAWS" means the duly adopted By-Laws of the Association, identified as Exhibit "D" attached hereto and made a part hereof as if set out fully herein.

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

1.09. "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 PHOENIX GULF TOWERS, LLC, 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" or "PROPERTY" means all property, both real, personal or mixed, which is submitted to the Condominium form of ownership as provided for herein and includes the Real Property and all improvements now existing or hereafter placed thereon and all easements, rights, interests or appurtenances thereto, and all personal property now or hereafter used in connection therewith.

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

1.15. "DEVELOPER" means PHOENIX GULF TOWERS, LLC, an Alabama limited liability company.

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. "LIMITED COMMON ELEMENT" shall have the same meaning as is defined in the ACT and as set out in the Declaration.

1.19. "MEMBER" means a member of the Association, membership in which is confined to Unit Owners.

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

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

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

1.23. "PLANS" mean the floor plans and elevations of the Condominium prepared by an independent registered engineer or registered architect, which are marked <u>Exhibit "B"</u> and attached hereto and expressly made a part hereof as though fully set out herein. The Plans are preceded by a certificate of completion executed by an independent registered engineer or registered architect in accordance with the ACT. It also certifies that the Plans contain all the information required by the ACT.

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

1.25. "SPECIAL DECLARANT RIGHTS" shall have the same meaning as is defined in the ACT and as set out in the Declaration. "Declarant" as used herein means the Developer.

1.26. "UNIT" or "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" means the Owner of a Unit.

1.28. "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.

NAME

2. The name by which this condominium is identified is Phase I of PHOENIX GULF TOWERS, a condominium. Should a phasing amendment to this Declaration be adopted as provided herein, such improvements shall be known as Phase II of PHOENIX GULF TOWERS, a condominium.

THE REAL PROPERTY

3. The lands owned by the Developer, which are herewith submitted to the condominium form of ownership, are the following described lands, lying and being in the County of Baldwin, State of Alabama, attached hereto as Exhibit "A,"

PURPOSE

4. The purpose of this Declaration is to submit the lands hereinafter described and the improvements constructed thereon to the condominium form of ownership and use in the manner provided by the Alabama Uniform Condominium Act § 35-8A-101, et seq., *Code of Alabama* (1975), as amended.

DEVELOPMENT PLAN

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

5.02. Amendment. The Developer shall have the unilateral right, privilege, and option from time to time at any time (subject to the provisions of this Declaration) to improve that part of the Real Property shown on the Site Plan as Phase II by constructing thereon additional Condominium Units, which said improvements may be submitted to the Condominium form of ownership and use by amendment or amendments to this Declaration without the consent of any Unit Owner, Mortgagee, or other Person in order to exercise these Development Rights or Special Declarant Rights so long as said amendment complies with the requirements of the Act.

5.03. Subsequent Phase II.

A. Generally. The property described on Exhibit "A", in excess of the property described herein as comprising Phase I, is hereby submitted to the Condominium form of ownership and use as a common element subject to the development rights of the Developer to create units, common elements, or limited common elements within the condominium or to withdraw real estate from the condominium. No assurance is made concerning whether or not any phase or portion thereof will be or will not be submitted to the Condominium form of ownership. The exercise by the Developer of any Development Rights on any portion of the Real Estate does not obligate the Developer to exercise said right in all or any other portion of the remainder of the Real Estate.

B. Units. If Phase II or more is developed and made subject to the terms of this Declaration, as provided for herein, each such phase shall consist of a number of Units such that the density (ratio of number of units to land area) of each such phase is no greater than that of Phase I.

C. Common Elements and Limited Common Elements. Any phase which is submitted to the terms of this Declaration shall contain Common Elements and Limited Common Elements consistent, but not identical, with and complimentary to those existing in Phase I.

D. Phasing Amendments. Any such additional phase may, from time to time, be added to, and made subject to, this Declaration by the execution, by the Developer alone, of an amendment to this Declaration, which said amendment shall comply with the provisions of the ACT and shall be recorded in the Probate Court records of Baldwin County, Alabama. Such amendment shall have attached to it exhibits similar to those attached to this Declaration, describing the Property so submitted to the Declaration and containing such other information concerning said Property and the improvements constructed, or to be constructed, thereon as is required by law.

E. Time Limitation. The right of the Developer to add additional phases to the Condominium (or to create additional units, common elements and limited common elements) as herein provided shall cease and terminate twenty (20) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama, and only those phases which shall have been submitted to this Declaration prior to said date shall be deemed to have been validly submitted to this Declaration. Except as provided in the preceding sentence, no other time limitation shall be imposed on the right of the Developer to add additional phases.

F. Effect. Once a phase has been submitted to the terms and provision of this Declaration, it shall comprise a portion of the Condominium, to be governed by and subject to all of the provisions of the Condominium Documents to the extent that said documents are not inconsistent with the provisions of the amendment adding such phase to this Declaration.

5.04. Agreement. Each Person or entity who shall acquire any Unit in the Condominium or interest in or lien upon any such Unit, regardless of whether said Unit shall be located in Phase I, or II or any portion of said phases 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 and to have further agreed and consented that any amendment to this Declaration executed by the Developer alone pursuant hereto shall be binding and effective as written notwithstanding the fact that the undivided interest of the Unit Owners in the Common Elements will be changed thereby.

5.05. Proviso. Anything contained herein to the contrary notwithstanding, Developer does not hereby commit itself to submit such subsequent phase, in whole or in part, to the Condominium form of ownership and use under the terms of this Declaration, and unless submitted to the terms of this Declaration under the provisions hereof, Developer, shall have the right to develop the same or any portion thereof, in any manner and to any extent that it sees fit or to decline to develop said property entirely. Further, the Development Rights retained herein shall be construed to permit the Developer to remove the property so described as Phase II from the then existing common elements and construct additional phases thereon or to put the same to such different use as it may see fit.

5.06. Developer's Easements. Easements are reserved to the Developer throughout the Common Elements as may be reasonably necessary for the purpose of discharging the Developer's obligations or exercising any Development Rights or Special Declarant Rights. Further, the Developer, its successors and assigns, reserves a perpetual nonexclusive easement for access, ingress and egress in, over and through all roads, access routes, parking areas, and other common areas for its guests, licensees, lessees, customers and employees to and from any adjacent and contiguous property for the purpose of real estate sales or any other business operated by the Developer or its assigns on such property.

5.07. <u>General Description of Improvements on Phase I</u>. The improvements of Phase I are as shown upon the plans attached hereto as "Exhibit B," which plans were prepared by Forrest Daniell, A.I.A., including a set of floor plans of the building showing the lay-out, location, the designating letters and numbers of each unit, as well as his verified statement, attached hereto as Exhibit "B," that such plans have been completed and are in sufficient detail to identify the common elements and the private elements comprising the units as built and which said plans are supplemented and complimented by the narrative and the graphic descriptions herein contained.

5.08. <u>Changes</u>. In order to meet the possible unforeseen or varying demands for the number and type of unit, or in order to meet particular requirements of prospective purchasers, lending institutions or title insurance companies, or for any other reason, the Developer reserves the right to change the size, dimensions, number and location of buildings, units and other improvements, and the size, dimensions, lay-out location and undivided percentage of ownership in the common elements of any unit for which a purchase agreement has not been executed by the Developer or with respect to which the purchaser is in default, provided such changes do not change the common elements of any unit already sold or under an executed purchase and sale agreement as to which the purchaser is not in default. The Developer further reserves the right to substitute for any of the materials, equipment and other articles herein mentioned, materials, equipment and articles of equal or better quality.

5.09. <u>Amendment of Plans</u>. This Declaration may be amended by the filing of such additional plans as may be required to accurately describe the improvements or the condominium and in order to show completion of improvements. Such completion may be shown by the filing of a verified statement of a registered architect or licensed professional engineer certifying that the completed improvements have been constructed as herein represented and upon the plans herewith filed, or, if not so constructed, then designating the changes made and certifying that the plans being filed simultaneously with such certificate fully and accurately depict the lay-out, location, numbers, size and dimensions of the units. Such plans or certificate, or both, when signed and acknowledged by such a registered architect or licensed professional engineer, and by the Developer, shall constitute an amendment to this Declaration without approval of the Association, whether or not elsewhere required for an amendment.

5.10. <u>General Easements</u>. 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 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 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 in any building. Under the terms of the Federal Fish and Wildlife Permit attached as Exhibit "E," access to the beach will be across the boardwalks in place.

5.11. Blanket Mortgages and Assignments of Declarant Rights. All mortgagees and other creditors joining in the execution of this instrument, including every holder of a blanket mortgage of the Real Property or an Assignment of Declarant Rights as a security agrees that the land area shown on the site plan as Phase I shall be released from the operation of such agreements. And all such parties advancing funds on the security of condominium units or lands subsequent to the recordation of this declaration shall hold their interests only against the lands shown on the Site Plan as Phase II. Neither the Developer nor any successor to the developer is bound to construct the improvements now contemplated as Phase II, and if the Developer or a successor elect to terminate such plans, the then Developer or its successor may remove from the operation of this declaration any of the condominium lands depicted as Phase II on the Site Plan.

5.12. Access. Each unit has a right of access to a public street or highway, that is to say Perdido Beach Boulevard (a/k/a Highway 182), upon and over common elements, providing such access all as shown upon the site plan (attached hereto as part of Exhibit "B"). the immediate common elements by which each unit has access to such public street or highway are: (i) the concrete walkways running along the face of the buildings and ground; and (ii) the parking area, driveways and streets all as shown upon the site plan (attached hereto as part of Exhibit "B").

DESCRIPTIONS OF IMPROVEMENTS ON PHASE I

6.01. The Building. The condominium includes access areas, parking areas, direct Gulf front Lazy River, indoor heated pool, Lobby, owners meeting room, exercise room, owner's storage closets on unit floor level, which serves a designated unit as a limited common element

6.02. Private Elements. The description of the private elements and the appurtenances thereto are determined with the aid of the plans therefore, attached hereto, and as follows:

a) Units Numbered. Each unit is assigned a number which is indicated on the drawings attached hereto as part of Exhibit "B" to this Declaration. The first letter or number designates the floor number on which the unit is located.

b) Changes. The Developer reserves the right to change the interior design and arrangement of all units so long as the Developer owns the unit so altered.

c) Unit Type A. Type A is a four (4) bedroom, three (3) bath unit containing a kitchen, living and dining area combination with approximately 2,091 square feet, more or less, of heated and cooled area not including the open balcony which contains approximately 269 square feet, more or less, and serves the unit as a limited common element. The unit comes complete with 18" tile throughout, granite throughout, 10' ceilings, stainless steel appliances, wet bar, cabinets over wet bar, brushed nickel or brushed bronze faucets and fixtures, tiled bar fronts, kitchen back splash, tall cabinets to fur down, comfort height toilets, Gulf front master bedroom, floor to ceiling glass, and large, private balconies. There is one (1) Type "A" Unit on levels 3 through 27 for a total of twenty-four (24) Type "A" Units.

d) Unit Type A Reversed. Type A Reversed is a mirror image of Unit Type "A." There is one (1) Type "A Reversed" Unit on levels 3 through 27 for a total of twenty-four (24) Type "A Reversed" Units.

e) Unit Type B. Type B is a three (3) bedroom, three (3) bath unit containing a kitchen, living and dining area combination with approximately 1,856 square feet, more or less, of heated and cooled area not including the open balcony which contains approximately 259 square feet, more or less, and serves the unit as a limited common element. The unit comes complete with 18" tile throughout, granite throughout, 10' ceilings, stainless steel appliances, wet bar, cabinets over wet bar, brushed nickel or brushed bronze faucets and fixtures, tiled bar fronts, kitchen back splash, tall cabinets to fur down, comfort height toilets, Gulf front master bedroom, floor to ceiling glass, and large, private balconies. There is one (1) Type "B" Unit on levels 3 through 27 for a total of twenty-four (24) Type "B" Units.

f) Unit Type C. Type C is a two (2) bedroom, three (3) bath unit containing a kitchen, living and dining area combination with approximately 1,549 square feet, more or less, of heated and cooled area not including the open balcony which contains approximately 186 square feet, more or less, and serves the unit as a limited common element. The unit comes complete with 18" tile throughout, granite throughout, 10' ceilings, stainless steel appliances, wet bar, cabinets over wet bar, brushed nickel or brushed bronze faucets and fixtures, tiled bar fronts, kitchen back splash, tall cabinets to fur down, comfort height toilets, floor to ceiling glass, and large, private balconies. There is one (1) Type "C" Unit on levels 3 through 27 for a total of twenty-four (24) Type "C" Units.

g) Non-residential private elements. Service Units as shown on the Plans.

6.03. Common Elements. The common elements of the condominium includes all parts of the condominium property not located within the perimeter boundaries of the apartment units, as hereinafter described, being the facilities located substantially as shown upon the plans hereto attached, and include but are not limited to the following:

a) The land described in Exhibit "A" attached hereto, 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 in the parking areas.

d) All outdoor and exterior lights.

e) Balconies and decking.

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 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, and 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.

6.04. Limited Common Elements. The limited common elements include items listed as such in the Alabama Uniform Condominium Act. Service areas shown on the plans as "Limited Common Elements" are allocated to the exclusive use of Unit "C201."

6.05. Unit Boundaries. Each unit consists of that part of the building containing the unit which lies within the boundaries of the unit, exclusive of interior load-bearing walls and pillars and any pipes, wires, conduits, ducts, vents and other servicing utility lines which are utilized for or serve more than one (1) condominium unit. The vertical boundaries of each unit shall be the plane of the inside surfaces of the studs which are the component parts of the exterior walls and of interior walls separating a unit from another unit, and are as shown on the drawings in Exhibit "B" attached hereto. Where the unit is bounded by an exterior wall, the walls shall be considered to include any door, window or other closure therein in the closed position, and the boundary shall be the plane of the inside surfaces of the studs which are the component parts of such walls to the effect that the private elements of the boundary walls shall include the surfacing materials. The upper horizontal boundary of each unit shall be the plane of the under surfaces of the ceiling slabs. The lower horizontal boundary of floors of the units shall be the upper surfaces of the floor slab.

6.06. Surfaces. An owner shall not be deemed to own the studs and structural components of the perimeter walls and/or of load-bearing walls, nor the windows and doors bounding the unit, nor balconies, nor balcony railings enclosing a balcony area assigned to the exclusive use of the unit. 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, which are the exclusive use the unit; 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.

6.07. Balconies. A valid exclusive easement is hereby declared and established for the benefit of each unit and its owner consisting of the exclusive right to use and occupy the balcony or balconies serving his unit, the maintenance of which shall nonetheless remain the responsibility of the Association.

6.08. Developer's Limited Warranty. By recording this Declaration, the Developer herewith provides a limited warranty covering latent defects of the common areas or common elements for one (1) year from the date that at least 60% of the votes of the Association have been transferred from the Developer. A latent defect is hereby defined as a defect not apparent at the time of occupancy or closing, but which becomes apparent within one (1) year, and such defect has been directly caused by the failure of construction of the building in accordance with the standards of construction prevailing in the geographical area of the Unit. Developer shall not be liable under this limited warranty unless written notice of the latent defect shall be given by the Association to Developer before the expiration of said one (1) year warranty period. Steps taken by Developer to correct any such defect shall not act to extend the warranty period as to other matters. Developer shall not be responsible or provide coverage for any of the following:

a) defects in appliances and pieces of equipment which are covered by manufacturer's warranties;

b) incidental, consequential or secondary damages caused by a breach of this warranty;

c) defects which are the result of characteristics common to the materials used, such as, but not limited to: warping and deflection of wood; mildew and fading; chalking and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks and masonry; drying, shrinking and cracking of caulking and weatherstripping;

d) conditions resulting from condensation on, or expansion or contraction of materials;

e) damages due to ordinary wear and tear, abusive use or lack of proper maintenance; and

f) chips, scratches or mars in tile, woodwork, walls, porcelain, brick, plumbing fixtures, formica and glass.

THE LIMITED WARRANTY IS GIVEN IN LIEU OF ANY AND ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY OR WORKMANSHIP, EACH OF WHICH ARE SEPARATELY HEREBY DISCLAIMED BY DEVELOPER.

DETERMINATION OF PERCENTAGES OF OWNERSHIP IN COMMON ELEMENTS, COMMON SURPLUS AND VOTING

7.01. Ownership and Voting Percentages. A schedule setting forth the percentage of undivided interest of each unit in the common areas is attached hereto, marked Exhibit "C" and by reference made a part hereof. The formula for arriving at the undivided ownership in the common elements, voting rights, and common expense liability is a percentage derived by dividing the approximate interior square footage of a unit by the approximate total interior square footage of all units and rounding the quotient to the nearest one thousandth of a percent. The common surplus shall be a trust fund for the unit owners according to the respective units' ownership in the common elements and shall be applied against the following year's assessment, unless otherwise determined by the Board of Directors of the Association, which shall not in any event use such surplus or any part thereof in any way other than to furnish services, insurance, goods or other items of value to the unit owners.

ENCROACHMENTS

8.01. If any portion of the common elements now encroaches upon any unit, or if any unit now 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 so long as such building stands shall exist. 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 shall stand.

UNITS SUBJECT TO ACT, DECLARATION, BY-LAWS AND RULES AND REGULATIONS

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 and the 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.

9.01. 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. The transfer of an owner's ownership of a unit is not subject to any right of first refusal by the Association.

9.02. 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 contained shall prevent, in a proper case, an independent action by an aggrieved unit owner for such relief.

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 maintain and replace all balconies and balcony railings.

iv) To repair all incidental damaged 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 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 and/or the exterior of the balconies assigned to the exclusive use of the unit owner, and/or the exterior of the balcony area assigned to the exclusive use of the unit owner.

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.

v) To maintain, repair and replace the interior appurtenances of his unit, including but not limited to the floor coverings, wall coverings, window shades and screens, draperies, furniture, furnishing light fixtures, and all appliances 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 nor the Association 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 in writing of the owners of all other units in the building concerned and the approval of the Board of Directors of the Association.

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. After the completion of the improvements included in the common elements which are contemplated by this Declaration, there shall be no further additions to common elements (except by incremental development as elsewhere herein provided) without the prior approval in writing of seventy-five percent (75%) of votes of the unit owners, and the approval in writing of the mortgagees who are the holders of mortgages comprising first liens on the units so approving, provided, however, that any alteration or improvements of common elements which constitute or are contained in the boundaries of units bearing the approval in writing of unit owners entitled to cast fifty-one percent (51%) of the votes in the Association, and the approval in writing of all mortgagees who are the holders of mortgages comprising first liens on the units of such approving unit owners 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 costs 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, such amendment, together with a complete set of plans of the condominium, as so altered, certified "as built" by a licensed or registered engineer or architect.

ASSESSMENTS

The making and collection of assessments against unit owners for common expenses and other charges shall be pursuant to the By-Laws and subject to the following provisions:

11.01. Share of Common Expenses and Other Charges. Each unit owner shall be liable for a share of the common expenses and other charges, such share being determined by the formulas referred to as set out in paragraph 7.01. herein.

11.02. Interest, Application of Payments. Assessments, and installments thereon, paid on or before ten (10) days after the date when due shall not bear interest, but to all sums not paid on or before ten (10) days after the date when due shall be added a $15.00 penalty and interest at the rate of ten percent (10%) per annum after date due until paid. The interest rate herein authorized may be changed by time to time by the Association and published in its Rules and Regulations.

11.03. Liens for Assessments. 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 or Limited Common Expenses shall not be affected by any sale or transfer of a Unit, except as herein provided. A sale or transfer pursuant to a foreclosure of a 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 and Limited Common Expense Assessments based on the periodic budget adopted by the Association pursuant to the ACT which would have become due in the absence of acceleration during the six (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.

11.04. Rental Pending Foreclosure. In consideration of the aforesaid Lien for Payment of Assessments to the Association, and in order to secure the payment to the Association for assessment payments due it by each Unit Owner, with interest, now due or hereafter to become due thereon, and any and all other obligations of Unit Owners set out herein; each Unit Owner shall be deemed to have assigned to the Association all the rents, issues and profits due or to become due from his Unit, together with all leases, all subleases and any extensions, renewals or modifications thereof and agreements affecting the Unit, whether any such leases or agreements are now existing or shall arise in the future.

1. License to Collect Rents. Upon the occurrence of an Event of Default as hereafter defined, the Association is granted the authority to collect the rents and profits assigned hereunder, subject to the powers granted to the Association herein without the institution of any civil action or garnishment against a Unit Owner or Property Manager.

2. Rights of the Association. Upon the occurrence of an Event of Default, the Association shall have the following rights and powers, which the Association may exercise in its sole discretion:

a) The Association may enter upon and take possession of the Unit and demand, collect and receive directly from the tenants, lessees or other occupants, now or at any time hereafter in possession of the Unit of any part thereof, rents then due or to become due, endorse the name of the Unit Owner on all checks, notes or other instruments for the payment of money, deposit the same in bank accounts, give any and all acquittances, or any other instrument in relation thereto in the name of the Unit Owner, institute, prosecute, settle or compromise all summary or legal proceedings for the recovery of such rents, profits, or recover the whole or any part of the premises, and institute, prosecute, settle or compromise all other proceedings for the protection of the Unit or for the recovery of any damages done to the premises. The Association shall also have the power to defend all legal proceedings brought against the Association or against the Unit Owner arising out of the operation of the Unit.

b) The Association shall have the power to lease or rent the Unit, to employ an agent to rent and manage the Unit and to fix the agent's compensation, to make all changes or improvement deemed by the Association necessary or expedient for the leasing or renting of the Unit, to keep and maintain the Unit in a tenable and rentable condition, as well as in a good state of repair, to purchase all equipment or supplies necessary or desirable for the operation or maintenance of the Unit, to pay for all gas, electricity, power, painting, repairs, wages of employees and other items for the maintenance of the Unit.

c) The Association may, but need not, seek the judicial appointment of a receiver who shall have all rights and powers as granted to the Association herein, and all other powers available to a Receiver at law and in equity.

d) With or without taking possession of the Unit, the Association may demand, collect and receive from the Unit Owner's Property Manager, Tenants, Lessees or other occupants, now or at any time hereinafter in possession of the Unit, or any part thereof, rents then due or to become due and apply the same to the indebtedness secured hereby. A copy of this recorded Declaration and a statement of Past Due assessments due the Association, certified by the Treasurer of the Association shall be sufficient notice to a Property Manager that this assignment of rents is valid.

e) The Association shall have the authority to pay the cost of all the matters herein mentioned out of the rents and other revenues received from the Unit. The cost of any such expenditure and of any payment which the Association may make under the provisions of this Assignment, including expenses and charges for attorneys shall be charged to Unit Owner. Income derived from the Unit and collected by The Association shall first be applied to the payment of expenses incurred in collecting said income, second to the expenses of managing and preserving the Unit, and third to the interest accrued and then principal indebtedness secured hereby.

f) Each Unit Owner conditionally assigns, transfers and sets over to the Association all leases or subleases made to the various tenants in the building, whether now existing or hereinafter entered into, and all Unit Owners' rights, title and interest therein. Upon the occurrence of an Event of Default, the Association shall have full power and authority to do and perform all acts or things necessary and requisite to be done in and about the Unit, as fully and to all intents and purposes as each Unit Owner might or could do if present, with full power of substitution and revocation. Each Unit Owner ratifies and confirms all that the Association shall lawfully do or cause to be done by virtue hereof.

3. Liability of The Association. The Association shall in no way be liable for any act done or any act omitted by it under this Article, but shall be liable only to account for all monies that it may receive hereunder, and nothing herein contained shall be construed to prejudice its rights to institute or to prosecute any proceedings to enforce any lien which the Association may have by reason of any default, present or future, under the terms of this Declaration.

4. Malfeasance of Agents. The Association shall in no way be responsible or liable for any failure to account for any rents collected by any agent or collector of the Unit whom it may designate or appoint to collect or manage the Unit which are not received by the Association, nor shall the Association be in any way liable for its failure or refusal to make repairs to the Unit.

5. Maintenance of Records. Each Unit Owner shall maintain rent rolls, statements of expense and income and such other records relating to the Unit as may be required by the Association and shall provide copies of such records of the Association upon its request.

6. Payments and Release. In the Event of Default, each Unit Owner directs any and each property manager, tenant, lessee or occupant to pay rents as they become due to the Association upon demand for payment therefor by the Association, and upon payment of rents directly to the Association, each Unit Owner hereby releases each property manager, tenant, lessee or occupant from any claim for rents paid to the Association. The Association is authorized to enter into an indemnity agreement with property managers in order to secure their cooperation in collecting rents due the Association.

7. Events of Default. A 60 day delinquency in the payment of monthly assessments or a 60 day delinquency in the payment of any special assessment shall be considered an Event of Default. Upon such default, all amounts, including the entire yearly assessment based on the annual budget, due to The Association shall at its option be accelerated and immediately become due and payable, and the Association may exercise any of the remedies available to it, as set forth herein.

11.05. No Exemption from Assessments. No owner of a unit may exempt himself from liability for contribution toward the common expenses and other charges by waiver of the use or enjoyment of any of the common elements or by the abandonment of his unit, or by any other means; except that any holder of a mortgage which comes into possession of the unit pursuant to the remedies provided in the mortgage, foreclosure of mortgage, or deed in lieu of foreclosure shall take the property free of any claims for unpaid assessments against the mortgaged unit which accrue prior to the time such holder comes into possession (except for claims for a pro rata share of such assessments resulting from a pro rata allocation of such assessment to all units including the mortgaged unit) and shall not be liable for contribution toward common expenses and other charges until the subject unit shall be been leased or sold.

