STATE OF ALABAMA,
BALDWIN COUNTY
I certify that this instrument was filed on
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Book 51
Page 1005-1035
Judge of Probate
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DECLARATION OF CONDOMINIUM
OF
PHOENIX III, A Condominium

THIS DECLARATION, made this 18th day of July, 1985, by BRETT REAL ESTATE, ROBINSON DEVELOPMENT COMPANY, INC., a corporation organized under the laws of the State of Alabama, hereinafter called the DEVELOPER, for itself, its successors, grantees and assigns.

WHEREIN, the DEVELOPER makes the following declaration.

WHEREAS, BRETT REAL ESTATE, ROBINSON DEVELOPMENT COMPANY, INC., a corporation, is the fee simple owner of that certain parcel of real property situated in the County of Baldwin, State of Alabama, and intends to improve the same in the manner hereinafter described, which said parcel of land is more particularly described as follows, to-wit:

The lands described in Exhibit "A" attached.

NOW, THEREFORE, BRETT REAL ESTATE, ROBINSON DEVELOPMENT COMPANY, INC., a corporation, the DEVELOPER, hereby makes the following declaration as to the division 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 BRETT REAL ESTATE, ROBINSON DEVELOPMENT, its 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.

1. Purpose. The purpose of this Declaration is to submit the lands hereinafter described and the improvements to be constructed thereon to the condominium form of ownership and use in the manner provided by the CONDOMINIUM OWNERSHIP ACT, Act No. 1059, 1973 Regular Session, Alabama Legislature (35-8-1 et seq., Code of Alabama 1975).

2. Name. The name by which this condominium is identified is PHOENIX III, a Condominium.

3. The Land. 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, to-wit:

Lands described in Exhibit "A" attached.

4. Definitions. The terms used herein and in the By-Laws shall have the meanings stated in the Condominium Ownership Act of Alabama, and as follows:

(a) "Unit" means an apartment, and includes the private elements thereof, together with the undivided interests in the common elements which are assigned thereto.

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(b) "Unit Owner" means the owner of an apartment, whether singly or jointly, partnership, corporation, or other legal entity, or the successors, heirs, administrators, executors or assigns, or the heirs or assigns of the survivor, as the case may be.

(c) "Association" means the PHOENIX III ASSOCIATION, INC., and its successors, and is the association of Unit Owners referred to in said Act.

(d) "Common Elements" means common areas and facilities including but not limited to all parts of the condominium property not included within the unit boundaries as described in paragraph 6.3 hereafter and shall include the utility spaces and the tangible personal property required for the maintenance and the operation of the condominium as well as the items stated in the Condominium Ownership Act of Alabama.

(e) "Common Expenses" means and includes the actual and estimated expenses of operating the property, and any reasonable reserve for such purposes as may be found and determined necessary or useful by the Board of Directors, and all sums designated as common expenses by or pursuant to the condominium documents.

(f) "Utility Services" shall include but not be limited to electrical power, water, garbage and sewage disposal.

(g) "Substantial Destruction, Deterioration or Obsolescence" shall mean such destruction or deterioration or obsolescence that the condominium has lost its character as a residential development, and restoration thereof would be the practical equivalent of a newly constructed development.

(h) "Development" comprehends the land, and all buildings, improvements and property which are a part of the condominium.

(i) "Common Interest" means the proportionate undivided interest in the fee simple absolute in the common elements appurtenant to each unit as expressed in this Declaration.

(j) "Common Surplus" means the excess of all receipts of the Association, including but not limited to assessments, rents, profits and revenues on account of the common elements, over the amount of common expenses.

(k) "Operation of the Property" means and includes the administration of the project, the operation,

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maintenance, repair or replacement of, and the making of any additions or improvements in the common elements.

(l) "Person" means a natural person, a corporation, a partnership, the Association herein referred to, a trustee, or other legal entity.

(m) "Unit Designation" means the number, letter or combination thereof or other official designation as shown on the plans annexed to this Declaration.

(n) "Declaration" means this declaration and all amendments thereto hereafter made.