11.06. Statement of Unpaid Assessments. The Association shall promptly provide any unit owner and/or the holder of a mortgage comprising a first lien on any unit or the grantee in any voluntary conveyance of a unit so requesting the same in writing with a written statement of all unpaid assessments due from the unit owner.

11.07. Rights of First Lien Holders and Guarantors. Notwithstanding any provision to the contrary in this declaration or the By-laws of the Association any holder of a first mortgage lien on a Unit or any party which is a holder, insurer, or guarantor of such a lien shall, upon giving notice to the Secretary of the Association that such party wishes to be notified, be given timely written notice of:

a. Any condemnation or casualty loss that affects either a material portion of the condominium project of the unit which is subject to the mortgage;

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

c. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association;

d. Any proposed action that requires the consent of a specified percentage of mortgagees. In such cases, however, a mortgagee shall be considered to have given implied consent when it fails to submit a response to any written proposal for a proposed action within 60 days after it receives proper notice of the proposal as evidenced by delivery of such notice by certified or registered mail, with a "return receipt" returned by the postal service indicating proper delivery.

ASSOCIATION

The operation and administration of condominium shall be by the Association of the unit owners, pursuant to the provision of the Alabama Uniform Condominium Act, which said Association shall be incorporated by the 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. It shall have authority and the power to maintain a class action and to settle a cause of action on behalf of unit owners of the condominium of the condominium with reference to the common elements, the roof and structural components of a building or other improvements, and mechanical, electrical and plumbing elements serving in 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. The Association shall be further organized and shall fulfill its functions pursuant to the following provisions.

12.01. Name. The name of the Association shall be PHOENIX GULF TOWERS OWNERS ASSOCIATION, INC.

12.02. Powers. The powers and duties of the Association shall include those set forth in the Alabama Uniform Condominium Act, and attached hereto as Exhibit "D" and made a part hereof, and those set forth in its Articles of Incorporation, and shall have the power to purchase a unit of the condominium. The powers of the Association shall included but not be limited to the maintenance, management and operation of the condominium property.

12.03. Members:

a) Qualification. The members of the Association shall consist of all of the record owners of units.

b) Change of Membership. Change of membership in the Association shall be established by the recording in the Public Records of Baldwin County, Alabama, of a deed or other instrument establishing a record title to a unit in the condominium, and the delivery to the Association of a certified copy of such instrument, the owner designated by such instrument thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated.

c) Voting Rights. Each unit shall be entitled to one (1) vote, which vote shall be the percentage assigned to the unit as stated in Exhibit "C" attached hereto. The vote for a unit shall be cast by the owner thereof or the owner of possessory interest therein, or in the case of a corporate owner, by the officer or employee thereof designated as the voting representative of such unit, as hereinafter provided, 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 rights for that unit.

d) 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, the officer or employee thereof 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 Association. If such a certificate is not on file with the Secretary of the Association for a unit owned by more than one (1) person or by a corporation, the membership or vote of the unit concerned shall not be considered in determining the requirement for a quorum nor for any purpose requiring the approval of the person entitled to cast the vote for the unit. 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.

e) Approval or Disapproval by Unit Owners. Whenever the approval or disapproval of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such approval or disapproval shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of all record owners is specifically required by this Declaration.

f) 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.

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

12.05. 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 note he is a Director or Officer of the Association at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty or 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 for 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.

12.06. 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 the injury or damage caused by the elements, or other owners or persons.

12.07. By-Laws. The By-Laws of the Association shall be in the form attached hereto as Exhibit "D."

INSURANCE

Insurance (other than title insurance) which shall be carried upon the condominium property and the property of the unit owners shall be governed by the following provisions:

13.01. Authority to Purchase. All insurance policies upon the condominium property shall be purchased by the Association in the name of the Association as trustee for each of the unit owners in the percentages of ownership set forth in the Declaration, and their mortgagees as their interest may appear, and provision shall be made for the issuance of certificates of mortgage endorsements to the mortgagees of unit owners. Such policies shall be deposited with the Association. A unit owner may, at his own expense, additionally insure his own unit for his own benefit, provided such additional insurance upon his unit be placed with the Association's insurance agent; and provided, further than any diminution in insurance proceeds to the Association resulting from the existence of such other insurance shall be chargeable to the owner who acquired such other insurance; who shall be liable to the Association to the extent of any such diminution and/or loss of proceeds. A unit owner may obtain at his own expense insurance coverage upon his own personal property, and such other coverage, including person liability, as he may desire.

13.02. Coverage:

a) Casualty. 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. All buildings, including the Unit themselves, and improvements upon the land and all personal property comprising the condominium property shall be insured with a single insurance agent in an amount sufficient to avoid application of a co-insurance clause, but not without deduction for depreciation, as determined annually by the Board of Directors of the Association. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild.

i) Loss or Damage by Fire. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

ii) Such Other Risks. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location ad use as the buildings on the land, including but not limited to water damage, vandalism, and malicious mischief, and flood insurance.

b) Public Liability. Public liability in such amounts and with such coverage as shall be required by the Board of Directors of the Association.

c) Workmen's Compensation Policy. Workmen's compensation policy if needed to meet the requirements of the law.

d) Other Insurance. The Board may purchase and maintain in force debris removal insurance, fidelity bonds, and other insurance an/or bonds as it may deem necessary. The Board is authorized to provide coverage for payment of maintenance charges on behalf of an owner whose unit is rendered uninhabitable by a peril insured against, and to absolve such an owner of the obligation to pay maintenance charges to the extent that the same are offset by proceeds from such coverage.

e) Revision. Insurance coverages will be analyzed by the Board or its representative, at least every five (5) years from the date hereof, and the insurance program revised accordingly.

13.03. Provisions. Every such policy of insurance shall in substance and effect:

a) Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any apparent owner.

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

c) Provide that such policy may not be cancelled (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 fee owner, 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 of lessee of any unit; and

e) Contain a standard mortgage clause which 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 therein; 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 provision invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

13.04. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

13.05. 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 the interests may appear, and shall provide that all proceeds covering casualty losses shall be paid to the Association, as Trustee for each of the unit owners in the percentages established by the Declaration, which said Association, for the purpose of these provisions, is herein referred to as the Insurance Trustee. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the unit owners and their mortgagees, as follows:

a) Common Areas and Facilities. Proceeds on account of damage to common areas and facilities -- an undivided share for each unit owner, such share being the same as his undivided share in the common areas and facilities appurtenant to his unit.

b) Units. Proceeds on account of units shall be held for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Association.

13.06. Distribution of Proceeds. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be used to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees, being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by him.

13.07. Association as Agent. The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

RECONSTRUCTION OR REPAIR AFTER CASUALTY

In the event of the damage or destruction of all or part of the property, then, unless it be determined by a vote of one hundred percent (100%) of the owners and one hundred percent (100%) of all record owners of liens on the units not to repair or reconstruct such damaged or destroyed property, the following provisions shall apply:

a) Reconstruction or Repair. If any part of the condominium property shall be damaged by casualty, it shall be reconstructed or repaired.

b) Building.

i) Partial Destruction. If the damaged improvement is part of a building, the damaged property shall be reconstructed or repaired.

ii) Total Destruction. If a building is so damaged that the same is untenantable, the building should be reconstructed.

c) Plans and Specifications. Any such reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, or as the building was last constructed, or according to plans approved by the Board of Directors of the Association, which approval shall not be unreasonably withheld.

14.02. Responsibility. If the damage is only to those parts of a unit for which the responsibility of maintenance and repair is that of a unit owner, then the unit owner shall be responsible for the reconstruction and repair after casualty. In all other instances, the responsibility for reconstruction and repair after casualty shall be that of the Association.

14.03. Estimates of Costs. Immediately after a casualty causing damage to 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 so as to place the damaged property in condition as good as that before the casualty.

14.04. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, assessments shall be made against the unit owners who own the damaged property, and against all unit owners in the case of damage to common areas and facilities, in sufficient amounts to provide funds to pay the estimated costs. If at any time during the reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the unit owners who own the damaged property, and against all unit owners in the case of damage to common areas and facilities, in sufficient amounts to provide funds for the payment of such costs. Such assessment against unit owners from reconstruction and/or repair of damages to units shall be in proportion to the cost of reconstruction and/or repair of damage to common areas and facilities shall be in proportion to the owner's share in the common areas and facilities.

14.05. 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 Insurance Trustee and funds collected by the Association from assessment against unit owners, shall be disbursed in payment of such costs in the following manner:

a) Association. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Association from collections of assessments against the unit owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

i) Unit Owner. The portion of insurance proceeds representing damage for which responsibility of reconstruction and repair lies with the unit owner shall be paid by the Insurance Trustee to the unit owner, or if there is a mortgagee endorsement, then to the unit owner and the mortgagee jointly.

ii) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than the total of the annual assessments for recurring expense to be made during the year in which the casualty occurs, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided for the reconstruction and repair of major damage.

iii) Association - Major Damage. If the amount of estimated costs of reconstruction and repair which is the responsibility of the Association is more than the total of the annual assessments for recurring expenses to be made during the year in which the casualty occurs, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Alabama, and employed by the Association to supervise the work.

iv) Surplus. It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in the construction fund after payment of all costs of reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere herein provided.

USE RESTRICTIONS

The use of the property of the condominium shall be in accordance with the following provisions:

15.01. Single Family Residences. The private units described in Section 6.02 (c) through (f) shall be used only for single family residences. Other units are for the furnishing of services and to assist in operating the facilities herein provided for the enjoyment of such residences. Each of the residential units shall be occupied only by a single family, its guests, lessees, and invitees as a residence.

15.02. Nuisances. No nuisances shall be allowed upon the condominium property nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. 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.

15.03. Lawful Use. No immoral, improper, 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 which require maintenance,

modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

15.04. Leasing. Entire Units may be leased by the Unit Owners; provided, however, that such lease and the rights of any tenant thereunder are hereby made expressly subject to the 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. No individual rooms may be rented. Anything to the contrary notwithstanding, the Developer, and its assigns, retain the right to maintain sales offices, management offices, leasing and operations offices and models on the Condominium property as provided in Paragraph 18.06.

Such lease or rental agreement shall be in writing. Each Unit Owner who leases his Unit empowers and authorizes the Association 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, the Declaration, the By-Laws, Rules and Regulations, or any contract for lease. The Association, the Board of Directors or its managing agent will not be liable to any Unit owner or sublessor or other party for any loss of rents or other damages resulting from the reasonable exercise of these rights.

15.05. Rules and Regulations. Reasonable Rules and Regulations concerning the use of the condominium property may be made by the Developer and amended from time to time by the Board of Directors of the Association; provided, however, that all such amendments thereto shall be approved by not less than a majority of the votes of the Association before such shall become effective. Members not present at meetings considering such Rules and Regulations or amendments thereto may express their approval or disapproval in writing. Copies of such Rules and Regulations or amendments thereto shall be furnished by the Association to all unit owners and residents of the condominium upon request.

COMPLIANCE AND DEFAULT

Each unit owner shall be governed by and shall comply with the terms of the condominium documents and regulations they may be amended from time to time. A default shall entitle the Association or other unit owners to the following relief in addition to the remedies provided by the Condominium Ownership Act:

16.01. Negligence. A unit owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, negligence or carelessness or by that of any member of his family or his or their guests, employees, agents or lessees, 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 insurance rates occasioned by use, misuse, occupancy or abandonment of a unit or its appurtenances.

16.02. 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 proceeding and such reasonable attorney fees as may be awarded by the Court.

16.03. No Waiver of Rights. The failure of the Association or any unit owner to enforce any covenant, restriction or other provision of the Condominium Ownership Act, this Declaration, the By-Laws or the Rules and Regulations shall not constitute a waiver of the rights to do so thereafter.

COVENANT AGAINST PARTITION

17.01. There shall be no judicial or other partition of the project or any part thereof, nor shall Developer or any person acquiring any interest in the project or any part thereof seek any such partition unless the project has been removed from the provisions of the Condominium Ownership Act, as in said Act provided.

AMENDMENT

This Declaration of Condominium and the By-Laws of PHOENIX GULF TOWERS Owners Association, Inc., may be amended in the following manner:

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

18.02. Resolution. 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 ten percent (10%) 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 (1) 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 not less than two-thirds (2/3) of the votes of the Association; provided, however, that any such amendment materially adverse to the interest to mortgagees shall have been approved in writing (subject to Section 11.07d) by mortgagees of at least 51% of the voting rights of units that are subject to mortgages; and provided, further, that every amendment that alters the percentage of undivided interest of an owner in the common areas and facilities or that alters or impairs any common area and facility or any easement or hereditament shall require the unanimous approval of all such owners and all such mortgagees.

18.03. Recording. A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

18.04. Agreement. In the alternative, an amendment may be made by an agreement signed and acknowledged by all of the record owners, including first mortgagees, of units in the condominium in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

18.05. Proviso. Provided, however, that no amendment shall discriminate against any unit owner nor against any unit or class or group of units, nor change any condominium unit nor increase the owner's liability for common expenses unless the record owner thereof and all record owners of liens thereon shall join in the execution of the amendment.

18.06. Provisions Pertaining to the Developer.

Subject to the provisions herein, until the earliest of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Developer; (ii) two (2) years after the Developer, its successors or assigns, have ceased to offer Units for sale in the ordinary course of business; or (iii) two (2) years after any Development Right to add new units was last exercised, the By-Laws and rules adopted by the Developer shall govern and the Developer shall have the exclusive right to appoint, remove, and designate the officers and members of the Board of Directors (which need not be Unit Owners), and neither the Unit Owners nor the Association nor the use of the Condominium Property by Unit Occupants shall interfere with the completion of the contemplated improvements and the sale of the Units. The Developer may voluntarily surrender the right to appoint and remove officers and members of the Board; but, in that event, the Developer may require, for the duration of the period of Developer control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Developer, be approved by the Developer before they become effective. Provided, however, not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Owners other than the Developer, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than the Developer. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than the Developer, not less than thirty-three and one-third percent (33⅓%) of the members of the Board must be elected by Unit Owners other than the Developer. Except as provided for in the ACT, not later than the termination of any period of Developer control, the Unit Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Unit Owners other than the Developer.

The Developer may make such use of the unsold Units and of the common areas and facilities as may facilitate such completion and sale, including but not limited to showing of the Property and the display of signs. The Developer may maintain sales offices, management offices, leasing and operations offices, and models in any Unit of the Condominium or on Common Elements in the Condominium without restriction as to the number, size, or location of said sales offices, management offices, leasing and operations offices, and models. The Developer shall be permitted to relocate said sales offices, management offices, leasing and operations offices, and models from one Unit location to another or from one area of the Common Elements to another area of the Common Elements in the Condominium. The Developer may maintain signs on the Common Elements advertising the Condominium. The rights of the Developer as provided for in this paragraph as to the use of residential units and the common elements shall cease and terminate ten (10) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama.

PROPORTIONATE CHANGES IN COMMON EXPENSES, COMMON SURPLUS AND VOTING RIGHTS

19.01. In the event of any one or more of the units are not rebuilt by reason of the loss of lands as a result of destruction, condemnation or otherwise, and therefore the number of units is reduced, or in the event the number of units is reduced because of its lien as heretofore provided, or an entity has acquired title to a unit as a result of owning a mortgage upon the unit concerned, whether by deed from the mortgagor or through foreclosure proceedings, then the proportionate share of the common expenses and of the common surplus and the voting rights of each unit shall be increased by adding to each remaining unit their proportionate percentages of ownership out of the percentages of ownership of the units so reduced.

TERMINATION

20.01. The condominium may be terminated in the manner provided by the Alabama Uniform Condominium Act; provided, however, that in the event of termination, each unit shall be subject to the payment of a share of the common expenses as heretofore defined, subject to increase as provided in Paragraph 21 hereof.

EMINENT DOMAIN

21.01. Partial Taking Without Direct Effect on Units. If part of the condominium shall be taken or condemned by any authority having the power of eminent domain in such manner that no unit is taken, compensation and damages for and on account of the taking of the common elements, exclusive of compensation for consequential damages to affected units shall be payable to the Association as Trustee for all unit owners and mortgagees of record according to the loss or damages to their respective interests in the common elements. The Association, acting through its Board of Directors, shall have the right to act on behalf of the unit owners with respect to the taking and compensation affecting the common elements, without limitation of the right of the unit owners to represent their own interests. Such proceeds shall be paid to the Association and shall be used promptly to the extent necessary for restoring or replacing improvements so taken on the remaining property in a substantial compliance with the original plans and elevations of the improvements as soon as possible and so as to restore the general value of the condominium. In the event such restoration or reconstruction is impossible or impractical, or in the event there is an award in excess of the amount necessary to so substantially restore or reconstruct the common elements, the amount of such award or the excess, as the case may be, shall be distributed by the Association to the unit owners in proportion to their share of undivided interest in the common elements. Nothing herein shall be deemed to prevent unit owners whose units are affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their behalf for damages relating to loss of value of the affected units, or personal improvements therein, exclusive of damages related to the taking of common elements. In the event the condemnation award does not allocate damages to specific units, but includes an award for reduction in value of the units without such allocation, the award shall be distributed to the affected unit owners and mortgagees of record in proportion to each unit owner's undivided interest in the common elements.

21.02. Partial or Total Taking Directly Affecting Units. If part or all of the condominium shall be taken or condemned by any authority having the power of eminent domain in such manner that any unit or part thereof is taken, the Association shall have the right to act on behalf of the unit owners with respect to common areas as in subsection .1. of this Paragraph 21, and the proceeds shall be used or distributed as outlined therein. The Association, acting through its Board of Directors, shall have the right to act on behalf of the unit owners affected with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the taken area, without limitation on the right of the unit owners to represent their own interests. The awards so made shall be used by the Association first to restore the units and improvements on the remaining common elements in the same manner as provided for restoration or reconstruction under Paragraph 14 of this Declaration, to the extent possible attempting to rebuild buildings containing new units of the same number, size and basic plan as the units taken, and with any excess award distributed as provided in subsection .1. of this Paragraph 21. In the event that the Board of Directors determines that such a taking so removed land and buildings containing units that they cannot effectively restore or replace substantially in compliance with the building plans, and unless seventy-five percent (75%) of the units vote to accept an alternative plan, the award shall be distributed as provided in subsection .01. of this Paragraph 21.

21.03. Notice to Mortgagees. The Board of Directors, immediately upon having knowledge of the institution or threat of institution of any proceedings or other action with respect to the taking of condominium units, the common elements or any portion of any condominium unit or common element in condemnation, eminent domain or other proceeding or actions involving any unit of government or other entity having the power of eminent domain, shall notify mortgagees holding liens of record on any of the units. Any such mortgagee may, at its option, and if permitted by law, participate in any such proceedings or actions or, in the event, may at its option, participate in negotiations in connection therewith, but shall have no obligation to do so.

U.S. FISH AND WILDLIFE PERMIT

The owners and the Association of PHOENIX GULF TOWERS, a condominium, will each jointly share in filling the requirements of the U.S. Fish and Wildlife Permit, a copy of which is attached hereto and made a part hereof as Exhibit "E."

22.01. Terms of Permit are Controlling. Every effort has been made to conform the other provisions of this Declaration and the other condominium to the terms and provisions of the incidental take permit; however, in the event of conflict, the terms and provisions of the incidental take permit take precedence over and control any terms and conditions of this declaration and all other condominium documents.

22.02. Habitat Conservation and Beach Enhancement Covenants. The Habitat Conservation and Beach Enhancement Covenants are attached hereto and made a part hereof as Exhibit "E." They are binding on the Association and each Unit Owner.

TABLE AND HEADINGS

23. The table of contents and headings used in this Declaration have been inserted for convenience and do not constitute matter to be construed in interpretation.

SEVERABILITY

24. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phase or work, or other provision of this Declaration of Condominium and the By-Laws of the Association shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, the said PHOENIX GULF TOWERS, LLC, an Alabama limited liability company, has caused **THESE PRESENTS** to be executed this day and year as first above written.

PHOENIX GULF TOWERS, LLC
An Alabama limited liability company:

By: Thomas E. Brett
THOMAS E. BRETT
Its: Managing Member

By: William T. Robinson Jr.
WILLIAM T. ROBINSON, JR.
Its: Managing Member

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, James R Owen, Jr., the undersigned authority, a Notary Public in and for said County in said State, hereby certify that THOMAS E. BRETT, whose name as Managing Member of PHOENIX GULF TOWERS, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who are known to me, acknowledged before me on this day, that being informed of the contents of said conveyance, he, as such managing member and with full authority, has executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 29th day of June, 2023.

Notary Public
My Commission Expires:

JAMES R OWEN JR
EXPIRES
NOTARY
PUBLIC
MARCH 18, 2024
ALABAMA STATE AT LARGE

STATE OF ALABAMA)

COUNTY OF Baldwin)

I, James R Owen Jr, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that WILLIAM T. ROBINSON, JR., whose name as Managing Member of PHOENIX GULF TOWERS, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who are known to me, acknowledged before me on this day, that being informed of the contents of said conveyance, he, as such managing member and with full authority, has executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 29th day of June, 2023.

Notary Public
My Commission Expires:

JAMES R OWEN JR
EXPIRES
NOTARY
PUBLIC
MARCH 18, 2024
ALABAMA STATE AT LARGE

THIS INSTRUMENT PREPARED BY:

Jule R. Herbert Jr.
Herbert Law Firm, LLC
Attorney at Law
P.O. Drawer 3889
Gulf Shores, AL 36547
(251) 968-4764

LEGAL DESCRIPTION OF PROPERTY

Lot 1, Phoenix Gulf Towers Subdivision, as recorded on Slide 2685-C and as revised on slide 2881-A in the office of the Judge of Probate, Baldwin County, Alabama

THE ABOVE PROPERTY IS SUBJECT TO THE FOLLOWING:

1. Subdivision regulations by the City of Orange Beach, Alabama as recorded at Instrument #1028536 and any amendments thereto. City of Orange Beach Community Preservation and Growth Management Plan filed August 7, 2007 at Instrument #1066859, and all amendments thereto.

2. Rights of other parties, the United States of America or State of Alabama in and to the shore, littoral or riparian rights to the property described herein, if any, lying adjacent to Gulf of Mexico.

3. Rights, if any, of the public to use as a public beach or recreation area, any part of the property described herein lying between the body of water abutting said land and the natural line of vegetation, dunes, extreme high water line or the apparent boundary line separating the publicly used area from the upland private area as shown on survey by David E. Diehl (Ala. Reg. No. 26014).

4. The terms, conditions, limitation, restrictions, reservations and easements as set forth in Easement for Placement, Construction, Maintenance and Use of sand and associated sand stabilization structures, vegetation, irrigation systems, and access structures as set forth in instrument recorded at Instrument # 833957 and Instrument #838194 and Instrument #833963 and as shown on Slides 2015-E through 2016-E.

5. Easement granted Baldwin County Electric Membership Corporation by instrument recorded in Real Property Book 794 page 640.

6. Reservation of all oil, gas and other minerals, and all rights in connection therewith as contained in deed from Windemere L.L.C., an Alabama Limited Liability Company, to Chiang Kwok Choon, dated January 13, 1999 and recorded at Instrument # 474610.

7. Any adverse claim arising by reason of rules or regulations being imposed upon the property described herein by any environmental agency of the State of Alabama or of the United States of America.

8. Easement in favor of Rural Electric Authority across the Northern margin as referenced in Deed Book 113, page 191 and Deed Book 152, page 331.

9. Restrictive covenants relating to the use and occupancy of the property described herein as contained in deed from Benjamin W. Martin, et ux to Cloyd A. Taylor, Jr., et ux dated August 3, 1956 and recorded in Deed Book 247 page 428, and all amendments thereto.

10. Restrictive covenants relating to the use and occupancy of the property described herein, as set forth in deed from Carl T. Martin, et ux, to Emanuel H. Bixler, Jr., et ux, dated June 20, 1946 and recorded in Deed Book 111, page 355, and all amendments thereto.

11. Right of way granted by E. H. Bixler, Jr. to the State of Alabama by instrument recorded in Deed Book 141, page 63 as shown on survey by David E. Diehl (Ala. Reg. No. 26014).

12. Restrictive covenants relating to the use and occupancy of the property described herein, as set forth in deed from Benjamin W. Martin and Virginia P. Martin to Eladio Rubira, et ux, dated May 2, 1958 and recorded in Deed Book 294, page 489, and all amendments thereto.

13. Reservation of oil, gas and other minerals, and all rights in connection therewith as contained in deed from Music City Associates to Chiang Kwok Choon and Liao Peng Nian dated November 29, 1991 and recorded in Real Property Book 442 page 1654.

14. Minimum setback lines and utility easements as shown on plat of Windemere Subdivision recorded at Slide 1765-A and as shown on survey by David E. Diehl (Ala. Reg. No. 26014).

15. Easement granted Smartresort Co, LLC at Instrument #1044112 and assigned to Capitol Infastructure, LLC at Instrument #1049335 and at Instrument #1049336.

16. Encroachment of building over the 30 foot set back line as shown on survey by David E. Diehl (Ala. Reg. No. 26014).

17. Coastal construction line (aka ADEM Line) as shown on survey by David E. Diehl (Ala. Reg. No. 26014).

18. The land of the State of Alabama (Code of Alabama-Title 9, Chapter 15 (9-15-55) as shown on survey by David E. Diehl (Ala. Reg. No. 26014).

EXHIBIT "B"
to
DECLARATION OF CONDOMINIUM OF
PHASE I of PHOENIX GULF TOWERS, A CONDOMINIUM

CERTIFICATION

I, the undersigned, Forrest Daniell, a Registered Architect in the Sate of Alabama, Registration Number 4696, pursuant to Section 35-8A-209, *Code of Alabama* (1975) (as amended), hereby certify that the PLANS labeled Exhibit "B", recorded in Apartment Book 29, Pages 44-70, and as Instrument Number 2071787, in the Office of the Judge of Probate, Baldwin County, Alabama, and made a part of the Declaration of Condominium of Phoenix Gulf Towers, a condominium, show the layout, location, Unit numbers and dimensions of the Units and the improvements designated as Phase I. I further certify that the improvements shown on the PLANS are substantially complete. I further certify that to the best of my knowledge and belief, the PLANS contain all of the information required by *Code of Alabama* (1975), §35-8A-201(c) and §35-8A-209, and that all structural components and mechanical systems of all buildings containing or comprising of any units of Phoenix Gulf Towers, a condominium, as described in the Declaration of Condominium, are substantially completed in accordance with the plans.

Forrest Daniell
Registered Architect License Number: 4696

Date: 6/28/23

Subscribed and sworn to before me, this 28 day of June, 2023.

MUFADDAL MANSOOR
Notary Public, State of Texas
Comm. Expires 01-13-2026
Notary ID 133532220

NOTARY PUBLIC
STATE OF TEXAS

Notary Public
My Commission Expires: 01-13-2026

Part of Exhibit "B" to Declaration of Condominium of Phase I of Phoenix Gulf Towers, A Condominium

ELEVATIONS ON PHASE 1 OF PHOENIX GULF TOWERS

LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.
GROUND FLOOR	013	17.22	33.62
2ND FLOOR	000	32.47	42.47
	203	32.47	40.47
	205	32.47	43.47
	206	32.47	43.37
	207	32.47	42.47
	217	32.47	46.87
	Storage	32.47	37.07-40.37
3RD FLOOR	3AR1	47.72	57.72
	3C2	47.72	57.72
	3B3	47.72	57.72
	3A4	47.72	57.72
	013	47.72	55.72
	306	47.72	55.72
4TH FLOOR	4AR1	58.47	68.37
	4C2	58.47	68.37
	4B3	58.47	68.37
	4A4	58.47	68.37
	013	58.47	66.47
	306	58.47	66.47
5TH FLOOR	5AR1	69.17	79.07
	5C2	69.17	79.07
	5B3	69.17	79.07
	5A4	69.17	79.07
	013	69.17	77.17
	306	69.17	77.17
6TH FLOOR	6AR1	79.85	89.75
	6C2	79.85	89.75
	6B3	79.85	89.75
	6A4	79.85	89.75
	013	79.85	87.85
	306	79.85	87.85
7TH FLOOR	7AR1	90.53	100.43
	7C2	90.53	100.43
	7B3	90.53	100.43
	7A4	90.53	100.43
	013	90.53	98.53
	306	90.53	98.53

LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.
8TH FLOOR	8AR1	101.20	111.10
	8C2	101.20	111.10
	8B3	101.20	111.10
	8A4	101.20	111.10
	013	101.20	109.20
	306	101.20	109.20
9TH FLOOR	9AR1	111.83	121.73
	9C2	111.83	121.73
	9B3	111.83	121.73
	9A4	111.83	121.73
	013	111.83	119.83
	306	111.83	119.83
10TH FLOOR	10AR1	122.54	132.44
	10C2	122.54	132.44
	10B3	122.54	132.44
	10A4	122.54	132.44
	013	122.54	130.54
	306	122.54	130.54
11TH FLOOR	11AR1	133.19	143.09
	11C2	133.19	143.09
	11B3	133.19	143.09
	11A4	133.19	143.09
	013	133.19	141.19
	306	133.19	141.19
12TH FLOOR	12AR1	143.87	153.77
	12C2	143.87	153.77
	12B3	143.87	153.77
	12A4	143.87	153.77
	013	143.87	151.87
	306	143.87	151.87
14TH FLOOR	14AR1	154.54	164.44
	14C2	154.54	164.44
	14B3	154.54	164.44
	14A4	154.54	164.44
	013	154.54	162.54
	306	154.54	162.54

LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.
15TH FLOOR	15AR1	165.14	175.04
	15C2	165.14	175.04
	15B3	165.14	175.04
	15A4	165.14	175.04
	013	165.14	173.14
	306	165.14	173.14
16TH FLOOR	16AR1	175.81	185.71
	16C2	175.81	185.71
	16B3	175.81	185.71
	16A4	175.81	185.71
	013	175.81	183.81
	306	175.81	183.81
17TH FLOOR	17AR1	186.52	196.42
	17C2	186.52	196.42
	17B3	186.52	196.42
	17A4	186.52	196.42
	013	186.52	194.52
	306	186.52	194.52
18TH FLOOR	18AR1	197.16	207.06
	18C2	197.16	207.06
	18B3	197.16	207.06
	18A4	197.16	207.06
	013	197.16	205.16
	306	197.16	205.16
19TH FLOOR	19AR1	207.87	217.77
	19C2	207.87	217.77
	19B3	207.87	217.77
	19A4	207.87	217.77
	013	207.87	215.87
	306	207.87	215.87
20TH FLOOR	20AR1	218.58	228.48
	20C2	218.58	228.48
	20B3	218.58	228.48
	20A4	218.58	228.48
	013	218.58	226.58
	306	218.58	226.58

Part of Exhibit "B"

ELEVATIONS ON PHASE 1 OF PHOENIX GULF TOWERS

LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.	LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.	LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.
21ST FLOOR	21AR1	229.28	239.18	27TH FLOOR	27AR1	293.49	303.39				
	21C2	229.28	239.18		27C2	293.49	303.39				
	21B3	229.28	239.18		27B3	293.49	303.39				
	21A4	229.28	239.18		27A4	293.49	303.39				
	013	229.28	237.28		013	293.49	301.49				
	306	229.28	237.28		306	293.49	301.49				
22ND FLOOR	22AR1	240.02	249.92								
	22C2	240.02	249.92								
	22B3	240.02	249.92								
	22A4	240.02	249.92								
	013	240.02	248.02								
	306	240.02	248.02								
23RD FLOOR	23AR1	250.68	260.58								
	23C2	250.68	260.58								
	23B3	250.68	260.58								
	23A4	250.68	260.58								
	013	250.68	258.68								
	306	250.68	258.68								
24TH FLOOR	24AR1	261.38	271.28								
	24C2	261.38	271.28								
	24B3	261.38	271.28								
	24A4	261.38	271.28								
	013	261.38	269.38								
	306	261.38	269.38								
25TH FLOOR	25AR1	272.08	281.98								
	25C2	272.08	281.98								
	25B3	272.08	281.98								
	25A4	272.08	281.98								
	013	272.08	280.08								
	306	272.08	280.08								
26TH FLOOR	26AR1	282.77	292.67								
	26C2	282.77	292.67								
	26B3	282.77	292.67								
	26A4	282.77	292.67								
	013	282.77	290.77								
	306	282.77	290.77								

I, WILLIAM G. LUKER, A REGISTERED LAND SURVEYOR IN THE STATE OF ALABAMA, HEREBY CERTIFY THAT THE ABOVE ELEVATIONS FOR THE UNITS IN PHASE 1 OF PHOENIX GULF TOWERS TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF ARE TRUE AND CORRECT.

William G. Luker

ALABAMA REGISTRATION NO. 14653

June 27, 2023

EXHIBIT "B"

to

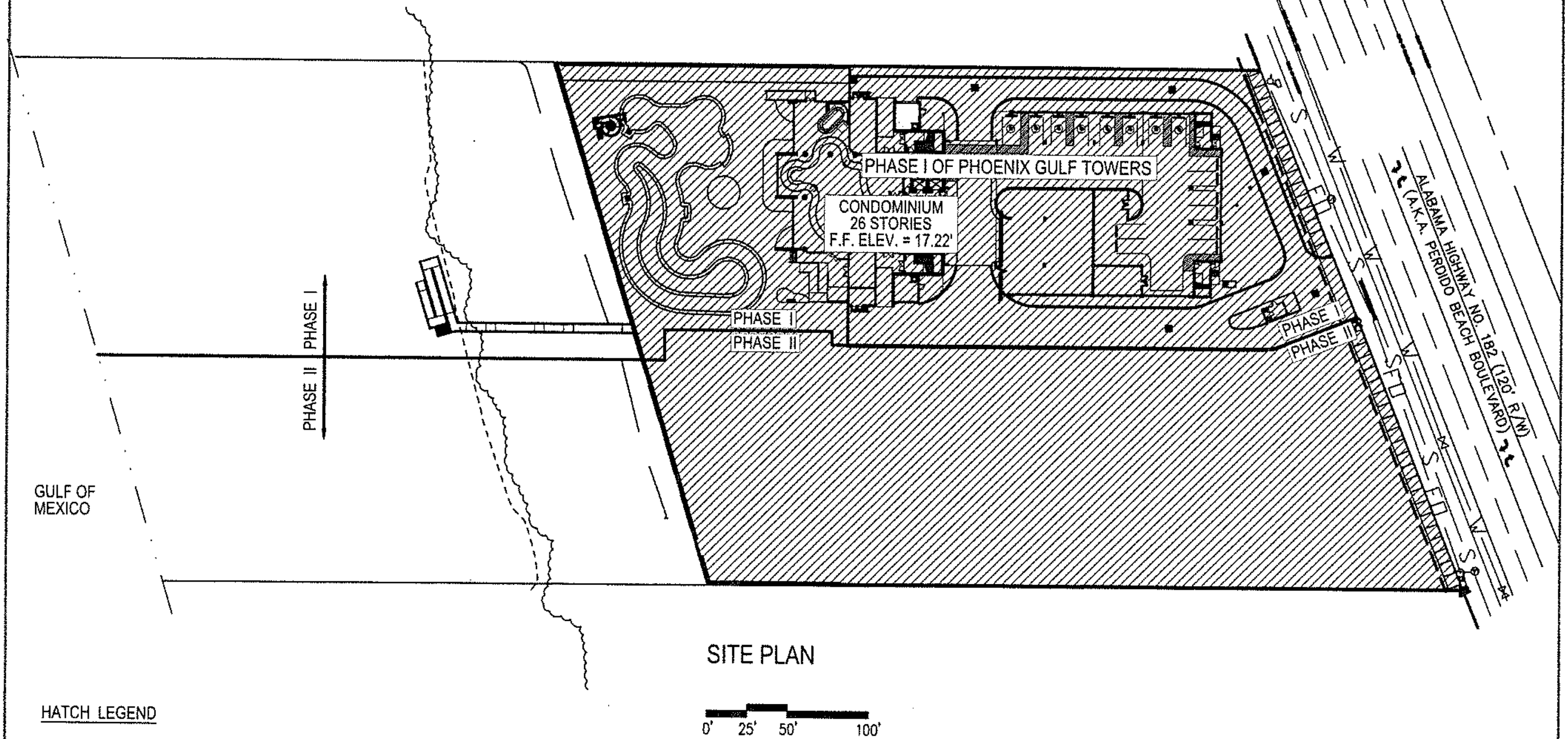
DECLARATION OF CONDOMINIUM OF PHASE I of PHOENIX GULF TOWERS, A CONDOMINIUM

For Plats and Plans, see Instrument 207787 Apt Book 29 pages 44-70

For Elevations see Exhibit B, Pages 1 to 2.

EXHIBIT "B"

"Plans"



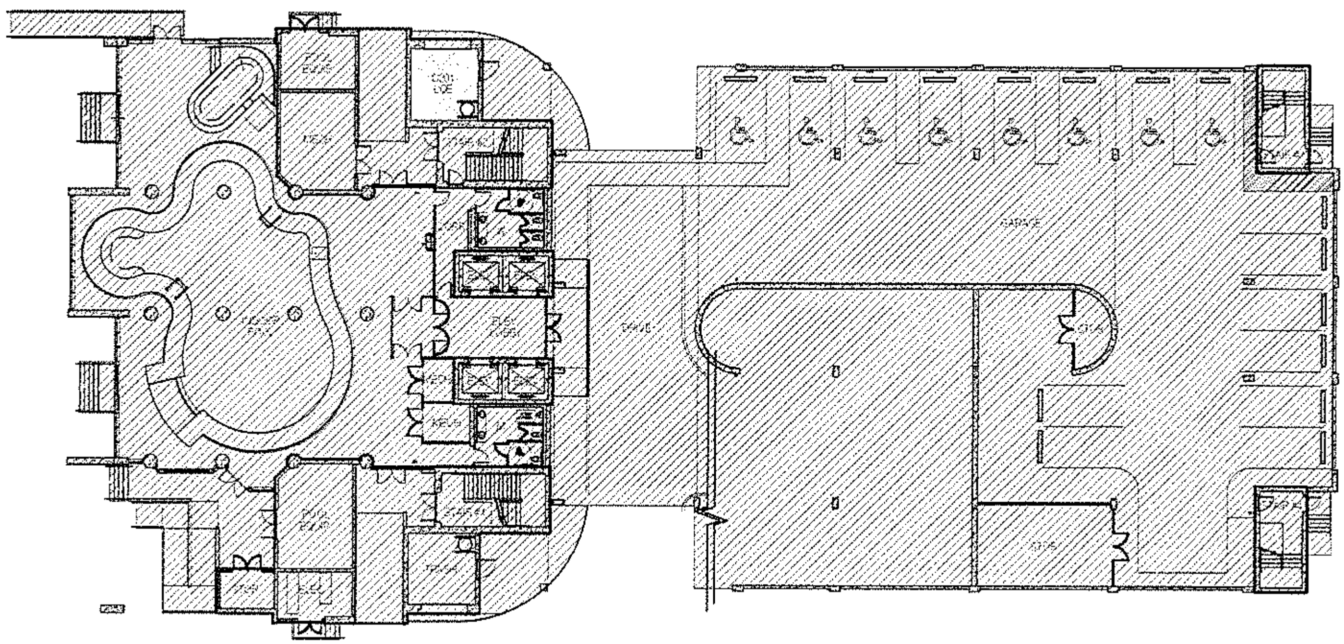
SITE PLAN

HATCH LEGEND

PRIVATE ELEMENT

LIMITED COMMON ELEMENT (LCE)

COMMON ELEMENT



FLOOR PLAN - LEVEL 1

0' 5' 10' 20'

HATCH LEGEND

PRIVATE ELEMENT

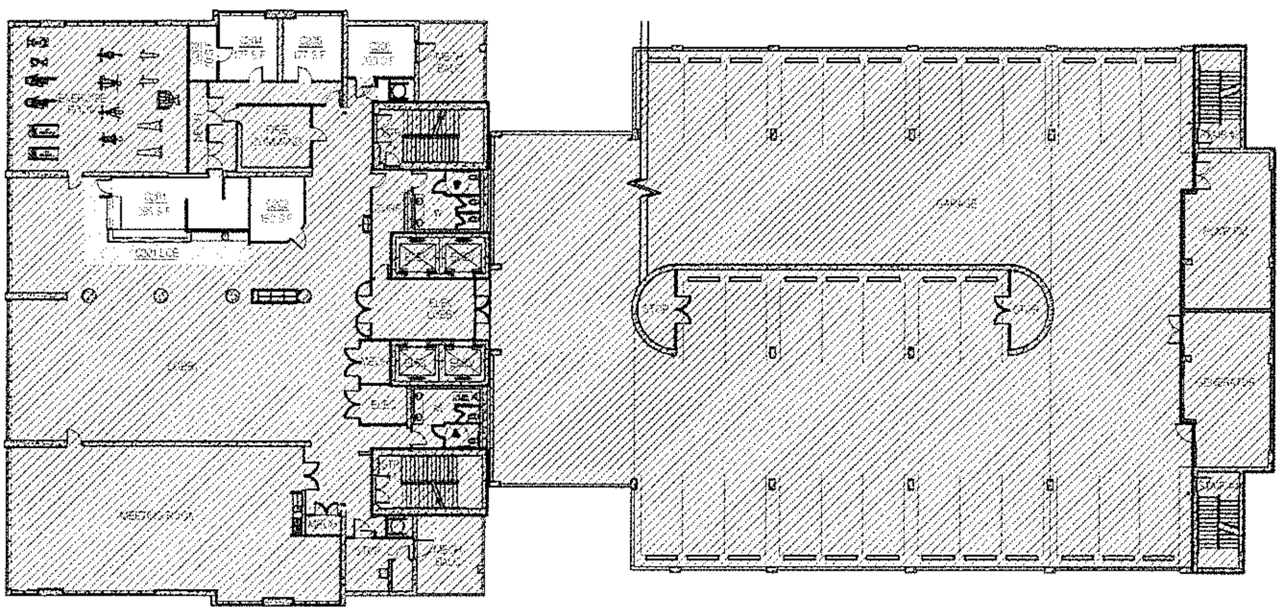
LIMITED COMMON ELEMENT (LCE)

COMMON ELEMENT

PHASE I OF PHOENIX GULF TOWERS

ORANGE BEACH, ALABAMA

CD-2



FLOOR PLAN - LEVEL 2

0' 5' 10' 20'

HATCH LEGEND

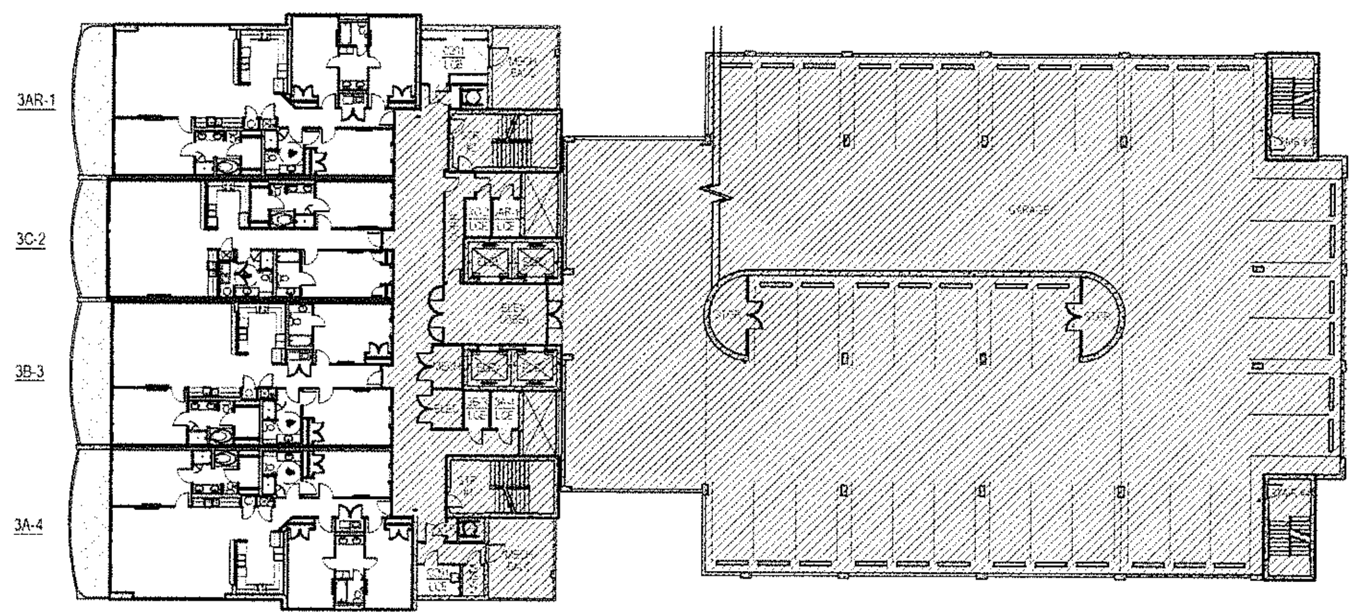
PRIVATE ELEMENT

LIMITED COMMON ELEMENT (LCE)

COMMON ELEMENT

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

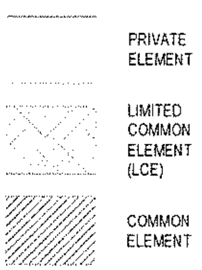
CD-3



FLOOR PLAN - LEVEL 3

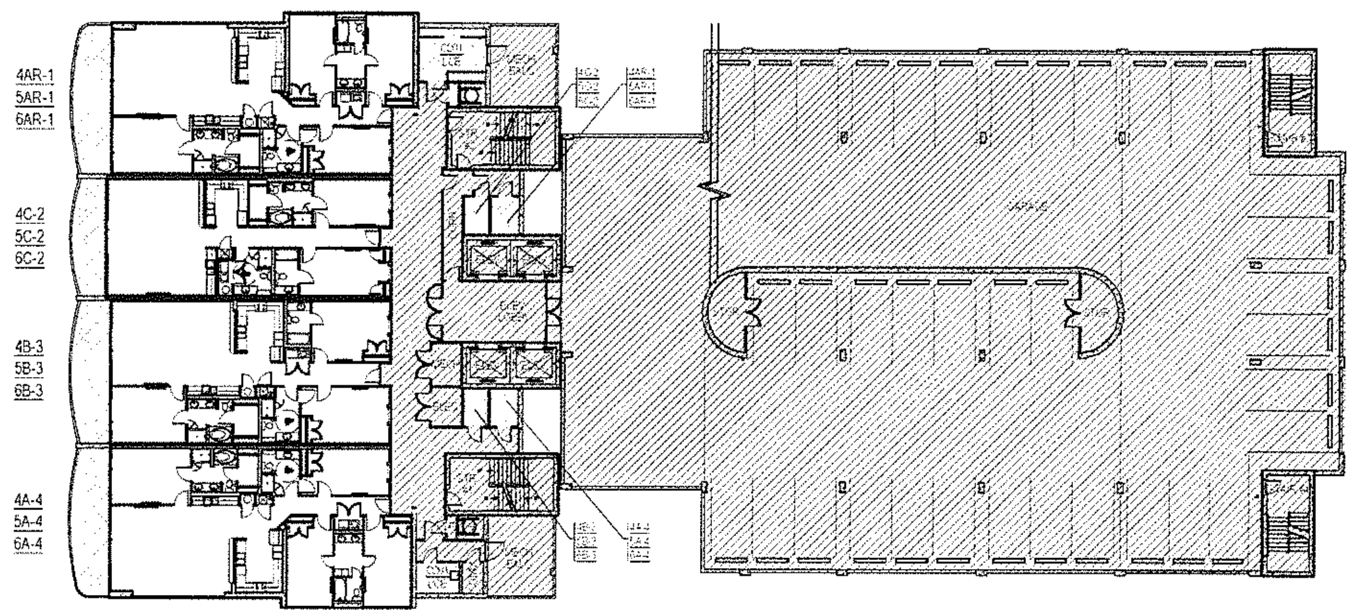
0' 5' 10' 20'

HATCH LEGEND



PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

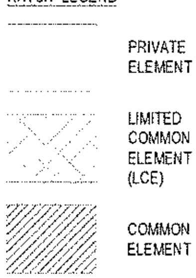
CD-4



FLOOR PLAN - LEVELS 4-6

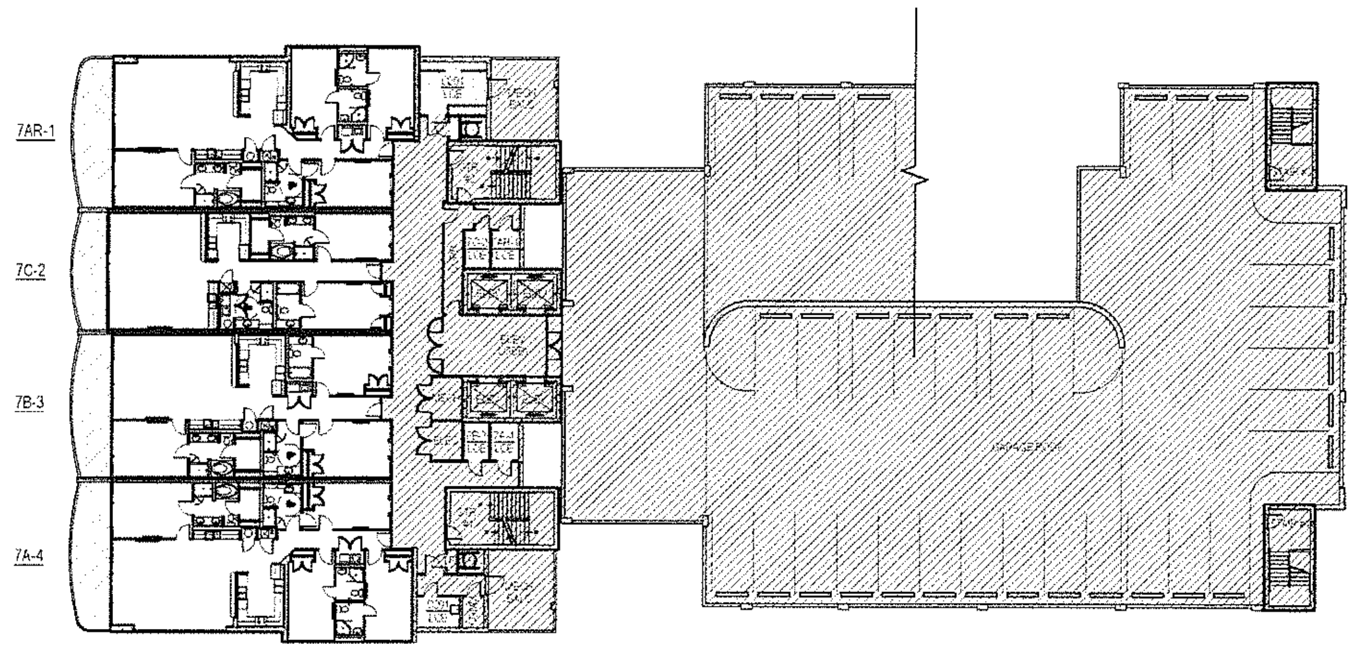
0' 5' 10' 20'