(o) "Surfacing Materials" means the materials, including but not limited to mats, carpeting, sheetrock, decking, boards, panels and the like which are laid upon or attached to foundation slabs, and/or to the under surfaces of ceiling rafters, and/or the upper surfaces of floor rafters.

5. Development Plan.

.1. The improvements will be constructed as shown upon the drawings thereof, pages 1 through 177, inclusive, of Exhibit "B", hereto attached and by reference made a part hereof, which plans were prepared by John M. Senkarik, 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, and bearing the verified statement of a Registered Architect that such drawings are in sufficient detail to identify the common elements and the private elements comprising the units as built and which said drawings are supplemented and complemented by the narrative and the graphic descriptions herein contained.

.2. Changes. In order to meet 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 in in default, provided such changes do not change the common elements or the undivided percentage interest of ownership in 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.

.3. Amendment of Plans. This Declaration may be amended by the filing of such additional plans as may be required to accurately describe the improvements of 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.

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

.5. Access. Each unit has a right of access to a public street or highway, that is to say, to East Gulf Beach Highway 182, upon and over common elements, providing such access all as shown upon the site plan (Page A-2 drawings incorporated by reference in Paragraph 5, supra). 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 the grounds, and (ii) the parking area, driveways and streets all as shown upon the site plan (Page A-2 drawings incorporated by reference in Paragraph 5, supra).

6. Descriptions.

.1. The Buildings. The Condominium will include access areas, parking areas, a parking garage, lawn areas, swimming pool, locker room area, 2 racquetball courts, 3 tennis courts, 2 saunas, 2 whirlpools, meeting rooms, public restrooms, lobby and reception area, gazebos, guard house and facilities located substantially as shown on the plans and drawings.

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

(a) Units Numbered. Each unit is assigned a number which is indicated on the plans attached hereto.

(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) Type A. Units of this type are located on all 20 floor levels, have two terraces, one overlooking the Gulf of Mexico and one facing North, for a total terrace area of approximately 393 square feet, a master bedroom with adjoining bath, two additional bedrooms and a second bath, a kitchen, living room and dining room, and have approximately 1356 square feet of living area exclusive of terraces, and of a storage area of approximately 18 square feet and including a foyer and closets. The kitchen is equipped with dishwasher, sink, garbage disposal, range, range hood and refrigerator; the unit is equipped with a water heater, heater and air conditioner, washer and dryer, all as set forth in the specifications.

(d) Type B. Units of this type are located on all 20 floor levels, have one terrace overlooking the Gulf of Mexico of approximately 148 square feet in area, have a master bedroom with adjoining bath, a second bedroom with a second bath, a kitchen, a living/dining area and have approximately 926 square feet of living area exclusive of terrace and of a storage closet of approximately 18 square feet in area and including an entrance hall and closets. The kitchen is equipped with dishwasher, sink, garbage disposal, range, range hood and refrigerator; the unit is equipped with a water heater, heater and air conditioner, washer and dryer, all as set forth in the specifications.

(e) Type C. Units of this type are located on all 20 floor levels, have a terrace overlooking the Gulf of Mexico of approximately 148 square feet in area, have one bedroom with adjoining bath, have a kitchen, living area and a breakfast area and have approximately 691 square feet of living area exclusive of the terrace and of a storage closet of approximately 18 square feet and including an entrance hall and closets. The kitchen is equipped with dishwasher, sink, garbage disposal, range, range hood and refrigerator; the unit is equipped with a water heater, heater and air conditioner, washer and dryer, all as set forth in the specifications.

3. Common Elements. The common elements of the condominiums include 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.

(b) All central and appurtenant installations for services such as power, light, telephone, storm drains, sewer, and water; TV cables, heat and air conditioning, including all pipes, ducts, wires, cables, and conduits used in connection therewith, whether located in common areas or in units, and all utility and mechanical equipment, buildings and spaces, which are not used or reserved for the exclusive use of certain units.

(c) Automobile parking spaces, whether or not in parking areas or the parking garage, and whether or not assigned to the exclusive use of any unit.

(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 pool, sun deck, whirlpools, saunas, racquetball courts, tennis courts, meeting rooms, public restrooms, lobby and reception area, gazebos, guard house and locker room area.

(i) Exterior steps, ramps, handrails, stairs and stairwells.

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

(k) All retaining walls, seawalls, 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 Condominium Ownership Act of Alabama, Act No. 1059, 1973 Regular Session, Alabama Legislature (35-8-1 et seq.; Code of Alabama of 1975, as amended), and located on the property.

.4. Limited Common Elements. There are no limited common elements.

.5. 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 exterior walls and of interior walls separating a unit from another unit, and are as shown on the drawings (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 surface of the floor slab.

.6. 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 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 and air conditioning, and TV, whether located in the boundaries of the unit or in common areas, which are the exclusive use of 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.

.7. 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 the unit.

7. Determination of Percentages of Ownership in Common Elements, Common Surplus and Voting. 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, to determine the percentage of ownership in the common elements, percentage of common expenses, and percentage of common surplus, and voting in all matters requiring action by the owners. The common expenses shall be charged to the unit owners according to the percentages of the undivided interests of the respective units in the

common elements. The common surplus shall be a trust fund for the unit owners according to the respective units in the common elements or 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.

8. Encroachments. 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.

9.

.1. 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 or 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: (1) the Act, (2) the Declaration, (3) the Articles of Incorporation of the Association, (4) the By-Laws of the Association, and (5) the Rules and Regulations of the Association.

.2. 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 seaparated 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.

.3. 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.

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

.1. 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 damage caused to a unit in the performance of any of the foregoing work.

(b) By the Unit Owner. The responsibility of the unit owner shall be as follows:

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

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

.2. 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 prior approval in writing of seventy-five (75) percent of the votes of the unit owners, and the approval in writing of 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 (51) percent 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 cost thereof. Any such alteration or addition shall be done in accordance with complete plans and specifications therefor first approved in writing by the Board; and promptly upon completion of such additional building or structural alteration or addition to any structure, the Association shall duly record or file of record in the office of the Judge of Probate of Baldwin County, Alabama, 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.

11. 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:

.1. Share of Common Expenses and Other Charges. Each unit owner shall be liable for a proportionate share of the common expenses and other charges, and shall share in the common surplus, such share being the same as his percentage of ownership in the common elements.

.2. 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 ten percent (10) percent per annum after date due, until paid.

.3. Liens for Assessments. The Association is hereby granted a lien upon each unit and its appurtenant undivided interest in common elements, which lien shall secure and does secure the moneys due for all assessments now or hereafter levied or subject to being levied against the owner of each unit, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said unit and its appurtenant undivided interest in the common elements. The said lien for non-payment of assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except only (1) tax lien on the unit in favor of the state, the county, any municipality, and any special district, and (2) all sums unpaid on a first mortgage of record. In any suit for the foreclosure of said lien, the Association shall be entitled to rental from the owner of any unit from the date on which the payment of any assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said unit without notice to the owner of such unit. The rental required to be paid shall be equal to the rental charged on comparable types of dwelling units in Gulf Shores, Alabama. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of ten percent (10) percent per annum on any such advances made for such purposes. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien granted to the Association.

.4. Rental Pending Foreclosure. In any foreclosure of a lien for assessments, the owner of the unit subject to the lien shall be required to pay a reasonable rental for the unit.

.5. 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 the 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 have been leased or sold.

.6. 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.

12. Association. The operation and administration of the condominium shall be by the Association of the unit owners, pursuant to the provision of the Condominium Ownership Act of Alabama, which said Association shall be incorporated by the Article 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 ofthe condominium with reference to the common element, the roof and structural components of a building or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a building as distinguished from mechanical elements serving only a unit, and with reference to any and all other matters in which all the unit owners of the condominium have a common interest. The Association shall be further organized and shall fulfill its functions pursuant to the following provisions:

.1. Name. The name of the Association shall be PHOENIX III ASSOCIATION, INC..