HATCH LEGEND



PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-5



FLOOR PLAN - LEVEL 7

0' 5' 10' 20'

HATCH LEGEND

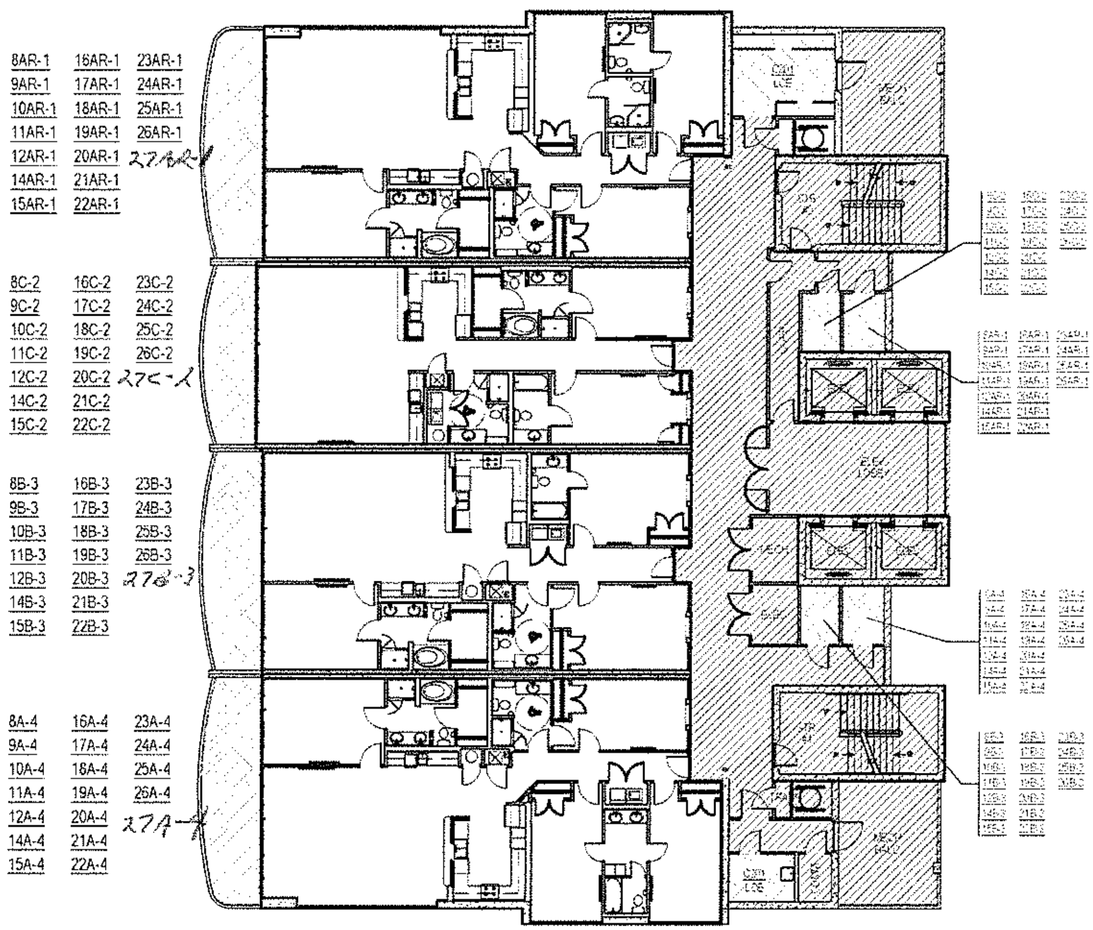
PRIVATE ELEMENT

LIMITED COMMON ELEMENT (LCE)

COMMON ELEMENT

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-6



HATCH LEGEND

PRIVATE ELEMENT

LIMITED COMMON ELEMENT

COMMON ELEMENT

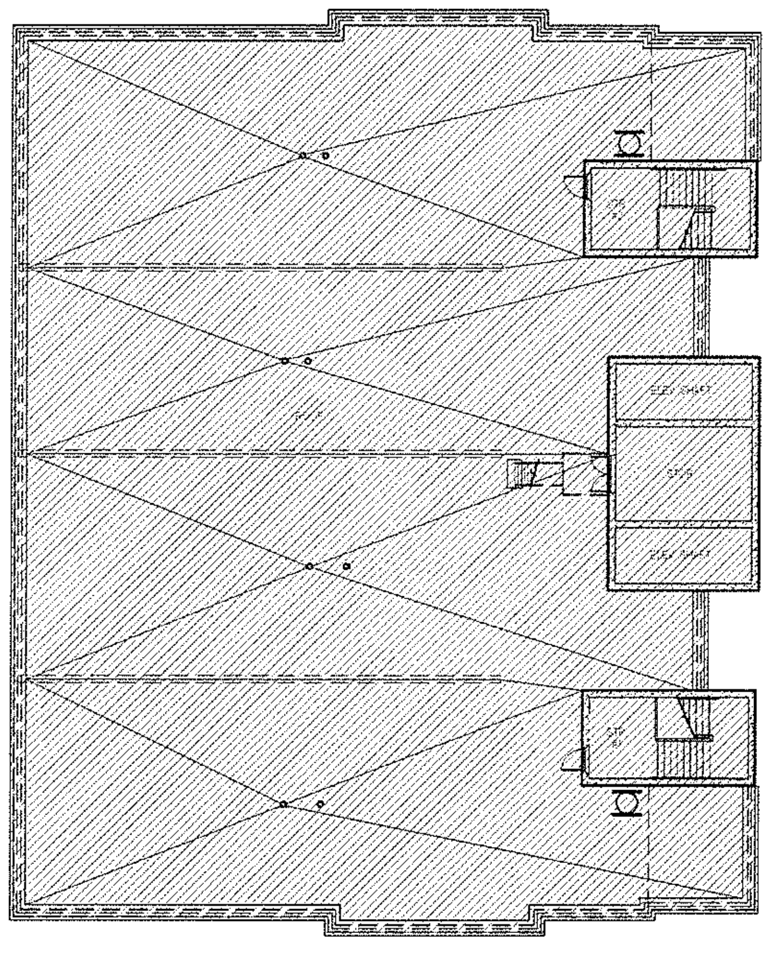
FLOOR PLAN - LEVELS 8-26

0' 5' 10' 20'

PHASE I OF PHOENIX GULF TOWERS

ORANGE BEACH, ALABAMA

CD-7



HATCH LEGEND

PRIVATE ELEMENT

LIMITED COMMON ELEMENT

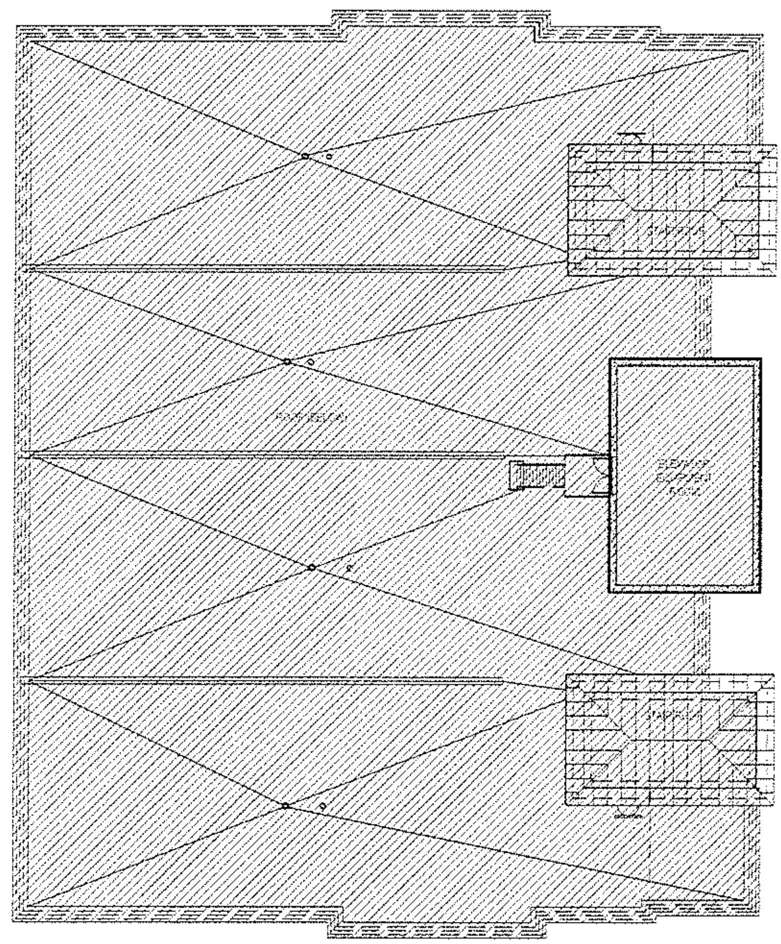
COMMON ELEMENT

FLOOR PLAN - MAIN ROOF LEVEL

0' 5' 10' 20'

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-8



FLOOR PLAN - ELEV. EQUIP. ROOM

0' 5' 10' 20'

HATCH LEGEND

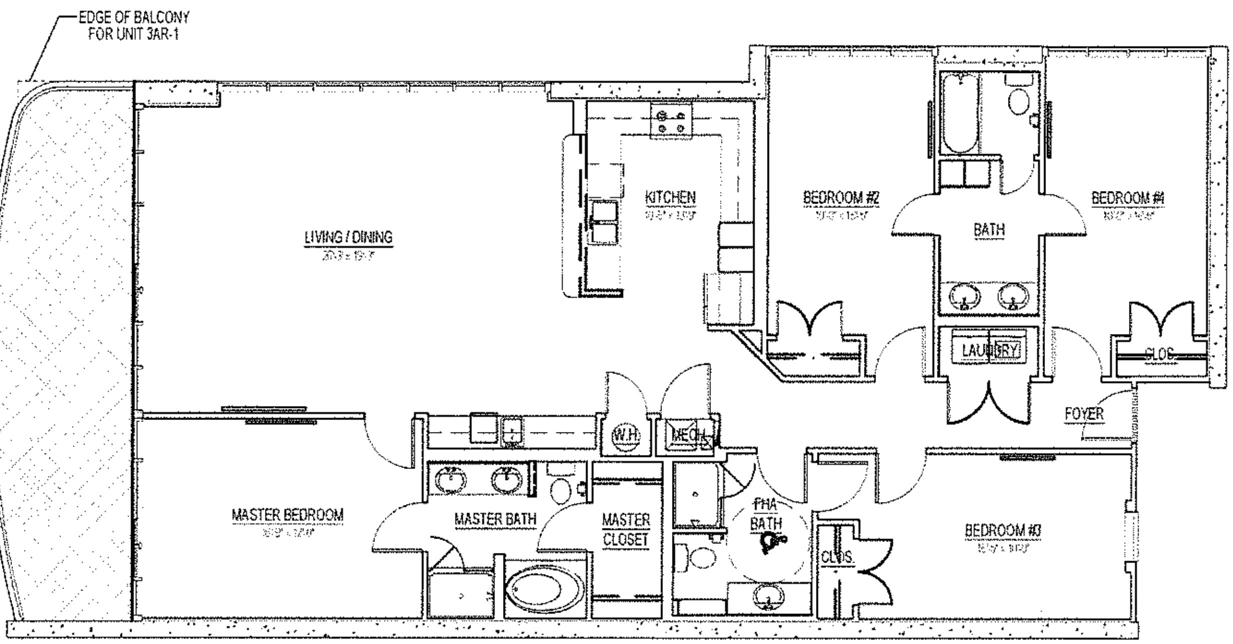
PRIVATE ELEMENT

LIMITED COMMON ELEMENT

COMMON ELEMENT

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-9



UNIT NUMBER:

UNIT 3AR-1	UNIT 9AR-1	UNIT 16AR-1	UNIT 22AR-1
UNIT 4AR-1	UNIT 10AR-1	UNIT 17AR-1	UNIT 23AR-1
UNIT 5AR-1	UNIT 11AR-1	UNIT 18AR-1	UNIT 24AR-1
UNIT 6AR-1	UNIT 12AR-1	UNIT 19AR-1	UNIT 25AR-1
UNIT 7AR-1	UNIT 14AR-1	UNIT 20AR-1	UNIT 26AR-1
UNIT 8AR-1	UNIT 15AR-1	UNIT 21AR-1	Unit 27AR-1

WEST END UNIT TYPE "AR"
NET AREA: 2,031 S.F.
BALCONY AREA: *269 S.F.
TOTAL: 2,300 S.F.

*BALCONY AREA IS 270 S.F. AT UNIT 3AR-1

HATCH LEGEND

PRIVATE ELEMENT

LIMITED COMMON ELEMENT

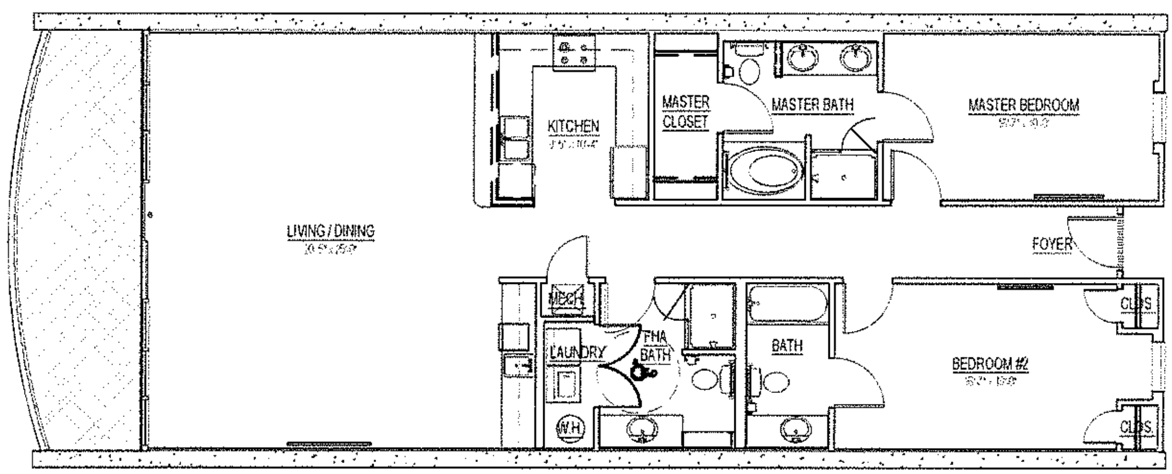
COMMON ELEMENT

0' 5' 10'

NOTE:
ALL DIMENSIONS ARE APPROXIMATE. PLEASE SEE AS-BUILT DRAWINGS FOR ACTUAL DIMENSIONS FOR EACH SPECIFIC UNIT. DIMENSIONS SHOWN ARE TO FACE OF STUDS.

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-10



UNIT NUMBER:

UNIT 3C-2	UNIT 9C-2	UNIT 16C-2	UNIT 22C-2
UNIT 4C-2	UNIT 10C-2	UNIT 17C-2	UNIT 23C-2
UNIT 5C-2	UNIT 11C-2	UNIT 18C-2	UNIT 24C-2
UNIT 6C-2	UNIT 12C-2	UNIT 19C-2	UNIT 25C-2
UNIT 7C-2	UNIT 14C-2	UNIT 20C-2	UNIT 26C-2
UNIT 8C-2	UNIT 15C-2	UNIT 21C-2	unit 27C-2

INTERIOR UNIT TYPE "C"
NET AREA: 1,524 S.F.
BALCONY AREA: 186 S.F.
TOTAL: 1,710 S.F.

HATCH LEGEND

PRIVATE ELEMENT

LIMITED COMMON ELEMENT

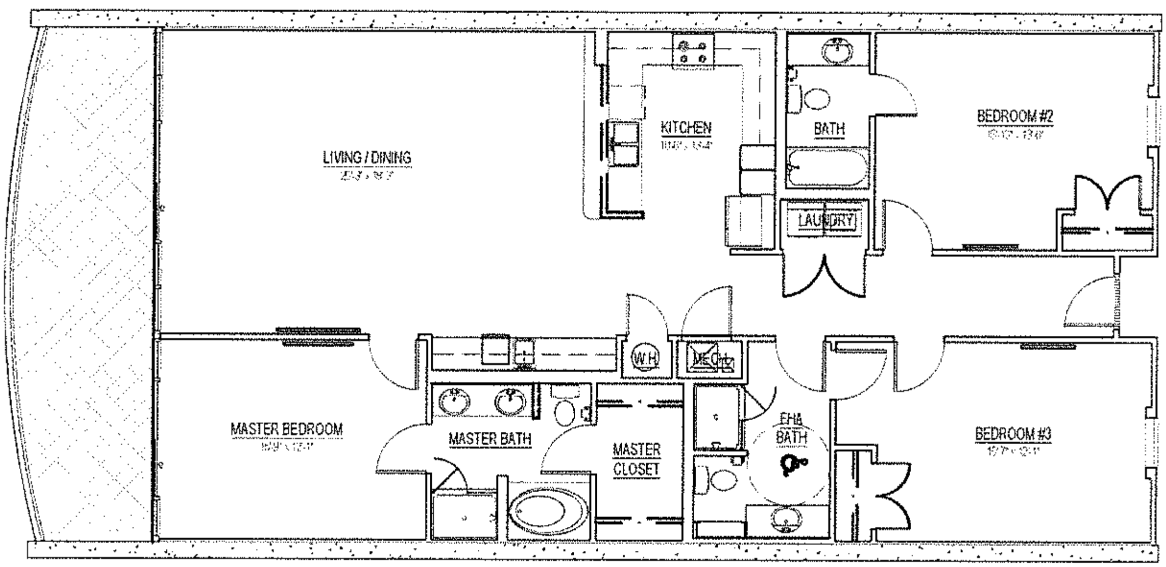
COMMON ELEMENT

0' 5' 10'

NOTE:
ALL DIMENSIONS ARE APPROXIMATE. PLEASE SEE AS-BUILT DRAWINGS FOR ACTUAL DIMENSIONS FOR EACH SPECIFIC UNIT. DIMENSIONS SHOWN ARE TO FACE OF STUDS.

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-11



UNIT NUMBER:

UNIT 3B-3	UNIT 9B-3	UNIT 16B-3	UNIT 22B-3
UNIT 4B-3	UNIT 10B-3	UNIT 17B-3	UNIT 23B-3
UNIT 5B-3	UNIT 11B-3	UNIT 18B-3	UNIT 24B-3
UNIT 6B-3	UNIT 12B-3	UNIT 19B-3	UNIT 25B-3
UNIT 7B-3	UNIT 14B-3	UNIT 20B-3	UNIT 26B-3
UNIT 8B-3	UNIT 15B-3	UNIT 21B-3	unit 27B-3

INTERIOR UNIT TYPE "B"
NET AREA: 1,835 S.F.
BALCONY AREA: 259 S.F.
TOTAL: 2,094 S.F.

HATCH LEGEND

PRIVATE ELEMENT

LIMITED COMMON ELEMENT

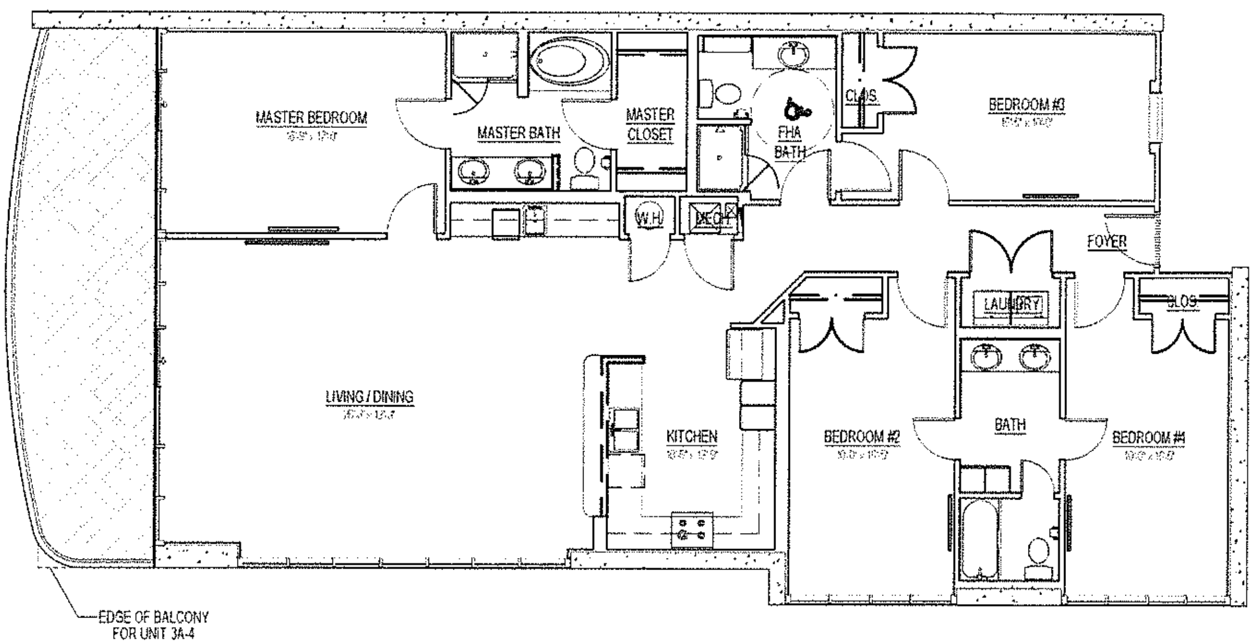
COMMON ELEMENT

0' 5' 10'

NOTE:
ALL DIMENSIONS ARE APPROXIMATE. PLEASE SEE AS-BUILT DRAWINGS FOR ACTUAL DIMENSIONS FOR EACH SPECIFIC UNIT. DIMENSIONS SHOWN ARE TO FACE OF STUDS.

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-12



UNIT NUMBER:

UNIT 3A-4	UNIT 9A-4	UNIT 16A-4	UNIT 22A-4
UNIT 4A-4	UNIT 10A-4	UNIT 17A-4	UNIT 23A-4
UNIT 5A-4	UNIT 11A-4	UNIT 18A-4	UNIT 24A-4
UNIT 6A-4	UNIT 12A-4	UNIT 19A-4	UNIT 25A-4
UNIT 7A-4	UNIT 14A-4	UNIT 20A-4	UNIT 26A-4
UNIT 8A-4	UNIT 15A-4	UNIT 21A-4	

EAST END UNIT TYPE "A"
NET AREA: 2,031 S.F.
BALCONY AREA: *269 S.F.
TOTAL: 2,300 S.F.

*BALCONY AREA IS 270 S.F. AT UNIT 3A-4

HATCH LEGEND

PRIVATE ELEMENT

LIMITED COMMON ELEMENT

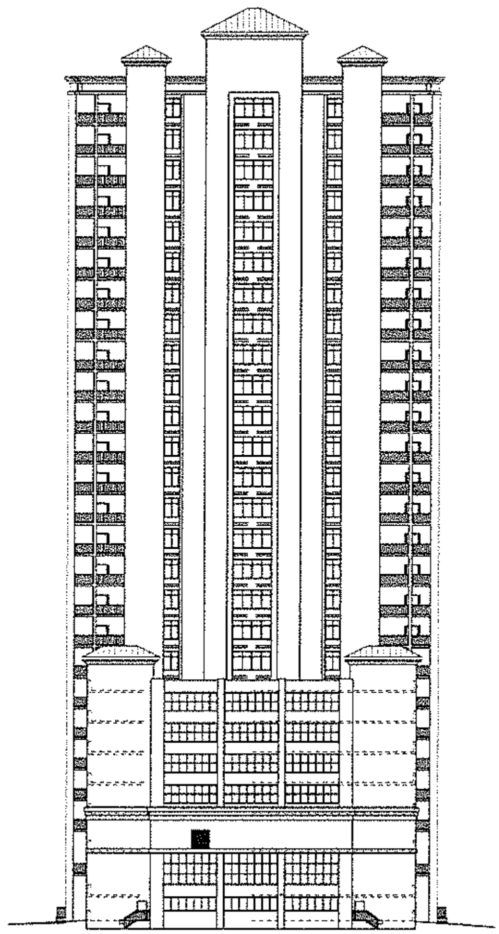
COMMON ELEMENT

0' 5' 10'

NOTE:
ALL DIMENSIONS ARE APPROXIMATE. PLEASE SEE AS-BUILT DRAWINGS FOR ACTUAL DIMENSIONS FOR EACH SPECIFIC UNIT. DIMENSIONS SHOWN ARE TO FACE OF STUDS.

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-13

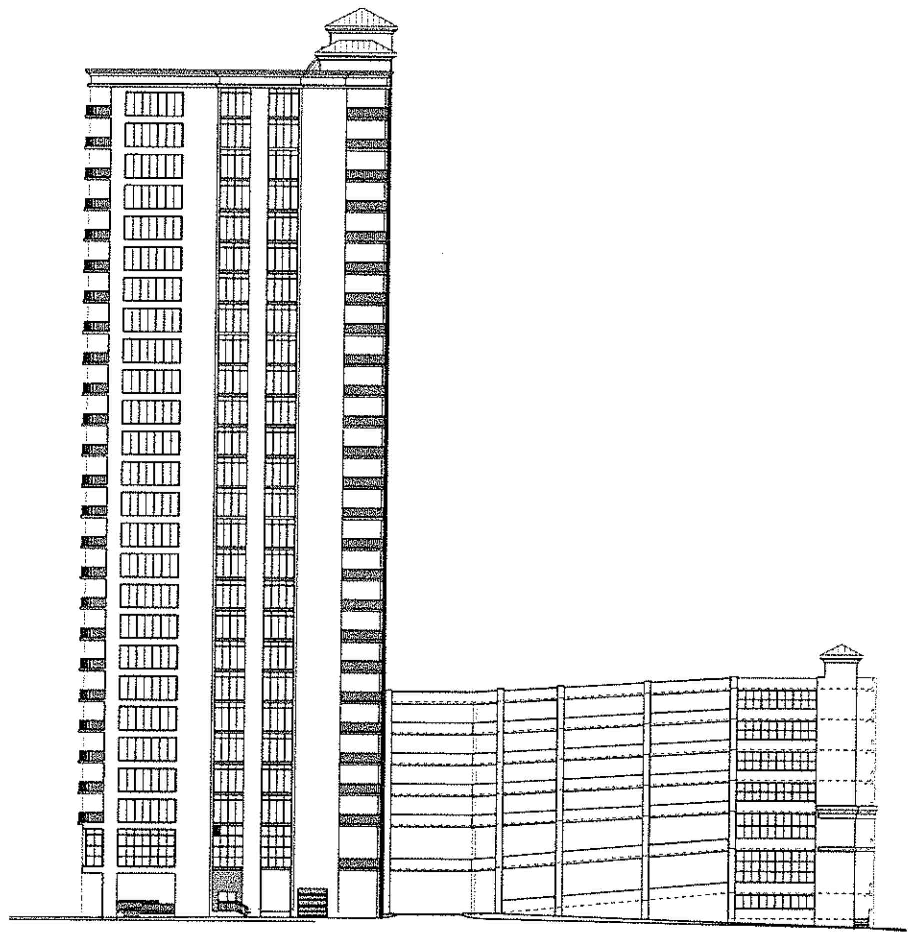


NORTH ELEVATION

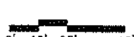
0' 10' 20' 40'

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-14

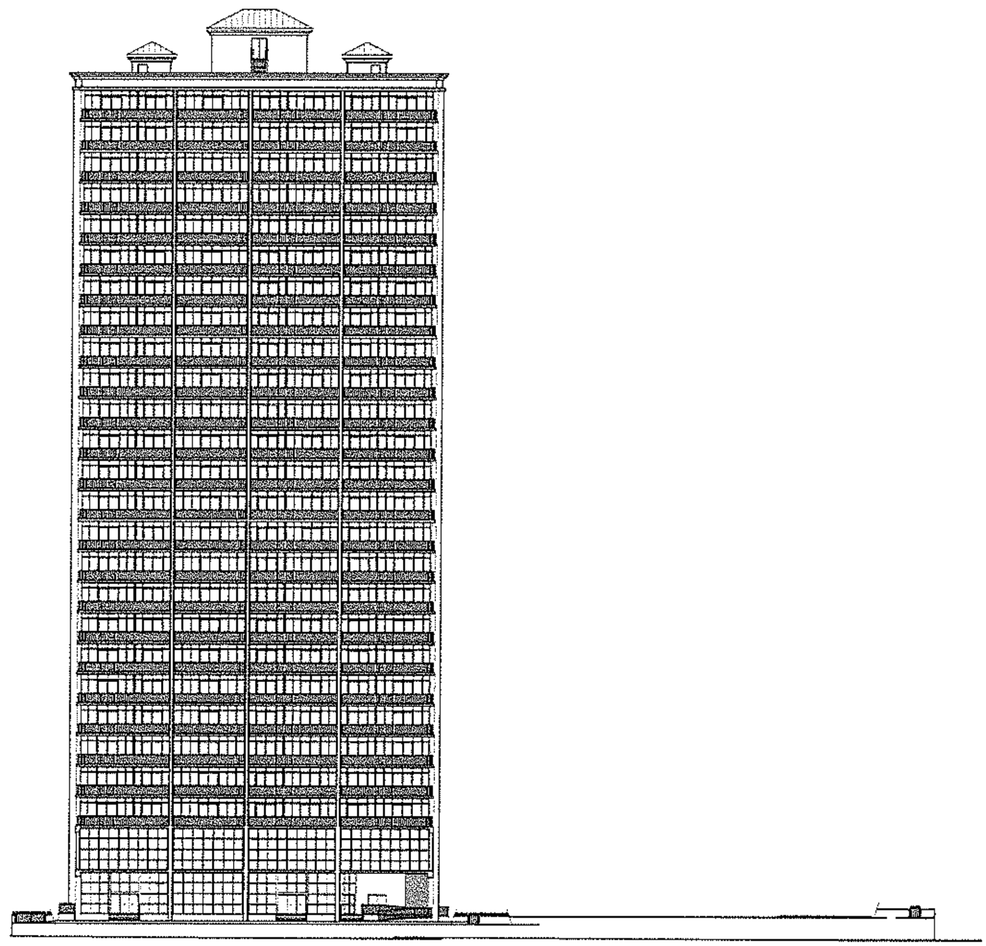


EAST ELEVATION



PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

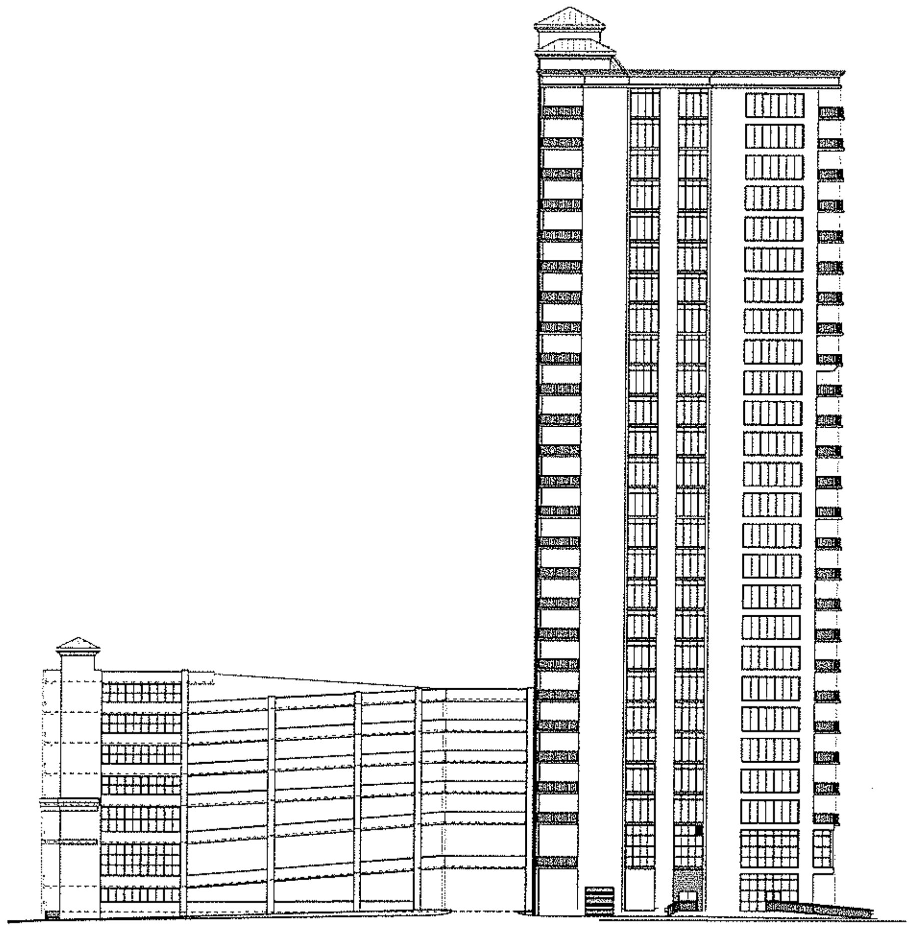
CD-15



SOUTH ELEVATION

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-16



WEST ELEVATION

PHASE I OF PHOENIX GULF TOWERS
ORANGE BEACH, ALABAMA

CD-17

EXHIBIT "C"

PHASE I OF PHOENIX GULF TOWERS

Level 27	**27EW1** 1.133% 2,031 sq. ft.	**27C-2** 0.850% 1,524 sq. ft.	**27B-3** 1.024% 1,835 sq. ft.	**27A-4** 1.133% 2,031 sq. ft.
Level 26	**26EW1** 1.133% 2,031 sq. ft.	**26C-2** 0.850% 1,524 sq. ft.	**26B-3** 1.024% 1,835 sq. ft.	**26A-4** 1.133% 2,031 sq. ft.
Level 25	**25EW1** 1.133% 2,031 sq. ft.	**25C-2** 0.850% 1,524 sq. ft.	**25B-3** 1.024% 1,835 sq. ft.	**25A-4** 1.133% 2,031 sq. ft.
Level 24	**24EW1** 1.133% 2,031 sq. ft.	**24C-2** 0.850% 1,524 sq. ft.	**24B-3** 1.024% 1,835 sq. ft.	**24A-4** 1.133% 2,031 sq. ft.
Level 23	**23EW1** 1.133% 2,031 sq. ft.	**23C-2** 0.850% 1,524 sq. ft.	**23B-3** 1.024% 1,835 sq. ft.	**23A-4** 1.133% 2,031 sq. ft.
Level 22	**22EW1** 1.133% 2,031 sq. ft.	**22C-2** 0.850% 1,524 sq. ft.	**22B-3** 1.024% 1,835 sq. ft.	**22A-4** 1.133% 2,031 sq. ft.
Level 21	**21EW1** 1.133% 2,031 sq. ft.	**21C-2** 0.850% 1,524 sq. ft.	**21B-3** 1.024% 1,835 sq. ft.	**21A-4** 1.133% 2,031 sq. ft.
Level 20	**20EW1** 1.133% 2,031 sq. ft.	**20C-2** 0.850% 1,524 sq. ft.	**20B-3** 1.024% 1,835 sq. ft.	**20A-4** 1.133% 2,031 sq. ft.
Level 19	**19EW1** 1.133% 2,031 sq. ft.	**19C-2** 0.850% 1,524 sq. ft.	**19B-3** 1.024% 1,835 sq. ft.	**19A-4** 1.133% 2,031 sq. ft.
Level 18	**18EW1** 1.133% 2,031 sq. ft.	**18C-2** 0.850% 1,524 sq. ft.	**18B-3** 1.024% 1,835 sq. ft.	**18A-4** 1.133% 2,031 sq. ft.
Level 17	**17EW1** 1.133% 2,031 sq. ft.	**17C-2** 0.850% 1,524 sq. ft.	**17B-3** 1.024% 1,835 sq. ft.	**17A-4** 1.133% 2,031 sq. ft.
Level 16	**16EW1** 1.133% 2,031 sq. ft.	**16C-2** 0.850% 1,524 sq. ft.	**16B-3** 1.024% 1,835 sq. ft.	**16A-4** 1.133% 2,031 sq. ft.

Level 15	**15EW1** 1.133% 2,031 sq. ft.	**15C-2** 0.850% 1,524 sq. ft.	**15B-3** 1.024% 1,835 sq. ft.	**15A-4** 1.133% 2,031 sq. ft.
Level 14	**14EW1** 1.133% 2,031 sq. ft.	**14C-2** 0.850% 1,524 sq. ft.	**14B-3** 1.024% 1,835 sq. ft.	**14A-4** 1.133% 2,031 sq. ft.
Level 12	**12EW1** 1.133% 2,031 sq. ft.	**12C-2** 0.850% 1,524 sq. ft.	**12B-3** 1.024% 1,835 sq. ft.	**12A-4** 1.133% 2,031 sq. ft.
Level 11	**11EW1** 1.133% 2,031 sq. ft.	**11C-2** 0.850% 1,524 sq. ft.	**11B-3** 1.024% 1,835 sq. ft.	**11A-4** 1.133% 2,031 sq. ft.
Level 10	**10AR-1** 1.133% 2,031 sq. ft.	**10C-2** 0.850% 1,524 sq. ft.	**10B-3** 1.024% 1,835 sq. ft.	**10A-4** 1.133% 2,031 sq. ft.
Level 9	**9AR-1** 1.133% 2,031 sq. ft.	**9C-2** 0.850% 1,524 sq. ft.	**9B-3** 1.024% 1,835 sq. ft.	**9A-4** 1.133% 2,031 sq. ft.
Level 8	**8AR-1** 1.133% 2,031 sq. ft.	**8C-2** 0.850% 1,524 sq. ft.	**8B-3** 1.024% 1,835 sq. ft.	**8A-4** 1.133% 2,031 sq. ft.
Level 7	**7AR-1** 1.133% 2,031 sq. ft.	**7C-2** 0.850% 1,524 sq. ft.	**7B-3** 1.024% 1,835 sq. ft.	**7A-4** 1.133% 2,031 sq. ft.
Level 6	**6AR-1** 1.133% 2,031 sq. ft.	**6C-2** 0.850% 1,524 sq. ft.	**6B-3** 1.024% 1,835 sq. ft.	**6A-4** 1.133% 2,031 sq. ft.
Level 5	**5AR-1** 1.133% 2,031 sq. ft.	**5C-2** 0.850% 1,524 sq. ft.	**5B-3** 1.024% 1,835 sq. ft.	**5A-4** 1.133% 2,031 sq. ft.
Level 4	**4AR-1** 1.133% 2,031 sq. ft.	**4C-2** 0.850% 1,524 sq. ft.	**4B-3** 1.024% 1,835 sq. ft.	**4A-4** 1.133% 2,031 sq. ft.
Level 3	**3AR-1** 1.133% 2,031 sq. ft.	**3C-2** 0.850% 1,524 sq. ft.	**3B-3** 1.024% 1,835 sq. ft.	**3A-4** 1.133% 2,031 sq. ft.
Level 2	**C203** 0.035% 70 sq ft **C204** 0.097% 177 sq. ft.	**C205** 0.097% 177 sq. ft.	**C206** 0.111% 203 sq. ft.	**C201** 0.214% 388 sq. ft. **C202** 0.086% 162 sq. ft.
Level 1	**PARKING**			

EXHIBIT "D"

BY-LAWS

OF

PHOENIX GULF TOWERS OWNERS ASSOCIATION, INC.

1. IDENTITY.

These are the By-Laws of PHOENIX GULF TOWERS OWNERS ASSOCIATION, INC., an association organized pursuant to the Alabama Uniform Condominium Act, 35-8A-101 et seq., *Code of Alabama*, as amended, for the purpose of administering Phoenix Gulf Towers, a Condominium, located in Baldwin County, Alabama.

1.01. The office of the Association shall be at 22988 Perdido Beach Blvd. Orange Beach AL 36561, with a mailing address Post Office Box 1339, Gulf Shores, Alabama, 36547.

1.0.2. The fiscal year of the Association shall be such as may from time to time be established by the Association.

2. MEMBERS' MEETINGS.

2.01. The first meeting of the unit owners to organize the Association shall be called as soon as practicable by the Directors of the Association after the closing and conveyance of the units commences and progresses, all in accord with the provisions, of the Alabama Uniform Condominium Act.

2.02. Thereafter, the annual meeting of the unit owners shall be held at the meeting room of the Association at 9:00 a.m., the local time, on the second or third Friday of August as determined by the Directors, of each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the members; provided, however, if that day is a legal holiday, the meeting shall be held at the same hour on the next day following that is not a legal holiday.

2.03. Change of Date and Place. The time and place of holding the annual meeting of members may be changed at any time prior to thirty (30) days before the regular day for holding such meeting by a resolution duly adopted by the Board of Directors or by the members, provided that such notice of change be mailed to each member of record at such address as appears upon the records of the Association not less than ten (10) days before the holding of such meeting; and further provided that each annual meeting of members shall be held within two (2) months of the date on which it should regularly have been held but for such change.

2.04. Special members' meetings shall be held whenever called by the President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast twenty percent (20%) of the votes in the Association.

2.05. Notice of all members' meetings stating the time and place and the objects for which a meeting is called shall be given by the President or Vice President or Secretary unless waived in writing. Such notice shall be in writing to each member at his address as it appears on the books of the Association and shall be mailed not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Notice of meeting may be waived before or after meetings.

2.06. Voting shall be on a percentage basis and the percentage of the vote to which a member is entitled is the percentage assigned to the unit of which the member is an owner, as stated in the Declaration of Condominium.

2.07. A quorum at members' meetings shall consist of persons entitled to cast forty-five percent (45%) of the votes in accordance with the percentages assigned in the Declaration of Condominium.

2.08. Proxies. Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote and shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting.

2.09. Vote required to transact business. When a quorum is present at any meeting, the holders of a majority of the voting rights present in person or represented by written proxy shall decide on any questions brought before the meeting, unless the question is one upon which, by express provision of the statutes, the Declaration of Condominium or the By-Laws, a different number is required, in which case the express provision shall govern and control the decision in question.

2.10. Adjourned meetings. Any meeting of the Association may be adjourned from time to time to such date and time as may be determined by the majority vote of the members present, whether a quorum be present or not, without notice other than the announcement at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

2.11. The order of business at annual members' meetings and, as far as practical, at all other members' meetings, shall be:

(a) Call to Order,
(b) Calling of the roll and certifying of proxies,
(c) Proof of notice of meeting or waiver of notice,
(d) Reading and disposal of any unapproved minutes,

(e) Report of Officers,
(f) Reports of Committees,
(g) Election of Directors,
(h) Unfinished Business,
(i) New Business,
(j) Adjournment.

2.12. Cumulative Voting shall not be permitted at any meeting of the owners.

2.13. Proviso. Provided, however, that until the Developer has sold seventy-five percent (75%) of the units of the Condominium, or until two (2) years after the units have ceased to be sold, or until Developer elects to terminate its control over the Condominium, whichever shall first occur, there shall be no meeting of the members of the Association unless a meeting is called by the Board of Directors.

2.14. Virtual Meetings. Meetings, including the Annual Meeting, by remote/virtual communication are allowed, provided they are authorized by a majority vote of the Board of Directors, under such rules of procedure as the Board may adopt. Members participating in meetings by remote/virtual communication shall be deemed present and may vote at the meeting, provided the following requirements are met:

(a) Verification that each person participating remotely as a member is an actual member.

(b) Providing members participating remotely a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with the proceedings, such that remote attendees are a part of a deliberative meeting as provided in Roberts Rules of Order.

3. BOARD OF DIRECTORS.

3.01. Membership. The affairs of the Association shall be conducted by the Board of Directors, which shall consist of such number not less than three (3) nor more than five (5), with staggered three year terms (except for shorter terms as provided initially at the first meeting of the members), as shall from time to time be determined and affixed by a vote of the voting rights present at any annual meeting of the members. Each Director shall be an owner of a unit, except as provided in subparagraph 3.02(d) below.

3.02. Election of Directors shall be conducted in the following manner:

(a) Directors shall be elected at the annual meeting of the members of the Association.

(b) Except as to vacancies created by removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors.

(c) Any Director may be removed by concurrence of two-thirds (2/3) of the members of the Association at a special meeting of the members called for that purpose. The vacancy thus created shall be filled at the same meeting by the members of the Association in the same manner as was provided for the election of the removed Director.

(d) Provided, however, until the earliest of(i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Developer; (ii) two (2) years after the Developer, its successors or assigns, have ceased to offer Units for sale in the ordinary course of business; or (iii) two (2) years after any Development Right to add new units was last exercised, or until Developer elects to terminate its control over the condominium there shall be no meeting of the members of the Association unless a meeting is called by the Board of Directors.

3.03. The term of each Director's services shall extend until the annual meeting of the members in the year in which his staggered term is to expire and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

3.04. The organization meeting of a newly elected Board of Directors shall be held as soon as is practicable after their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of organization meeting shall be necessary, provided a quorum shall be present.

3.05. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or email, at least three (3) days prior to the day named for such meeting.

3.06. Special meetings of the Directors may be called by the President, and must be called by the Secretary at the written request of one-third (1/3) of the votes of the Board. Not less than three (3) days notice of the meeting shall be given personally or by mail, telephone or email, which notice shall state the time, place and purpose of the meeting.

3.07. Waiver of notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

3.08. A quorum at Directors' meetings shall consist of the Directors entitled to cast a majority of the votes of the entire Board of Directors. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except where approval by a greater number of Directors is required by the Declaration of Condominium or by these By-Laws. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting from any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

3.09. <u>The presiding officer</u> of the Directors' meetings shall be the President. In the absence of the President, the Directors present shall designate one of their members to preside.

3.10. <u>Directors</u> shall serve without compensation, and a Director may not be an employee of the Association.

3.11. The provisions of Section 2.14 apply to meetings of the Board of Directors.

4. **<u>POWERS AND DUTIES OF THE BOARD OF DIRECTORS</u>**.

The Board of Directors, for the benefit of the owners, shall have the following powers and duties:

4.01. To exercise all of the powers of the Association with respect to the operation and regulation of the condominium project which are conferred upon the Board by the Condominium Ownership Act or which may be conferred upon the Board by these By-Laws pursuant to such Act, and to exercise all of the powers of the Association which are conferred upon it by law and by its Articles of Incorporation.

4.02. To make contract and incur liabilities in connection with the exercise of any of the powers and duties of the Board.

4.03. To provide or cause to be provided all goods and services required by the By-Laws or by law, or which the Board, at its discretion, deems necessary for the proper operation of the condominium project, or which are used in common or jointly by the common elements and condominium units, in each case to the extent such goods and services shall not be otherwise provided.

4.04. To collect monthly assessments from the owners, and to render or cause to be rendered statements, when required or useful, of any assessments which remain unpaid by any owner.

4.05. To maintain a class action, and to settle a cause of action on behalf of owners with references 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 to bring an action and to settle the same on behalf of two (2) or more of the owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one (1) condominium; all as the Board deems advisable.

4.06. To elect the officers of the Association and otherwise exercise the powers regarding officers of the Association as set forth in these By-Laws.

4.07. To determine who shall be authorized to make and sign all instruments on behalf of the Association and the Board.

4.08. To employ a management agent or manager, at a compensation established by the Board, to perform such duties and services as the Board shall authorize, including, but not limited to, the duties listed in this Section and the following Section, except those powers delegated to the President, all as set out in the employment agreement.

4.09. To procure such property and other insurance of all kinds and such fidelity bonds as the Board deems advisable covering officers and employees of the Association handling and responsible for the Association's funds and personal property, and to procure advisable; and the premium of such bonds and insurance shall be paid by the Association as common expense.

4.10. To determine policies and to adopt administrative rules and regulations governing the details of the operation and use of the condominium project, including the common elements, and to amend such administrative rules and regulations from time to time as the Board deems advisable.

4.11. To designate, by resolution passed by a majority of the whole Board, one (1) or more committees to consist of two (2) or more of the Directors. Any such committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the management of the business and affairs of the corporation, except where action of the full Board of Directors is required by law, the Articles of Incorporation and the Declaration or the By-Laws.

4.12. To designate, by resolution adopted by a majority of the Directors present at a meeting at which a quorum is present, or by the President thereto duly authorized by a like resolution of the Board of Directors, or other committees not having and exercising the authority of the Board of Directors in the management of the affairs of the corporation. Membership on such committees may, but need not be limited to Directors of members of the Association.

4.13. All committees so appointed shall keep regular minutes of the transactions of their meetings, and shall cause them to be recorded in books kept for that purpose in the office of the Association, and shall report the same to the Board of Directors at the next meeting of such Board.

5. **OFFICERS.**

5.01. The executive officers of the Association shall be a President, who shall be a Director; a Vice-President, who shall be a Director; a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the Directors at any meeting. Any person may hold two (2) or more offices except that the President shall not also be Secretary. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

5.02. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the president of an association.

5.03. The Vice-President shall, in the absence of or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

5.04. The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association as may be required by the Directors or the President.

5.05. The Treasurer shall have custody of all property of the Association, including funds, securities and evidence of indebtedness. He shall keep the financial records and books of account of the Association in accordance with good accounting practices; shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expense of the common area and facilities and any other expenses incurred; and he shall perform all other duties incident to the office of Treasurer. The records, books of account and the vouchers authorizing payments, shall be available for examination by a member of the Association at convenient hours of weekdays.

6. **FISCAL MANAGEMENT.**

6.01. Budget. The Board of Directors shall determine the common expenses of the Association and adopt a budget for each calendar year of such estimated common expenses, including a reasonable allowance for contingencies and reserves, less the unneeded fund balances on hand.

Within thirty (30) days after the adoption of a proposed budget for the condominium, the Board shall provide a copy of the budget and proposed assessments to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after delivery or mailing of the budget to the unit owners. Unless at that meeting a majority of all the unit owners present, in person or by proxy or any larger vote specified in the Declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget is last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the Board.

6.02. Assessments for Recurring Expenses. Assessments for recurring common expenses shall be made for the calendar year annually in advance and transmitted to each member as provided supra. The Board may include a Maintenance Fund Reserve for contingencies in such assessments, and such Maintenance Fund Reserve may from time to time be increased or reduced at the discretion of the Board. The proportionate interest of each unit owner in said Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such unit even though not expressly mentioned or described in the conveyance thereof. In case the condominium regime hereby created shall be terminated and the property removed from the Alabama Uniform Condominium Act, any part of the said Fund remaining after full payment of all common expenses of the Association shall be distributed to all unit owners in the respective proportionate shares. Such assessments shall be due in monthly installments on the first day of the year for which the assessments are made. If such annual assessment is not made as required, an installment in the amount required by the last prior assessment shall be due upon each installment payment date until changed by a new assessment. The total of the assessments for recurring common expenses shall be not more than one hundred twenty percent (120%) of the assessments for this purpose for the prior year unless approved in writing by unit owners entitled to cast a majority of the votes in the Association. In the event such an annual assessment proves to be insufficient, it may be amended at any time after approval in writing by unit owners entitled to cast a majority of the votes in the Association. In the event such an annual assessment proves to be insufficient, it may be amended at any time after approval in writing by unit owners entitled to cast a majority of the votes in the Association, and the amended assessment for the remaining portion of the calendar year shall be due at the time the next monthly installment is due. The first assessment shall be determined by the Board of Directors of the Association.

6.03. Assessments for Capital Improvements. Upon written notice to all the unit owners and upon approval in writing by unit owners entitled to cast a majority of the votes of the Association, the Board may establish and maintain one (1) or more capital reserve accounts, but the assessment of and payment by all of the unit owners in equal monthly installments of their respective proportion shares of such reasonable annual amount, for such term of years as the Board may estimate as needed to cover each unit owner's obligation to provide for specified capital improvements, such as, by way of illustration and not limitation, the purchase of additional property, the paving or repaving of streets and areas, the construction or reconstruction of common elements and the like. Each such capital reserve account shall not be commingled with the general assessment funds of the Association, but shall be deposited in a special account, shall be earmarked and designated. The proportionate interest of each owner in each such capital reserve account cannot be withdrawn or separately assigned, but shall be deemed to be transferred with such unit even though not expressly mentioned or described in the conveyance thereof. In case the condominium regime hereby created shall be terminated and the property removed from the Condominium Ownership Act, any part of each such capital reserve account remaining after full payment of all common expenses of the Association shall be distributed to all unit owners in the respective proportionate shares.

6.04. Assessments for Emergencies. Assessments for common expenses for emergencies which cannot be paid from the assessments for recurring expenses shall be made only after notice of the need therefor to the unit owners concerned. After such notice and upon approval in writing of more than one-half (½) of such unit owners concerned, the assessment shall become effective, and it shall be due after thirty (30) days notice thereof in such manner as the Board of Directors may require.

6.05. Acceleration of Assessment Installment Upon Default. If a unit owner shall be in default in the payments of an installment upon any assessment, the Board of Directors may accelerate the remaining installments of such assessment upon notice thereof to the unit owner, and thereupon the unpaid balance of the assessment shall come due upon the date stated in the notice, but not less than ten (10) days delivery thereof to the unit owner, or not less than twenty (20) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

6.06. Default.

(a) In the event an owner of a unit does not pay any sums, charges or assessments required to be paid to the Association within thirty (30) days from due date, the Association may foreclose the lien encumbering the unit created by non-payment of the required moneys in the same fashion as mortgage liens are foreclosed; provided that thirty (30) days prior to the foreclosure, notice of such intention shall be mailed, postage prepaid, to the unit owner and to all persons having a mortgage lien or other interest of record in such unit as shown in the Association's record of ownership. The Association shall be entitled to the appointment of a Receiver, if it so requests. The Association shall have the right to bid on the unit at a foreclosure sale and to acquire, hold, mortgage and convey the same. In any such foreclosure action, the lien of the Association shall be subordinate and inferior to tax liens in favor of the state, county, any municipality and any special district and any first mortgage liens of record encumbering such unit at the time of commencement of the foreclosure action by the Association. In lieu of foreclosing its lien, the Association may bring suit to recover a money judgment for any sums, charges or assessments required to be paid to the Association without waiving its lien securing the same. In any action either to foreclose its lien or to recover a money judgment brought by or on behalf of the Association against a unit owner, the losing defendant shall pay the cost thereof together with a reasonable attorney's fee.

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

6.07. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which moneys of the Association shall be deposited. Withdrawal of moneys from such accounts shall be only by check signed by such persons as are authorized by the Directors.

6.08. An audit of the accounts of the Association shall be made annually by a certified public accountant, not a member of the Association, and a copy of the report shall be furnished to each member not later than April 1st of the year following the year for which the report is made.

7. OBLIGATIONS OF THE OWNERS.

7.01. Assessments. Every owner of any unit in the condominium shall contribute pro rata toward the expense of administration of the condominium as provided in the Declaration and in these By-Laws.

7.02. Maintenance and Repair.

(a) Every owner must perform promptly all maintenance and repair work within his unit, which, if omitted, would affect the condominium in its entirety or in a part belonging to other owners, and is expressly responsible for the damages and liabilities that his failure to do so may endanger.

(b) All the repairs of internal or appurtenant installations of the unit, such as water, lights, power, air conditioning, heat, sewage, telephones, sanitary installations, doors, windows, lamps and all other accessories belonging to the unit area, shall be maintained at the owner's expense.

(c) An owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common areas and facilities damaged through his fault.

7.03. Use of Units. Every owner shall comply strictly with the provisions of the Act, the Declaration, the By-Laws and the Rules. In the event of the failure of any owner to do so, the Association may sue to recover sums due, and/or damages, and/or injunctive relief, and for its costs and expenses therein, including a reasonable attorney's fee.

7.04. Right of entry. The Management Company and any person authorized by the Board of Directors shall have the right to enter each unit in case of any emergency originating in or threatening such unit whether or not the owner or occupant, when so required, shall permit other unit owners or their representative to enter his unit at reasonable times for purpose of performing authorized installations, alterations or repairs to the common elements therein for central services, provided that requests for entry are made in advance.

7.05. Title. Every unit owner shall promptly cause to be duly recorded in the office of the Judge of Probate of Baldwin County, Alabama, the deed or other conveyance to him of his unit or other evidence of title thereto and file such evidence of his title with the Association, and the Secretary shall maintain such information in the record of ownership of the Association.

7.06. Mortgages.

(a) Any mortgagee of a unit may file a copy of its mortgage with the Association, and the Secretary shall maintain such information in the record of ownership of the Association. After the filing of the mortgage, the Association shall be required to notify the mortgagee of any unit owner who is in default in the expenses for the administration of the condominium and the mortgagee at its option may pay the delinquent expenses; and the holder of every such mortgage requesting the same shall be entitled to written notification from the Association of any default by mortgagor of such unit in the performance of such mortgagor's obligations under the condominium documents which is not cured within thirty (30) days.

(b) Unless all holders of first mortgage liens on units have given their prior written approval the Association shall not be entitled to:

(i) Change of pro rata interest or obligations of any unit for the purposes of levying assessments and charges, and determining shares of undivided interest in the common elements and proceeds of the project;

(ii) Partition or subdivide any unit or the common elements of the project; nor

(iii) By act of omission seek to abandon the condominium status of the project except as provided by statute in case of substantial destruction, deterioration or obsolescence to the units and condominium project.

8. AGENT TO RECEIVE SERVICE OF PROCESS.

The following person, who is a resident of the State of Alabama, is designated as agent to receive service of process upon the Association:

NAME:	John Brett
ADDRESS:	24325 Perdido Beach Blvd. Orange Beach AL 36561

9. **PARLIAMENTARY RULES**.

Roberts Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Condominium Ownership Act, Declaration of Condominium or these By-Laws.

10. **AMENDMENTS TO THE BY-LAWS**.

10.01. 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.

10.02. Adoption. These By-Laws may be altered, amended or appealed or new By-Laws may be adopted at a properly noticed meeting of the members by the affirmative vote of the voting rights of two-thirds of the votes of the Association in accordance with the percentages assigned in the Declaration of Condominium.

10.03. Prohibited Amendments. No amendment that is in conflict with the Articles or Certificate of Incorporation, the Declaration, or the Act shall be adopted.

10.04. Recording. Any amendment shall become effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

The foregoing were adopted as the By-Laws of Phoenix Gulf Towers Owners Association, Inc., at the first meeting of the Board of Directors on the 21st day of June, 2023.

William T. Robinson Jr.
SECRETARY
William T. Robinson, Jr.

ATTEST:

Thomas E. Brett
PRESIDENT
Thomas E. Brett

EXHIBIT "E"

NATIVE ENDANGERED SP. HABITAT CONSERVATION PLAN
ENDANGERED WILDLIFE

Permit Number: TE48280D-0

Effective: 03/20/2020 Expires: 03/20/2070

Issuing Office:

Department of the Interior
U.S. FISH & WILDLIFE SERVICE
Ecological Services Permit Office
1875 Century Boulevard
Atlanta, GA 30345
permitsR4ES@fws.gov

WILLIAM PEARSON

Digitally signed by WILLIAM PEARSON
Date: 2020.03.20 16:18:21 -05'00'

Field Supervisor, Alabama Ecological Services Field Office, Daphne, Alabama

Permittee:

BRETT REAL ESTATE ROBINSON DEVELOPMENT CO. INC
dba PHOENIX GULF TOWERS LLC.
25299 CANAL ROAD SUITE B-4
ORANGE BEACH, AL 36561
U.S.A.

Name and Title of Principal Officer:
WILLIAM T. ROBINSON, JR. - PARTNER

Authority: Statutes and Regulations: 16 USC 1539(a); 50 CFR 17.22, 50 CFR 13.

Location where authorized activity may be conducted:
Three lots for a total of 5.80-acres, located on Orange Beach, Alabama, Parcel ID #05-66-06-14-4-001-006.000 (Tax Pin 3354); Parcel ID #05-66-06-13-3-001-044.001 (Tax Pin 221440); and Parcel ID #05-66-06-13-3-001-045.000 (Tax Pin 57062).

Reporting requirements:
Reports will be provided to the U.S. Fish and Wildlife office appearing in Condition K of this Permit.

Authorizations and Conditions:

A. General Conditions set out in Subpart B of 50 CFR 13, and specific conditions contained in Federal regulations cited above, are hereby made a part of this permit. All activities authorized herein must be carried out in accord with and for the purposes described in the application submitted. Continued validity, or renewal of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.

B. The validity of this permit is also conditioned upon strict observance of all applicable foreign, state, local, tribal, or other federal law.

C. Valid for use by Permittee named above. The Permittee is defined as those entities, which hold, or will hold, any right, title, or interest in any portion of the covered property over the duration of this Permit.

D. Acceptance of this Permit serves as evidence that the Permittee and its authorized agents understand and agree to abide by the terms of this Permit and all sections of Title 50 Code of Federal Regulations, Part 13 and 17, pertinent to issued permits. Section 11 of the Endangered Species Act of 1973, as amended, provides for civil and criminal penalties for failure to comply with Permit conditions.

THIS PERMIT CONSISTS OF CONDITIONS A - L (6 PAGES TOTAL) AND ONE APPENDIX

EXHIBIT "E"

E. The Project area encompasses 5.80 acre (approximately 252,648 square feet) where the Permittee proposes construction of two condominium towers (192 units) with amenities shown in the appended plats. Field surveys and live trapping surveys indicate that only 1.90 acres of the Project area provides suitable habitat that is used by the endangered Alabama beach mouse (ABM) (Peromyscus polionotus ammobates). Incidental take of the ABM is restricted to the permanent conversion of approximately 0.450 acre (19,602 square feet) of this habitat within the Project construction footprint, which would be permanently eliminated due to Project construction and site occupancy after construction.

The Permittee, and any authorized agents, are authorized to take the ABM within the Project construction footprint incidental to earth moving, grading, and other land alteration and construction activities necessary to construct, operate and use a two condominium towers with amenities as described in the Permittee's February 2019 Habitat Conservation Plan (HCP), and as conditioned herein. This Permit does not authorize take of any covered species outside of the project construction footprint or as a result of unlawful activities. Use of the homes and amenities, in accordance with the HCP is also authorized.

The nature of the Project is a residential development, eventually transferring titles and control of the Project to individual property owners (Owners) and a Property Owners Association, Incorporated (Association). Prior to the sale of any residential unit, the Permittee must develop a Declaration of Covenants and Restrictions (The Declaration). The contact office of the U.S. Fish and Wildlife must approve The Declaration. The permittee must inform each Owner and the Association, using The Declaration (see Condition G.3., below), of their responsibilities and mandates as described in this permit. The Permittee shall record The Declaration as an encumbrance of title, to ensure that all conditions of this permit automatically will be assigned and transferred to each Owner and the Association and to ensure that The Declaration shall run with the real property encompassed by the Project. After execution of The Declaration, the Permittee shall be defined as those entities which hold fee simple title to any portion of the real property identified in this permit over the duration of the permit.

F. The following measures must be employed by the Permittee to ensure that take of the ABM is minimized and fully mitigated.

1. All measures as described in the permittee's February 2019 HCP must be fully implemented.
2. No lumber, metals, nor bulk materials will be kept, stored, or accumulated on the property excepting only building materials during construction. The Permittee will provide each contractor, including each subcontractor, retained for land preparation and construction of the proposed project, with specific written requirements reflecting the entirety of the conditions controlling refuse disposal and removal and limitations on material storage. The area of the site to be used for staging building materials will be minimized and such areas will be restored to natural state post construction. Construction debris will be placed in a dumpster, on a daily basis, located on site for this purpose. Vehicle and construction equipment will not be parked within ABM habitat. No hazardous materials (including oil and gas), will be stored in ABM habitat areas.
3. By one month after the permit issuance date, the Permittee shall have established an account with the City of Orange Beach for purposes of funding the monitoring, habitat maintenance, and reporting requirements of this permit (Sections K and L below). The permittee shall annually assess, via The Declaration each dwelling unit $201 (two hundred and one) per year for the life of the permit. The purposes of the fee is to ensure the permit conditions are successfully implemented. The Declaration must identify that the special assessment for implementation of the permit cannot be dissolved under any procedures or circumstances outlined in the Declaration.
4. The use of gravel is prohibited within the project and the permittee, future owners, and future property owners association will be responsible for filtering any gravel in sand that may migrate due to tropical storm events.
5. Unauthorized pedestrian access will be prohibited in all areas outside the established footprint. A dune walkover and education signage will be used to guide users to the beach.
6. City or private waste disposal services will be utilized for refuse and garbage. The Permittee will assure at all times the availability of such containers.
7. The Permittee will not alter the natural topography of the lots outside of the developed area. The developed area will be confined to the footprint of the two condominiums, community pool, and the community driveways, as described in the HCP.

EXHIBIT "E"

8. The Permittee will actively restore those portions of the undeveloped habitat in the project area impacted by any future hurricane impacts to the site. Sand fencing may be installed. Clean beach sand from an approved City of Orange Beach (ADEM) borrow site may be utilized. A Service biologist will be available to discuss restoration plans or provide on-site guidance regarding post-hurricane restoration efforts that benefit the ABM, as needed.
9. All exterior lighting will be fully shielded with either integrated Amber LED light or Amber LED bulbs and directed away from adjacent beach and dune areas. Floodlights are prohibited. Windows will be tinted to reduce the impact of interior lighting on sea turtles. Tint level can be either 45% light transmittance with additional window coverings or 15% light transmittance with no additional window coverings.
10. Landscaping of the lot, outside of the developed area, if desired, is restricted to the use of dune vegetation native to coastal Alabama stated in the permittee's HCP. An approved list of plants is available from the Service.
11. The Permittee will allow the Service or the State of Alabama Department of Conservation and Natural Resources (ADCNR) or other persons designated by either agency to enter the property at any reasonable time for the general purposes specified in 50 CFR 13.21 and 17.22, and for monitoring permit compliance, monitoring and trapping of competitors/predators, or other activities associated with ABM monitoring or recovery.
12. Cats are prohibited at all times with the project. Furthermore, the Permittee, future owners and the guests of the Property are prohibited from supporting the presence of feral or free-roaming cats by providing food, shelter or any other life support elements. The Permittee agrees to report any observations of free-roaming cats to local animal control authorities and to the Service.
13. The use of exterior rodenticides will not be used as part of the permittee's HCP.
14. The permittee as described in the February 2019 HCP will allow the reintroduction of Peromyscus polionotus ammobates at their developments known at Phoenix VI- VIII when the Service deems a reintroduction is feasible. Monitoring of the reintroduced population will be the responsibility of the Service and will be funded by the funds created by the Phoenix Gulf Towers project or other beach mouse appropriate funds.
15. Within one month after each unit sells or the owner decides to retains a unit, the unit is substantially completed or is able to receive a Certificate of Occupancy, the permittee shall establish deeds, covenants, restrictions, and conditions, on each Owner and Association (The Declaration). The Declaration must be approved by the U.S. Fish and Wildlife Service and properly executed as a legal instrument bound to any subsequent owners of the real property of the project. The Declaration cannot be altered without written consent of the U.S. Fish and Wildlife Service. The Declaration must mandate the following minimum performance standards for purposes of protecting Peromyscus polionotus ammobates.
    a. A brief description and information on the need, intent, and purposes of this permit, and conservation of Peromyscus polionotus ammobates.
    b. Identification of the requirements and responsibilities contained in the permit. Permittee is required to provide a copy of the permit to each Owner at or before closing of each lot within the Project. In addition, each Owner shall maintain a copy of the permit in the residence for use by lessees or others who hold under the Owner. The responsibilities to be identified include the following:
        i. Cats are prohibited at all times within the Project.
        ii. Use of refuse containers which are scavenger-proof and rodent-proof.
        iii. The necessity of compliance with the Project's Lighting Plan, including the requirements of specific performance and design standards for each dwelling unit and common areas as established in the Lighting Plan.
        iv. All plant species used for Project must be selected from an indigenous plant list approved by the U.S. Fish and Wildlife Service. No sod or turf grasses will be allowed in the Project's footprint (see Condition 11.G.1 above).
        v. Identification of the requirements of establishing and maintaining a special assessment to fund and monitor the implementation of the requirements of this permit.

EXHIBIT "E"

vii. Common areas of the Project, as defined in The Declaration, shall not be altered by construction, landscaping, or any other development activity unless with the express written consent of the contact office of the U.S. Fish and Wildlife Service.

G. The following measures will be employed by the permittee to provide for permit monitoring. Live trapping monitoring will start after the project construction is initiated.

1. During the fall and spring quarter of each calendar year for five years, the permittee shall perform a five-night live trapping survey documenting the presence or absence of Peromyscus polionotus ammobates. The survey shall be performed by qualified and permitted agents of the permittee, approved by the U.S. Fish and Wildlife Service. The methodology and design of the survey must be acceptable to the U.S. Fish and Wildlife Service. Monitoring expenses are the obligation of the permittee, the City of Orange Beach (funds account holder), and future owners.
2. Simultaneous with the monitoring program as outlined above, the permittee or its qualified agent shall conduct a census for the presence or absence of free roaming cats (Felis domesticus) within the Project. The survey shall be performed by qualified and permitted agents of the permittee, approved by the U.S. Fish and Wildlife Service. Walking transects shall be established so as to provide census coverage of 100 (one hundred) percent of the Project's total area. Track and occurrence data will/shall be recorded. Should the surveys or other reports document presence of free roaming cats, the permittee shall immediately institute a trapping program. Trapped animals will be transported to the nearest animal shelter or adoption facility. Funded by the special assessment, the trapping program shall be employed until weekly trapping/surveys fail to document the presence of free roaming cats in the Project.
3. The permittee shall also report, simultaneous to the monitoring program as outlined above, the condition of the primary and secondary dune system within the project area. The Permittee or its authorized agent shall note any areas of degradation caused by foot traffic or other human-induced factors. Should degradation be discovered during these visual surveys; within thirty (30) days, the Permittee shall develop a remediation plan and submit it to the U.S. Fish and Wildlife Service for approval. Implementation of the approved remediation plan shall begin immediately by the Permittee.

H. The Permittee and the U.S. Fish and Wildlife Service agree that modification and amendments to the Permittee's HCP and this Permit may occur through its effective term. The following procedures shall govern the modification and amendment process:

1. This Permit is based upon the Permittee's expected compliance with the provisions and commitments established in the submitted HCP and the terms and conditions identified herein. Where a conflict occurs between the HCP and this Permit, the Permit shall control.
2. Either the Permittee or the U.S. Fish and Wildlife Service may propose modifications and/or amendments to the HCP or this Permit by providing written notice. Such notice shall include a statement of the reason for the proposed modification and an analysis of the environmental effects of such modification or amendment, including effects on operations under the HCP and on the covered species. This analysis shall be conducted jointly by the Permittee and the contact office of the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service or the Permittee will use best efforts to respond to a proposed modification or amendment within sixty (60) days of receipt of such notice. Provided any such proposed modification or amendment would not result in any of the conditions identified in Condition H.3, below, and absent any objection from the U.S. Fish and Wildlife Service or the Permittee, the proposed modification and/or amendment will be determined as minor and shall become effective upon written approval by the U.S. Fish and Wildlife Service or the Permittee. If, for any reason, a receiving party objects to a proposed amendment or modification, it must be processed in accordance with Condition H.3, below.
3. The U.S. Fish and Wildlife Service will not propose or approve modifications or amendments to the HCP or this Permit if the U.S. Fish and Wildlife Service determines that such modifications would result in operations under the HCP and Permit that are significantly different from those analyzed in connection with the original HCP, that would adversely affect the environment in new or significantly different ways from those analyzed in connection with the original HCP, or that would result in additional take of the covered species not analyzed in connection with the original HCP.

EXHIBIT "E"

4. Any amendment or modification shall conform with all applicable legal requirements, including but not limited to the Endangered Species Act, the National Environmental Policy Act, and the U.S. Fish and Wildlife Service's permit regulations at 50 C.F.R. §13 and §17.

I. The Permittee and the U.S. Fish and Wildlife Service acknowledge that even with the above detailed provisions for mitigating and/or minimizing impacts to the covered species, changes in circumstances could arise which were not fully anticipated by this permit and which may result in substantial and adverse change in the status of the covered species. The U.S. Fish and Wildlife Service's policy regarding changed and unforeseen circumstances is contained in the final "No Surprises" rule published on February 23, 1998 (63 FR 8859) and codified at 50 C.F.R. §§ 17.22(b)(5), 17.32(b)(5), 222.22(g).

J. The Permittee and the U.S. Fish and Wildlife Service acknowledge that even with the above detailed provisions for mitigating and/or minimizing impacts to the covered species, changes in circumstances could arise which were not fully anticipated by this permit and which may result in substantial and adverse change in the status of the covered species. The U.S. Fish and Wildlife Service's policy regarding changed and unforeseen circumstances is contained in the final "No Surprises" rule published on February 23, 1998, (63 Fed. Reg. 8859) and codified at 50 C.F.R. Part § 17.

Unforeseen and/or changed circumstances may become apparent either to the Permittee, authorized agents, or to personnel of the U.S. Fish and Wildlife Service. For purposes of implementation of this condition, unforeseen circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been anticipated by the HCP developers and the U.S. Fish and Wildlife Service at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of the covered species. Changed circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that can reasonably be anticipated by HCP developers and the U.S. Fish and Wildlife Service, and that can be planned for. Should either unforeseen or changed circumstances arise, the Permittee and the contact office of the U.S. Fish and Wildlife Service identified in Condition L, below, shall meet within twenty (20) working days following notice by either party. The U.S. Fish and Wildlife Service and Permittee shall together agree upon appropriate and reasonable measures for addressing such circumstances, within the rule of applicable law, and the Permittee shall implement appropriate and reasonable measures within an additional thirty (30) working days, unless a longer period of time is agreed to by the U.S. Fish and Wildlife Service.

K. Upon locating a dead, injured, or sick specimen of the covered species or any other threatened or endangered species, initial notification must be made immediately to the U.S. Fish and Wildlife Service Law Enforcement Officer, 1208-B Main Street, Daphne, Alabama 36526 (251/441-5787). Notification should also be made, by the next work day, to the contact office of the U.S. Fish and Wildlife Service noted in Condition L. Care should be taken in handling sick, injured, or dead specimens to ensure effective treatment or to preserve biological materials for later analysis. In conjunction with the care of sick or injured threatened or endangered species or preservation of biological materials from a dead animal, the finder should take responsible steps to ensure that the site is not unnecessarily disturbed.

L. For purposes of receiving reports, and monitoring compliance and administration of the terms and conditions of this permit, the contact office of the U.S. Fish and Wildlife Service is:

U.S. Fish and Wildlife Service
Alabama Ecological Services Field Office
1208-B Main Street
Daphne, Alabama 36526
Telephone: 251/441-5181

EXHIBIT "E"

Brett Real Estate Robinson Development Co. Inc
Dba Phoenix Gulf Towers LLC.
25299 Canal Road Suite B-4
Orange Beach, AL 36561
Telephone: 251-259-7135

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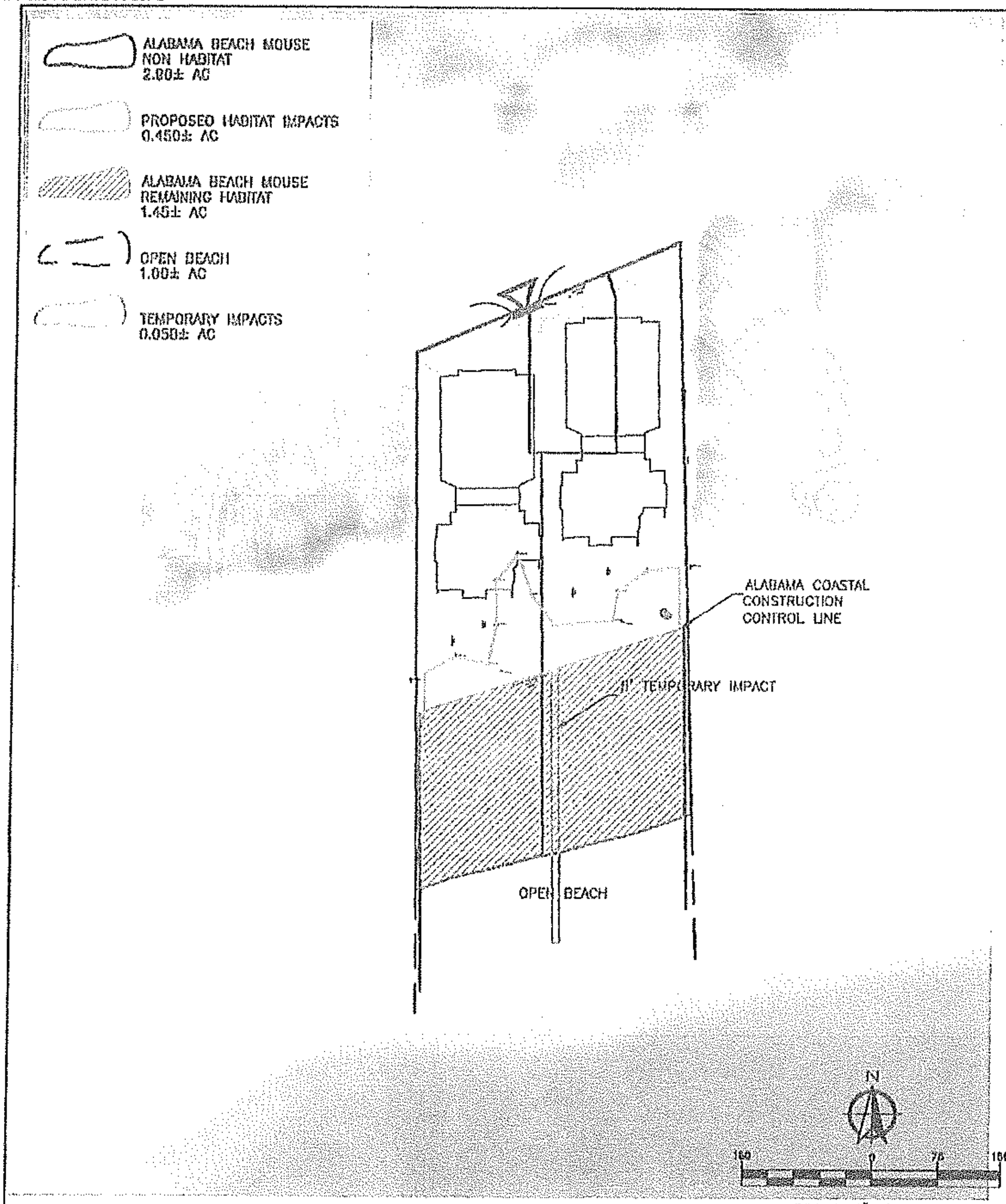
APPENDIX PAGE 1



Total Impacts: 0.45 acre or 19,602 square feet

UNIFORM ORANGE BEACH DUNE ENHANCEMENT COVENANTS FOR PHOENIX GULF TOWERS, A CONDOMINIUM

This Declaration of Uniform Orange Beach Dune Enhancement Covenants for Phoenix Gulf Towers, a Condominium (hereinafter referred to as the "Covenants," or "Dune Enhancement Plan," "Plan," or "DEP," as the case may be), is made and declared as of the 29th day of June, 2023, by Phoenix Gulf Towers, LLC, an Alabama limited liability company, the fee simple owner ("Declarant").

RECITALS:

A. Declarant is the owner of the Property, as described in Section 1.25 below.

B. Declarant is in the process of improving the Property, located as beach front property on the Gulf of Mexico, as a residential condominium development and selling Residential Condominium Units to prospective buyers and elects to impose these Covenants on the Property in order to protect the value and desirability of the Property, to have a flexible and reasonable method for the administration and maintenance of the common elements and areas of the Property, and to comply with certain governmental requirements.

C. Declarant has heretofore caused the Association, as defined in Section 1.4 below, to be formed as an Alabama nonprofit corporation for the purpose of (among other things) managing the common elements of the condominium development, enforcing this covenant for Dune Enhancement, and otherwise taking all actions that the Association is authorized to undertake.

D. The Property is located within the City of Orange Beach, Alabama, and is adjacent to the Gulf of Mexico.

E. The Property encompasses primary dune field ecosystems requiring particular protection in order to allow it to be developed in a way that preserves and protects the existing ecosystem and its natural beauty.

F. A portion of the Property may maintain habitat occupied by the Alabama Beach Mouse ("*Peromyscus polinotus ammobates*") a species that has been designated as an endangered species by the United States of America. The designation as an endangered species is set forth in Title 50 Code of Federal Regulations § 17.11(h) and the establishment of a critical habitat is set forth in Title 50 Code of Federal Regulations § 17.95.

G. In order to engage in construction and development activities on the Property, Declarant may seek a Permit, if applicable, from the Department of the Interior, U.S. Fish & Wildlife Service, under the authority of Title 16 U.S.C. § 1539(a)(l)(b) and the Regulations promulgated thereunder set forth at Title 50 Code of Federal Regulations § 17.22 that permits Declarant and its authorized agents, pursuant to the terms and conditions of a Permit, if applicable, to take the Alabama Beach Mouse incidental to construction of residential condominiums on the subject Property, or, in the event no Permit is required, may, nonetheless, elect to submit the Property to a Dune Enhancement Plan.

H. Declarant has agreed to adopt and does hereby adopt the provisions of this Dune Enhancement Plan (the "Plan") developed by Declarant and make them binding upon the Association, Owners, and Occupants, as defined herein.

NOW, THEREFORE, subject to the conditions and limitations described below, Declarant does hereby proclaim that all of the Property shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to these Covenants which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE 1
DEFINITIONS

As used throughout these Covenants, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

Section 1.1 Alabama Beach Mouse. The term "Alabama Beach Mouse" shall mean and refer to the Alabama Beach Mouse, *Peromyscus polinotus ammobates*, designated an endangered species in Title 50 Code of Federal Regulations § 17.1 l(h).

Section 1.2 Orange Beach Enhancement Assessment. The term "Orange Beach Enhancement Assessment" shall mean the assessments assessed against any Unit or Owner by the Association pursuant hereto.

Section. 1.3 Orange Beach Enhancement Fund. The term "Orange Beach Enhancement Fund" shall mean and refer to that fund created pursuant to Section 5.2 below.

Section 1.4 Association. The term "Association" shall mean and refer to Phoenix Gulf Towers Home Owners Association, Inc., an Alabama corporation, the members of which shall be the Unit Owners of the Development as set out in the Declaration of Condominium of Phoenix Gulf Towers, a condominium.

Section 1.5 Association Articles of Incorporation. The term "Association Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.

Section 1.6 Association Board. The term "Association Board" shall mean and refer to the members of the Board of Directors of the Association and their duly elected successors as may be provided in the Association Articles of Incorporation and the Association Bylaws.

Section 1.7 Association Bylaws. The term "Association Bylaws" shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

Section 1.8 Common Areas. The term "Common Areas" shall mean and refer to all real and personal property now or hereafter under the management control of the Association for the nonexclusive, common use and enjoyment of the Owners and Occupants of the condominium development. The Common Areas shall include (a) all private roadways and easements located within the boundaries of the Development that provide ingress to and egress from any portion of the Development, (b) all signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, fences, limited access facilities, Improvements, landscaped or other areas immediately adjacent to any public or private roadways within the Development, (d) all maintenance areas and parking areas located on any portion of the Development, (c) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances that are located in or serve any portion of the common Areas, (d) all recreational facilities and areas, and (e) all easements and easement areas within the Development (other than such areas located solely within the boundary lines of the condominium structure and any other areas or Improvements on or within the Development that are designated as Common Areas by the Declaration of Condominium. The designation of any land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment thereof or any other rights, licenses or benefits therein.

Section 1.9 Covenants. The term "Covenants" shall mean and refer to this instrument.

Section 1.10 Development. The term "Development" shall mean and refer to Phoenix Gulf Towers, a condominium.

Section 1.11 Declarant. The term "Declarant" shall mean Phoenix Gulf Towers, LLC, an Alabama limited liability company, its successors and assigns.

Section 1.12 FWS. The term "FWS" shall mean and refer to the Department of the Interior, U.S. Fish and Wildlife Service, an instrumentality of the government of the United States of America.

Section 1.13 Governmental Authority. The term "Governmental Authority" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Development.

Section 1.14 House Cat. The term "House Cat" shall mean and refer to *Felis domesticus*.

Section 1.15 House Mice. The term "House Mice" shall mean and refer to *Mus musculus*.

Section 1.16 Improvement. The term "Improvement" shall mean and refer to any building, structure, planting or device constructed, erected or placed upon any Unit or Common Area that in any way affects the exterior appearance of any Unit or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, septic tanks, roads, driveways, walkways, dune walkover boardwalks, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, satellite dishes, radio or television antennas, and any other artificial or man-made changes or alterations to the natural condition of the Property.

Section 1.17 Institutional Mortgage. The term "Institutional Mortgagee" shall mean and refer to (a) any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust or other recognized lending institution that normally and customarily engages in the business of making Mortgage loans, (b) any institutional or governmental purchaser of Mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, and (c) any pension or profit-sharing trust that makes Mortgage loans or that purchases Mortgage loans in the secondary market, that holds a first Mortgage on any Unit that has been duly and properly recorded in the probate Office of Baldwin County, Alabama.

Section 1.18 Member. The term "Member" shall mean and refer to a member of the Association as determined by the articles of incorporation of the Association and the Association Bylaws.

Section 1.19 Mortgage. The term "Mortgage" shall mean and refer to any mortgage, deed of trust or other security device encumbering a Unit or any interest therein and that shall have been duly and property recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

Section 1.20 Mortgagee. The term "Mortgagee" shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgagee.

Section 1.21 Occupant. The term "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Unit. All actions or omission of any Occupant is and shall be deemed the action or omission of the Owner of such Unit.

Section 1.22 Owner. The term "Owner" shall mean and refer to the record owner, including Declarant, of fee simple title to any Unit, whether a corporate, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Unit at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Unit solely by virtue of a lease, contract, installment contract or other agreement.

Section 1.23 Permit. The term "Permit" shall mean and refer to any Permit issued by FWS. The absence of a Permit affecting the Property shall not serve to defeat or terminate the provisions of these Covenants.

Section 1.24 Plan. The term "Plan" shall mean and refer to this instrument and any condition, permit, regulation, or rule annexed hereto as an exhibit or recorded as an amendment or supplement prepared by or under the direction of FWS.

Section 1.25 Property. The term "Property" shall mean and refer to that certain real property situated in Baldwin County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

Section 1.26 Rules and Regulations. The term "Rules and Regulations" shall mean and refer to the rules and regulations adopted by the Association pursuant to the terms of these Covenants for the purpose of expanding, clarifying, modifying, imposing additional or different requirements or restrictions in order to implement the Plan.

ARTICLE 2
PROPERTY SUBJECT TO COVENANTS

Section 2.1 General. Declarant hereby proclaims that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, lien and regulations of these Covenants and the Property, any part thereof and each Unit and Common Area thereon shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of these Covenants, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Declarant and upon all Owners and Occupants of the Property and any Unit and Common Area thereof.

Section 2.3 Withdrawal of Property is Prohibited. No portion of the Property that is subject to these Covenants may be withdrawn from these Covenants without the prior written consent of FWS, except as provided in Section 7.1.

ARTICLE 3
EASEMENTS

Section 3.1 Grant of Access Easements for Monitoring Compliance with Covenants. Declarant does hereby establish and reserve for itself and the Association, their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon the Property and for the purpose of providing ingress to and egress to (a) conduct the trapping requirements set forth in Section 4.2(b) below, (b) inspect the Property and any Improvements thereon to determine compliance with the provisions of these Covenants, and (c) perform the respective duties of Declarant and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Declarant and/or the Association pursuant to any of the tenants or provisions of these Covenants, the Plan, the Rules and Regulations or the Association Bylaws; provided, however, that upon completion and occupancy of any Unit, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Unit directly affected thereby under the terms set out in the following sub-section.

Section 3.2 Easement to Governmental Authorities for Monitoring/Repopulation or other Permit Requirements. Subject to the provisions of the Covenants that generally limits access to the property, Declarant does hereby grant to each branch, bureau, department and agency of any Governmental Authority and its respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across, through and upon the subject property and all of the private roadways within the Developments forming a part of the Common Areas for the purposes of performing such duties and activities related to monitoring compliance and species assessments with the Permit, including, but not limited to trapping of the Alabama Beach Mouse; provided, however, such access shall only be allowed during reasonable hours and at reasonable intervals, unless an emergency exists. In addition, FWS is hereby granted a license during the term of the Permit to enter the Property at reasonable times and at reasonable hours for the general purposes specified in Part 50 Code of Federal Regulations § 13.2(d)(2) and to trap and monitor the Alabama Beach Mouse; provided, however, FWS, its agents or assigns shall not enter a completed Dwelling without obtaining the Owner's prior consent, which consent shall not be unreasonably withheld and provided that FWS, its agents and assigns shall enter the Property at their own risk and by acceptance of this license do hereby waive any and all claims for any injury, loss or damage suffered by said FWS, their agent and assigns while on the Property.

Section 3.3 Easement for Erosion Control and Dune Remediation. Declarant does hereby establish and reserve for itself, the Association, and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Units and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with these Covenants, the Plan and the Rules and Regulations or any erosion control rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities or the Association, including, but not limited to, placing snow fencing, silt fencing, hay bales, sea oats or other plants, to control erosion of dune structures.

Except in the case of an emergency situation or a perceived emergency situation, the exercise by Declarant or the Association of the rights reserved in this Section 3.4 shall not unreasonably interfere with the use or occupancy of any Dwelling.

ARTICLE 4
COVENANTS FOR COMPLIANCE WITH OR WITHOUT INCIDENTAL TAKING PERMIT

Section 4.1 Covenants to Protect and Enhance the Habitat of the Alabama Beach Mouse and to Implement the Plan. Pursuant to the requirements of the Permit, if applicable, and in accordance with the Plan, the following requirements, prohibitions and restrictions are hereby established:

(a) Copy of Permit, if applicable, and the Rules and Regulations promulgated under this Plan, to be Placed in Each Dwelling. Each Owner, by acceptance of a deed to a Unit or any other portion of the Property shall be a permittee under the express terms of the Permit, if applicable. As a permittee, each Owner shall be bound by the terms and conditions of the Permit, if applicable, in addition to the terms, covenants and conditions of these Orange Beach Enhancement Covenants and the Rules and Regulations promulgated by the Association hereunder. Each Owner shall receive a copy of the Permit, if applicable, and the Rules and Regulations at the closing of the purchase of a Unit. Each Owner must maintain a copy of the Permit, if applicable, and the Rules and Regulations in his or her Dwelling and shall inform all Occupants of the Dwelling or Unit of the Permit, if applicable, and shall require such persons to read and abide by the Permit, if applicable. Each Owner must inform any contractor or subcontractor of the Owner that undertakes to construct an Improvement on a Unit of the requirements of the Permit, if applicable, these Covenants, the Rules and Regulations and all other rules, regulations or covenants regulating activities on a Unit or Dwelling.

(b) No cats. No owner or occupant shall maintain any cat as a pet on the property. Owners are prohibiting from supporting the presence of free roaming or stray cats by providing food, shelter, or life support elements. Any free roaming cats observed shall be reported.

(c) Trash Containers. In addition to the requirements of the Covenants concerning trash containers, all trash containers used by an Owner or Occupant of a Dwelling that is located outside, must be of a type that is rodent-proof, meaning that such container must be designed to prevent access to the interior of such container by any rodent.

(d) Flood Lighting. Any street light or other illumination device installed along the parcels where such right-of-way abuts suitable habitat shall be shielded in such a manner as to prevent, to the extent possible, the illumination of the habitat areas. All flood lights or other outdoor lighting placed shall be configured such that;

(e) Lights. Lights shall be shielded or otherwise configured to prevent the illumination of the habitat areas.

(f) Landscaping. In addition to the other requirements of the Covenants concerning landscaping, no Owner may use any plant species other than those that are listed as indigenous species on the attached Exhibit E; provided, however, other plant species may be used by Declarant or the Association in the Common Areas that do not constitute beach mouse habitat.

(g) Informational Brochures. The Association shall prepare and publish a brochure giving information about the protection and conservation of the Alabama Beach Mouse. The brochure will be distributed annually to each Owner and to all contractors prior to the beginning of any construction activity on any Unit. The Association shall update the information contained in the brochures every five years. Funds from the Alabama Beach Mouse Fund shall be used for purposes of preparing such brochures and updating such brochures.

(h) Notification of FWS of Location of Alabama Beach Mouse. Any Owner or Occupant who locates a dead, injured or sick Alabama Beach Mouse shall immediately notify the FWS. The name and address of the contact person to notify shall be listed and updated in the Rules and Regulations. If an Alabama Beach Mouse is killed during construction activity on the Property, the Owner of the Unit or Dwelling (or if a Common Area, the Association), or said party's contractor shall immediately place the specimen in a secure refrigerated storage and shall contact the FWS for instructions on disposition thereof. If an Alabama Beach Mouse is injured during construction activity on the Property and may be safely captured without additional injury or trauma, the Owner of the Unit or Dwelling (or if a Common Area, the Association), or said party's contractor shall immediately place the specimen in a secure indoor area and shall contact the FWS for instructions on the care of the injured Alabama Beach Mouse.

(i) Beach Access. Access to beach areas will be by dune walkovers designed to maintain the primary dune habitat.

(j) Storage of Materials on Beach. No lumber, metal or other bulk materials shall be stored or accumulated outdoors on any Unit, except building materials to be incorporated into an Improvement.

Section 4.2 Monitoring of the Orange Beach Dune Enhancement Covenants and the Plan.

(a) Monitoring of House Mice Competition. During the fall, and spring of each calendar year, the Association shall perform a survey documenting the presence or absence of House Mice. The survey shall be conducted in a manner and by persons approved by the FWS. All House Mice that are captured during such a survey are to be destroyed, unless prohibited by applicable law. A report shall be provided to the FWS within 20 days of the completion of the survey. If the monitoring activities indicate that remediation of the House Mice population is required pursuant to the terms of the Permit, if applicable, then the Association shall undertake to remediate such populations in order to comply with the Permit, if applicable. The cost of such remediation efforts shall be paid from the Orange Beach Enhancement Fund.

(b) Monitoring of House Cats. During the fall, spring and summer quarters of each calendar year, the Association shall perform a survey documenting the presence or absence of House Cats. The survey shall be conducted in a manner and by persons approved by the FWS. If House Cats are present on the property, the Association shall implement a program to trap such animals and shall transport all captured House Cats to the nearest animal shelter or adoption facility. The trapping program shall continue until weekly surveys no longer indicate the presence of House Cats on the Property. A report shall be provided to the FWS within 20 days of the completion of the survey. The cost of such remediation efforts shall be paid from the Orange Beach Enhancement Fund.

(c) Annual Report to FWS. By May 1 of each year after the date hereof, the Association shall prepare and submit a report to the FWS outlining and describing the implementation of the Plan and shall note any non-compliance with the Permit, if applicable, or these Covenants and shall describe measures undertaken to remediate any such non-compliance. The report shall address the following items in particular: (a) the control of House Mice; (b) the control of House Cats; (c) garbage and refuse containment; (d) educational and informational programs; (e) sand dune integrity and status of the dune walkover boardwalks; (f) landscaping controls; (g) lighting regulations and controls; (h) integrity of the suitable habitat; (i) dune restoration and maintenance efforts; G) status of and any changes or amendments to the Covenants, the Covenants or the Rules and Regulations governing the Property or any part thereof; (k) status of construction on residential structures on habitat; (1) financial report and accounting of Alabama Beach Mouse Fund; (m) status of any employee or contractor training that took place during the report period; (n) suggestions for corrective measures or other changes that would improve the efficacy of the Plan.

ARTICLE 5
SPECIAL ASSESSMENTS FOR PLAN PURSUANT TO PLAN

Section 5.1 Assessments and Creation of Lien. In addition to any other assessments required under the Covenants or any other agreements, such Owner of a Unit, by a acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to these Covenants, is hereby deemed to covenant and agree to pay to the Association an Orange Beach Enhancement Assessment, as established and to be collected as provided in Section 5.3 below. The Orange Beach Enhancement Assessment, together with late charges and interest as provided in Section 5.5(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Orange Beach Enhancement Assessment, shall be an equitable charge and a continuing lien upon each Unit or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 5.5 (c) below. Each Owner shall be personally liable for the payment of all Orange Beach Enhancement Assessments coming due while he, she or it is the Owner of any Unit or Dwelling and such Owner's grantee shall take title to such Unit or Dwelling subject to the equitable charge and continuing lien therefore, but without prejudice to the rights of such grantee to recover from his, her or its granter any amounts paid by such grantee to the Association that were the legal obligations of such granter. All

Orange Beach Enhancement Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 5.5 (a) below, court costs and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Unit or Dwelling at the time such Orange Beach Enhancement Assessments and other costs and charges were assessed or incurred. If there is co-ownership of any Unit or Dwelling, all of the co-owners shall be jointly and severally liable for the entire amount of such Orange Beach Enhancement Assessment. The Orange Beach Enhancement Assessment shall be paid in such manner and on such dates as may be fixed by the Association. All Orange Beach Enhancement Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Unit, or Common Area or any other portion of the Development or any other cause or reason of any nature.

Section 5.2 Purpose of Orange Beach Enhancement Assessment. The Orange Beach Enhancement Assessment provided for herein shall be used for the general purposes of promoting compliance with these Covenants, the Plan, the Rules and Regulations and the Permit, if applicable, all as may be more specifically authorized from time to time by the Association provided, however, nothing set forth herein shall be construed to limit the use of such Orange Beach Enhancement Assessment or the ability of the Association or any other homeowner's association made up of owners of any of the Units from making or establishing other assessments, a portion of which may be used for compliance with these Covenants, the Plan or the Permit, if applicable. The Orange Beach Enhancement Assessment shall be deposited into a bank account in the name of the Association and shall constitute the Alabama Beach Mouse Fund.

Section 5.3 Computation of Assessments.

(a) Commencing with the first fiscal year of the Association, and annually thereafter, the Association shall place in its annual budget a Dune Enhancement Assessment, payable in the first monthly statement of the fiscal year, whereby each owner of each Unit shall be assessed and pay $201.00. Nonetheless, the first payment shall be due June 30, 2019, and the due date shall be the same date of each year until a Unit is conveyed to an Owner other than the Developer.

(b) In addition to the assessments set forth above, any and all levies, fines or other charges imposed by the Association on owners or occupants for violations of the terms of these Orange Beach Enhancement Covenants or the Rules and Regulations shall be deemed to be a part of the Orange Beach Enhancement Assessment for the purposes of the enforcement and remedies provisions contained herein.

Section 5.4 Allocation of Assessment. All funds collected by the Association through the Dune Enhancement Assessment, shall be retained by the Association in the Orange Beach Enhancement Fund. These funds can be used at the discretion of the United States Fish and Wildlife Service for any dune enhancement activity deemed beneficial to the dune or its inhabitants.

Section 5.5 Effect of Non-Payment; Remedies of the Association.

(a) Each owner of a Unit is and shall be deemed to covenant and agree to pay to the Association the Orange Beach Enhancement Assessment provided for herein. If any Orange Beach Enhancement Assessment or any portion thereof are not paid when due, the same shall be subject to a late charge in an amount determined and uniformly applied by the Association Board from time to time and the owner of such Unit shall be deemed in default herewith. If any Orange Beach Enhancement Assessments or any portion thereof are not paid within thirty days after the due date of the same, then the unpaid portion of the Orange Beach Enhancement Assessment shall accrue simple interest at the lesser of eighteen percent (18 %) per annum or the highest rate that may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth day from the due date until the same is paid in full. If the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys ' fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Unit or Dwelling for Orange Beach Enhancement Assessments as provided above shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Orange Beach Enhancement Assessments.

(b) If any Orange Beach Enhancement Assessments or other amounts due to the Association are not paid by any Owner when the same becomes due, then in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Association Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

(1) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Orange Beach Enhancement Assessments and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 5.1(a) above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Orange Beach Enhancement Assessments; and/or

(2) The Association may enforce the lien created pursuant to Section 5.1 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Unit and Dwelling, with power of sale, that secures the payment to the Association of any and all Orange Beach Enhancement Assessments levied against or upon such Unit or Dwelling, all late charges and interest at the Applicable Rate assessed pursuant to Section 5.1(a) above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Orange Beach Enhancement Assessments. If any Orange Beach Enhancement Assessments remain unpaid for more than sixty days, then the Association, through its Association Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect ·it's lien against the Unit or Dwelling of such delinquent Owner, which .claim .shall be .executed by any member .of the Board of .the Association or any officer of the Association, contain the following information and be recorded in the Probate Office of Baldwin County, Alabama:

(1) The name of the delinquent Owner;

(2) The legal description and street address of the Dwelling upon which the lien claim is made;

(3) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and

(4) A statement that the claim of lien is made by the Association pursuant to these Covenants and is claimed against such Unit or Dwelling in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those Owners in default) and may be foreclosed in the same manner as now provided by law in the case of past-due mortgages, and the Association shall be authorized, at its option, to sell the Unit or Dwelling under the power of sale that is hereby given to the Association, at public outcry, to the highest bidder for cash, at the front or main door of the Baldwin County courthouse, after first given notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Unit or Dwelling to be sold, by publication in some newspaper published in Baldwin County. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Unit or Dwelling. Each Owner, by acceptance of a deed to any Unit or Dwelling, shall be deemed to (1) grant to and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations that may be applicable to the commencement of any such suit or action for foreclosure.

Section 5.6 Subordination of Lien. Notwithstanding anything provided herein to the contrary, the lien for Orange Beach Enhancement Assessments and other charges, fines or levies authorized herein with respect to any Unit or Dwelling in the Development is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office of Baldwin County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 5.5(c) above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Unit or Dwelling; then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Orange Beach Enhancement Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office of Baldwin County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 5.5(c) above, but (b) be liable for all Orange Beach Enhancement Assessments other charges levied, assessed or incurred with respect to such Unit or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Unit or Dwelling has been foreclosed from the personal obligation to pay all Orange Beach Enhancement Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Unit or Dwelling.

Section 5.7 Certificates. The Association or any officer or authorized representative thereof shall, upon request and at such reasonable times as may from time to time be adopted by the Association Board, furnish to any Owner a certificate in writing setting forth whether the Orange Beach Enhancement Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Orange Beach Enhancement Assessments stated therein.

ARTICLE 6
ENFORCEMENT

Section 6.1 Authority and Enforcement. In addition to the provisions of Sections 5.1 above, if any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of these Covenants, the Rules and Regulations adopted by the Association Board from time to time, the Association Board shall have the power to (i) impose reasonable monetary fines that shall constitute an equitable charge and continuing lien upon the Unit and shall be a personal obligation of such Owner that is guilty of such violation, or (ii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests and tenants) to use any of the facilities located in or upon the Common Areas, and the Association Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

Section 6.2 Procedure. If any of the terms or provisions of these Covenants or any Rules and Regulations of the Association are violated by an Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Association Board shall not suspend or infringe upon or suspend any other rights pursuant to Section 6.1 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

(a) The alleged violation;

(b) The action required to abate such violation; and

(c) A time period of not less than two days during which the violation may be abated without further sanction (if such violation is a continuing one), or (if the violation is not a continuing one), a statement that any further violation of the same provision of these Covenants or any of the Rules and Regulations may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 6.1 above concerning suspension of use rights and shall not apply to the exercise of any of the rights and remedies specified in any other provision of these Covenants.

Section 6.3 Non-exclusive Revenues. Notwithstanding anything provided to the contrary in these Covenants, the authority, enforcement and procedural rights set forth in this Article 6 are in addition to and shall not be deemed to limit the other rights and remedies set forth in these Covenants or which the Association, acting through the Association Board, would have the right to exercise at law or in equity.

ARTICLE 7
TERM AND AMENDMENTS

Section 7.1 Term. The terms, covenants, conditions and restrictions set forth in these Covenants shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine years from and after the date hereof, after which time these Covenants shall be automatically renewed and extended for successive and continuous periods of ten years each, unless, at any time after the earlier of (a) thirty years from the date hereof, or (b) the date the Permit, if applicable, becomes ineffective or is terminated, an agreement executed by the Owners of at least two-thirds or more of the Units or Dwellings within the Property agreeing to terminate or modify these Covenants has been recorded in the Probate Office of Baldwin County, Alabama; provided, however, that the rights of way and easements established, granted and reserved in Article 3 hereof shall continue and remain in full force and effect for the time periods and duration specified therein; and provided, further, however, that such modification or termination does not violate the Permit, if applicable, or any subsequent permit issued in replacement of the Permit, if applicable.

Section 7.2 Amendment by Declarant. For so long as Declarant owns any Unit or Dwelling within the Property, or until such earlier date as Declarant elects, in Declarant's sole discretion, Declarant may amend these Covenants by a written instrument filed and recorded in the Probate Office of Baldwin County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 7.4 below, (a) if any amendment proposed by Declarant materially and adversely alters or changes any Owner's rights to the use and enjoyment of his or her Unit or Dwelling or materially and adversely affects the title to any Unit or Dwelling, then such amendment shall be valid only upon the written consent of the affected Owner or, alternatively, by fifty percent of all of the Owners (including Declarant who shall have the voting rights attributable to any Units or Dwellings owned by Declarant), (b) if any such proposed amendment by Declarant would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent of all such Institutional Mortgagees affected thereby or (c) if any amendment proposed by Declarant violates the terms of the Permit, if applicable, then such amendment shall be valid only upon the written consent of FWS. Any amendment made pursuant to this Section 7.2 shall be certified by Declarant and shall be effective when it is recorded in the Probate Office of Baldwin County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Unit or Dwelling, and each Mortgagee, by acceptance of a Mortgage on any Unit or Dwelling, agrees to be bound by all amendments permitted by this Section 7.2 and further agrees that, if requested to do so by Declarant, such Owner and Mortgagee will consent to the amendment of these Covenants or any other instrument relating to the Property or the Association if such amendment is necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority (including, but not limited to, the Permit, if applicable,) or the judicial decision of any state or federal court:

(i) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Unit or Dwelling,

(ii) required by any Institutional Mortgagee to enable such Institutional Mortgagee to make a mortgage loan on any Unit or Dwelling or;

(iii) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Unit or Dwelling within the Property.

Section 7.3 Amendments by Association. Amendments to these Covenants, other than those authorized by Section 7.2 above, shall be proposed and adopted by the Association in the following manner:

(a) At any annual or special meeting of the members of the Association, an amendment to these Orange Beach Enhancement Covenants may be proposed by either the Association Board or by any Members present in person at such meeting. Any such proposed amendment must be approved by the Members holding at least two-thirds of the total votes in the Association; provided, however, that (i) for so long as Declarant owns a Unit or Dwelling within the Property, or until such earlier date as Declarant elects, in Declarant's sole discretion, Declarant must approve such proposed amendment and (ii) to the extent the proposed amendment affects any of the matters described in Section 7.4 below, then the provisions of Section 7.4 below shall be applicable to such proposed amendment.

(b) Any and all amendments approved in accordance with the provisions of Section 7.3(a) above shall be executed by all parties whose consent to the same is required, including the Members holding at least two-thirds of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Association Board stating unequivocally that the agreement of the requisite number of Members was lawfully obtained may be attached to and incorporated into such amendment without the written consent of any Member. Any such amendment shall be effective upon recording of the same in the Probate Office of Baldwin County, Alabama.

ARTICLE 8
AMENDMENTS TO THE PLAN; RULES AND REGULATIONS

Section 8.1 Amendment of the Plan. To allow the Association to comply with changing conditions as contemplated by the Plan and to allow flexibility in compliance with the Permit, if applicable, each Owner by acceptance of a deed, agrees that the Association may amend; modify, clarify, expand the scope of, limit the scope of, or otherwise change the Plan by amending the Rules and Regulations.

Section 8.2 Rules and Regulations. The Association Board may establish and enforce the Rules and Regulations governing the use of all Units, including, without limitation, rules and regulations that govern the enforcement of all of the provisions of these Covenants, the Permit, if applicable, and the Plan. Each such rule and regulation shall be binding upon all Owners and Occupants until and unless any such rule or regulation is specifically overruled, canceled or modified by the Association Board; provided, however, that no such rule or regulation may be overruled, canceled or modified unless such action is also approved by Declarant for so long as Declarant owns any portion of the Property or until such earlier date as Declarant elects in Declarant's sole discretion, to relinquish such right.

ARTICLE 9
MISCELLANEOUS PROVISIONS

Section 9.1 Legal Expenses. In addition to the rights and remedies set forth in Section 5.1 and in Article 6 above, in the event either the Association, its agents or representatives, or Declarant undertake any legal or equitable action that either of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of these Covenants, then all costs and expenses incurred by either of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in these Covenants shall be paid for by the Owner against whom such action was initiated. Declarant, its agents and representative and the Association, its agents and representative, are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any such violation or breach or to otherwise seek monetary damages as a result of any expenses incurred by either Declarant or the Association to cure such violation or breach.

Section 9.2 Severability. If any provision of these Covenants or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of these covenants or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

Section 9.3 Captions and Headings. The captions and headings contained in these Covenants are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of these Covenants.

Section 9.4 Pronouns and Plurals. All personal pronouns used in these Covenants, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

Section 9.5 Binding Effect. The terms and provisions of these Covenants shall be binding upon each Owner, Occupant and Mortgagee and the respective heirs, executors, administrators, personal representatives, successors and assigns of each Owner, Occupant and Mortgagee, and shall inure to the benefit of Declarant, the Association, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

Section 9.6 Conflict or Ambiguity. If any conflict or ambiguity in the terms and provisions of these Covenants, the general rules of construction against one party as a result of that party having drafted these Covenants are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

Section 9.7 No Reverter. No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Declarant nor shall any provision be deemed to vest any reversionary interest in Declarant.

Section 9.8 Interpretation. In all cases, the provisions set forth and provided for in these Covenants shall be construed together and given that interpretation or construction that, in the opinion of Declarant, or the Association, as the case may be, will best effect the intent of the general plan of development for the Property and the protection and conservation of the Alabama Beach Mouse and the Critical Habitat and to prevent violation of the Permit, if applicable. If there is any direct conflict between the requirements of these Covenants and the requirements of the Permit, if applicable, the requirements of the Permit, if applicable, shall prevail and these Covenants shall be deemed amended to prevent such conflict. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes that are less restrictive. The effective date of these Covenants shall be the date hereof. These Covenants shall be construed under and in accordance with the laws of the State of Alabama.

Section 9.9 Right of Third Parties. These Covenants shall be recorded for the benefit of Declarant, the Association, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or the Development or the operation and continuation of either, in the enforcement of any of the provisions of these covenants or the right to consent to or approve any amendment or modification to these Covenants.

Section 9.10 No Trespass. Whenever the Association, Declarant, Governmental Agencies and their respective agents, employees, representatives, successors and assigns, are permitted by these Covenants to enter upon or correct, repair, clean, maintain, monitor or preserve or do any other action within any portion of a Unit or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

Section 9.11 No Partition. Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property or the Development.

Section 9.12 Reservation of Rights. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Unit or Dwelling by Declarant to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Declarant unless reference is made in such instrument of conveyance to the specific rights created in these Covenants that Declarant is transferring to any such third party.

Section 9.13 Standards for Review. Whenever in these Covenants Declarant or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Declarant or the Association, as the case may be.

Section 9.14 Oral Statements. Oral statements or representations by Declarant or the Association or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on Declarant or the Association.

Section 9.15 Noticing. Notices required hereunder shall be in writing and shall be delivered by hand, by overnight courier, or sent by registered or certified United States Mail, postage prepaid return receipt requested. Any notice so addressed and mailed shall be deemed to be given five (5) days after deposit in the United States Mail, and if delivered by hand, shall be deemed to be given when delivered, by overnight courier, shall be deemed to be given on the business day immediately following the day on which it was sent or delivered. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Unit or Dwelling within the Property. All notices to the Association shall be delivered or sent in care of Declarant to the following address:

Phoenix Gulf Towers Owners Association, Inc.
3259 Gulf Shores Parkway
Gulf Shores, AL 36542

Or to such other address as the Association may from time to time specify in a notice to the Owners. All notices to Declarant shall be sent or delivered to Declarant at the above address or to such other addresses as Declarant may notify the Association.

Section 9.16 Assignment. Subject to the provisions of Section 9.12 above, Declarant and the Association shall each have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Declarant and the Association, respectively.

Section 9.17 Further Assurances. Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformity or otherwise, that may be reasonably requested by Declarant or the Association, for the purpose of or in connection with clarifying, amending or other consummating any of the transactions and matters herein.

Section 9.18 Non-liability of Declarant. Each Owner agrees and acknowledges that be acceptance of a deed to the Property they are a permittee pursuant to the terms of the Permit, if applicable. As such permittee, the Owners are solely responsible for their own full and complete compliance with the Permit, if applicable. The establishment and creation of these Covenants shall not create any liability for Declarant for a claim that compliance with the terms of these Covenants does not result in full compliance with the Permit, if applicable. Each Owner is responsible for insuring their own compliance with the Permit, if applicable. Declarant makes no representation or warranty that full compliance with these Covenants shall insure full compliance with the Permit, if applicable.

Section 9.19 No Waiver. All rights; remedies and privileges granted to Declarant and the Association pursuant to the terms and provisions of these Covenants shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

IN WITNESS WHEREOF, Declarant has caused these Covenants to be duly executed as of the day and year first above written.

Phoenix Gulf Towers, LLC
An Alabama limited liability company:

By: Thomas E. Brett
Thomas E. Brett
Its: Manager

STATE OF Alabama)

COUNTY OF Baldwin)

I, James R. Owen Jr, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Thomas E. Brett, as Manager of Phoenix Gulf Towers, LLC, an Alabama limited liability company, whose name 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, such Manager and with full authority, has executed the same voluntarily for and as the act of said company, on the day the same bears date.

Given under my hand and seal this the 29th day of June, 2023.

Notary Public
My Commission Expires:

JAMES R OWEN JR
EXPIRES
NOTARY
PUBLIC
MARCH 18, 2024
ALABAMA STATE AT LARGE

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Lot 1, Phoenix Gulf Towers Subdivision, as recorded on Slide 2685-C and as revised on slide 2881-A in the office of the Judge of Probate, Baldwin County, Alabama.

Exhibit "F"

RULES AND REGULATIONS CONCERNING USE OF PHOENIX GULF TOWERS, A CONDOMINIUM

The PHOENIX GULF TOWERS Owners Association, Inc. (hereinafter "Association"), acting through its Board of Directors (hereinafter "Board"), has adopted the following Rules and Regulations (hereinafter "Regulations"). These Regulations may be amended from time to time by resolution of the Board.

As used in these Regulations the term "Unit Owners" shall apply to the Owner of any Unit, to his family, tenants (whether or not in residence), servants, employees, agents and visitors, and to any guests, invitees or licensees of that Unit Owner, his family or tenant of that Unit Owner. As used in these Regulations the term "Association" shall include the Association and the Managing Agent when the Managing Agent is acting on behalf of the Association.

1. The Association reserves the right to alter, amend, modify, repeal or revoke these Regulations, and any consent or approval given hereunder, at any time, by resolution of the Association or the Board.

2. All Owners of any Unit are to inform non-owners upon the Condominium Property of these Rules and Regulations.

3. Unit Owners are reminded that alteration and repair of the common elements are the responsibility of the Association, except for those matters which are stated in the Declaration to be the responsibility of a Unit Owner. No work of any kind is to be done upon or affecting those portions of exterior building walls or interior boundary walls which are the responsibility of the Association without first obtaining the approval required by the Declaration of Condominium.

No Owner may install any plumbing, wiring or air conditioning equipment without the prior written approval of the Board.

4. The sidewalks, entrances, passages, elevators, corridors and stairways of, or appurtenant to, the Building shall not be obstructed or used for any other purpose than ingress to and egress from the Building.

5. No article (including, but not limited to, garbage cans, bottles or mats) shall be placed in any of the Common Areas, except those areas specifically designated by the Association. Nothing shall be hung or shaken from any doors, windows, roofs, balconies, terraces or patios, or placed upon the window sills of the Building.

6. Neither occupants nor their guests shall play or lounge in the entrances, passages, elevators, corridors, stairways or fire towers of the Building.

7. Except as otherwise provided in the By-Laws, no common area of the Building shall be decorated or furnished by any Unit Owner in any manner.

8. Each Unit Owner shall keep his Unit in a good state of preservation and cleanliness, and shall not sweep or throw (or permit to be swept or thrown) therefrom or from the doors or windows thereof, any dirt or other substance.

9. No window guards or other window decorations shall be used in or about any Unit except such as shall have been approved in writing by the Board.

10. Nothing shall be done in any Unit or on the Common Elements that may impair the structural integrity of the Building or that may change the Building structurally, nor shall anything be altered or constructed on or removed from the common elements, except upon the prior written consent of the Board.

11. No radio or television aerial shall be attached to or hung from the exterior of the Building and no sign, notice, advertisement or illumination shall be inscribed or exposed on or at any window or other part of the Building except such as are permitted pursuant to the Declaration or the By-Laws and shall have been approved in writing by the Board; nor shall anything be projected from any window of a Unit without similar approval.

12. No ventilator or air conditioning device shall be installed in any Unit without the prior written approval of the Board.

13. All electrical equipment (of any kind or nature) installed or used in each Unit shall fully comply with all rules, regulations, requirements of recommendations of the local fire department and the public authorities having jurisdiction, and the Unit Owner alone shall be liable for any damage or injury caused by any electrical equipment in such Unit Owner's Unit.

14. No bicycles, scooters or similar vehicles shall be taken into or from the Building through the main entrance or be allowed in any of the elevators other than the elevator designed by the Board for that purpose, and no baby carriages or any of the above-mentioned vehicles shall be allowed to stand in the common halls, passageways or other common areas of the Building.

15. No Unit Owner shall mount or display a name plate or sign of any kind on the exterior of his Unit Entry Door or in any other Common Areas of the Building without the prior written approval of the Board. This restriction shall not apply to the Developer until after all Units are sold, or to the owners(s) of the non-residential units.

16. No Unit Owner shall make or permit any disturbing noises or activity in the Building, or do or permit anything to be done therein, which will interfere with the rights, comforts or conveniences of other Unit Owners or tenants. No Unit Owner shall play upon or cause to be

played upon any musical instrument, or operate or permit to be operated a phonograph, radio, television set, loud speaker or other sound amplification device in such Unit Owner's Unit between 10 p.m. and the following 9 a.m., if the same shall disturb or annoy other occupants of the Building, and in no event shall practice or cause to be practiced either vocal or instrumental music between the hours of 10 p.m. and the following 9 a.m. No construction or repair work or other installation involving noise shall be conducted in any Unit except on weekdays (not including legal holidays) and only between the hours of 8 a.m. and 5 p.m., unless such construction or repair work is necessitated by an emergency. Unit Owners shall not cause or permit any unusual or objectionable noises or odors to be produced upon or to emanate from their Units or any terrace or deck appurtenant thereto.

17. All service and delivery persons will be required to use the entrance designated by the Board.

18. Toilet facilities and other water apparatus in the Building shall not be used for any purpose other than those for which they are designed, nor shall any sweepings, rubbish, rags or any other article be thrown into the same. Any damage resulting from misuse of any water-related apparatus in a Unit shall be repaired and paid for by the Owner of such Unit.

19. The agents of the Board, and any contractor or workman authorized by the Board, may with a minimum 48-hours' notice, enter any room or Unit at any reasonable hour of the day for the purpose of inspecting such Unit for the presence of any vermin, insects or other pests and for the purpose of taking such measures as may be necessary to control or exterminate in a reasonable manner so as not to unreasonably interfere with the use of such Unit for its permitted purposes..

20. The Board shall retain a pass-key to each Unit. If any lock is altered or a new lock is installed, the Board shall be provided with a key thereto immediately upon such alteration or installation. If the Unit Owner is not personally present to open and permit an entry to his Unit at any time when an entry therein is necessary or permissible under these Rules and Regulations or under the By-Laws and has not furnished a key to the Board, then the Board or its agents (but, except in an emergency, only when specifically authorized by an officer of the Condominium) may forcibly enter such Unit without liability for damages or trespass by reason thereof (if during such entry reasonable care is given to such Unit Owner's property).

21. No vehicle belonging to a Unit Owner or to a member of the family or guest, tenant or employee of a Unit Owner shall be parked in such manner as to impede or prevent ready access to any entrance to or exit from the Building by another vehicle.

22. Unless otherwise authorized by the Association, the parking areas may not be used for any purpose other than parking automobiles. No buses, trucks that do not fit within the confines of a standard parking space, trailers, boats, recreational or commercial vehicles shall be parked in the parking areas or in driveways except in those areas, if any, designated specifically for such parking by the Board. All vehicles must have current license plates and be in good operating condition. No vehicles shall be parked on the Property with conspicuous "For Sale" signs attached. All vehicles on the premises shall display a current, authorized parking pass. The absence of a valid parking pass will result in the vehicle being towed from the premises at the vehicle owner's expense. The Association assumes no responsibility for vehicles damaged by storms, theft, accident, or for loss of articles left in vehicles.

23. All Unit Owners shall observe and abide by all parking and traffic regulations as posted

by the Association or by municipal authorities. Vehicles parked in violation of any such regulations may be towed away at the Unit owner's sole risk and expense. Owners will be allotted (2) passes for two and three-bedroom units and (3) passes for four-bedroom units. The authorized owner's permit is physically transferable from one vehicle to another. Owners who have misplaced passes must purchase new ones at a cost of $100.00 per pass.

24. The Board may from time to time curtail or relocate any portion of the Common Elements devoted to storage, recreation or service purposes in the Building.

25. Complaints regarding the service of the Property shall be made in writing to the Board.

26. Any consent or approval given under these Rules and Regulations may be added to, amended or repealed at any time by resolution of the Board.

27. Except as permitted under the Declaration and By-Laws, Unit Owners, their families, guests, servants, employees, agents, visitors or licenses shall not at any time or for any reason whatsoever enter upon or attempt to enter upon the roof of the Building.

28. No Unit Owner or any of his agents, servants, employees, licenses or visitors shall at any time bring into or keep in his Unit any inflammable, combustible or explosive fluid, material, chemical or substance, except as shall be necessary and appropriate for the permitted uses of such Unit.

29. Employees and agents of the Association are not authorized to accept packages, keys, money (except for condominium assessments) or articles of any description from or for the benefit of a Unit Owner. If packages, keys (whether for a Unit or an automobile), money or articles of any description are left with the employees or agents of the Association, the Unit Owner assumes the sole risk therefor and the Unit Owner, not the Association, shall be liable for injury, loss or

damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith. The Association does not assume any responsibility for loss or damage in such cases. Deliveries requiring entrance to a Unit Owner's Unit will not be accepted without the prior written permission of the Unit Owner accompanied by a written waiver of all liability in connection with such deliveries.

30. If any key or keys are entrusted by a Unit Owner or by any member of his family or by his agent, servant, employee, licensee or visitor to an employee of the Association, whether for such Unit Owner's Unit or an automobile, trunk or other item of personal property, the acceptance of the key shall be at the sole risk of such Unit Owner, and the Board shall not be liable for injury, loss or damage of any nature whatsoever, directly or indirectly resulting therefrom or connected therewith.

31. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of the Building or contents thereof without the prior written consent of the Board. No Unit Owner or occupant shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Building or which would be in violation of any law. No waste shall be committed in the Common Elements.

32. 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 of a Residential Unit shall place, distribute or maintain any sign, poster or bill in any portion of the Common Elements outside his Unit without the approval of the Board of Directors, nor shall "For Sale" signs or similar signs be posted in Unit windows.

33. No group tour or exhibition of any Unit or its contents shall be conducted, nor shall any auction sale be held in any Unit without the consent of the Board.

34. No Unit Owner shall install any plantings on any terrace, patio or roof except with the permission of the Board.

35. All occupants of Units and Unit Owners must comply with the requirements of the Alabama Uniform Condominium Act of 1991, Articles of Incorporation of the Association, By-Laws of the Association, the Declaration, and these Rules and Regulations.

36. The Association regulates the presence of pets on condominium property. Unit Owners' pets are permitted under such restrictions and conditions as the Board shall impose from time to time. Only unit Owners and their immediate family are permitted to have pets on the premises. Immediate family is defined as: spouse, child, parent, grandparent, or grandchild. All other relations, friends, acquaintances, and guests (rental and non-rental) are prohibited from having pets on the premises. All authorized pets are required to be on a leash and have an Association Pet Identification Tag attached whenever in Common Areas of the property. Pets are NOT allowed in Pool Areas, the Exercise Fitness Room, or the Meeting Room.

37. All persons shall be properly attired when appearing in any of the following portions of the property public halls, community buildings and any other public spaces of the condominium.

38. Rules of behavior regarding the swimming pool, and other recreational and storage areas shall be promulgated by the Board of Directors of the Association and all Unit Owners shall comply with such Rules.

39. Installation of Tankless Electric Water Heaters is prohibited due to high electrical load demands that could exceed the facility's electrical power distribution system capacity and cause circuit overloading.

40. Smoking and vaping are prohibited in all Common and Limited Common Areas which include but are not limited to Unit Balconies, Hallways, Fitness Center, Meeting Rooms, Lobbies, Storage Areas, Parking Garage, Pool and Spa Areas and Stairwells. Smoking and vaping are only allowed in the designated smoking area.

41. No throwing or pouring anything off Balconies or Walkways.

42. All persons on the premises whether the Owner or an Owner's family member, or a guest of an Owner, or a renting guest must display Association authorized and issued wristbands at all times. Owners and guests who fail to comply with this requirement will be asked to leave the premises' Common Areas.

I certify that the above set out Rules and Regulations were adopted by the Phoenix Gulf Towers Owners Association, Inc., acting through its Board of Directors, at its regular meeting held on the 21st day of June, 2023.

William J Robinson Jr

Secretary