.2. Powers. The powers and duties of the Association shall include those set forth in the Condominium Ownership Act, and those set forth in this Declaration and the By-Laws of the Association, attached to 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 include but not be limited to the maintenance, management and operation of the condominium property.

.3. 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" hereto attached. The vote for a unit shall be cast by the owner thereof or the owner of a 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 right 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 not 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 a appurtenance to his unit. MISC. 511 PAGE 1205

.4. 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 eight (8) as shall, from time to time, be determined and fixed by vote of a majority of the voting rights present in any annual meeting of the members.

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

.6. 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, not for injury or damage caused by the elements, or other owners or persons.

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

13. 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:

.1. 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 that 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 personal liability, as he may desire.

.2. Coverage.

(a) Casualty. All buildings 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 and other hazards covered by a standard extended coverage endorsements; and

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

(b) 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, 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 and/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.

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

(a) Provide that the liability of the insuror thereunder shall not be affected by, and that the insuror 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 insuror from liability for a loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Association, or because of any breach of warranty or condition or any other act or neglect by the Association or any unit owner or any other persons under either of them.

(c) Provide that such policy may not be cancelled (whether or not requested by the Association) except by the insuror 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 insuror.

(d) Contain a waiver by the insuror of any right of subrogation to any right of the Association or either against the owner or 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 insuror of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

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

.5. Insurance Trustee; Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees 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.

(c) Mortgages. In the event a mortgagee endorsement has been issued as to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests may appear.

.6. 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.

.7. Association as Agent. The Association is hereby irrevocably appointed 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.

14. 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:

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

(a) Common Areas and Facilities. If the damaged improvement is a common area or facility, the damaged property shall be constructed, replaced 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 shall 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.

.2. Responsiblity. If the damage is only to those parts of a unit for which the responsiblity 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.

.3. 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.

.4. 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 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 assessments against unit owners for reconstruction and/or repair of damages to units shall be in proportion to the cost of reconstruction and repair of their respective units. Such assessments for reconstruction and/or repair of damage to common areas and facilities shall be in proportion to the owner's share in the common areas and facilities.

.5. 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 - Lessor Damage. If the amount of the estimated costs of reconstruction

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and repair which is the responsiblity 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 expense 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.

15. Use Restrictions. The use of the property of the condominium shall be in accordance with the following provisions:

.1. Single Family Residences. The condominium property shall be used only for single family residences, and for the furnishing of services and facilities herein provided for the enjoyment of such residences. Each of the units shall be occupied only be a single family and its guests as a residence and for no other purpose.

.2. 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.

.3. 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. No commercial use, except as set forth in paragraph .4.

.4. Leasing. After approval by the Association as elsewhere required, entire units may be rented provided the occupancy is only by the lessee and his family and guests. No individual rooms may be rented and no transient tenants may be accommodated.

.5. 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.

.6. Proviso. Provided, however, that until the DEVELOPER of the condominium has completed and sold all of the units of the condominium or until February 1, 1988, or until DEVELOPER elects to terminate its control of the condominium, whichever shall first occur; and provided, further, that until the DEVELOPER of the condominiun has completed and sold eighty percent (80%) of the aggregate of all the units of the condominium or until four(4) years after the date of the filing of the certificate by the DEVELOPER, or until the DEVELOPER elects to terminate its control over the condominium, whichever shall first occur; neither the unit owners not the occupants shall interfere with the completion of the contemplated improvements and the sale of the units. 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 the showing of the property and the display of signs.

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16. Maintenance of Community Interests. In order to maintain a community of congenial residents, preserve the financial stability of the condominium regime, and protect the value of the units, the transfer of condominium parcels by any owner other than the DEVELOPER shall be subject to the following provisions so long as the condominium shall exist:

.1. Transfers Subject to Approval.

(a) Sale. No unit owner may dispose of a condominium unit or any interest therein by any sale without approval of the Association, except to another unit owner.

(b) Lease. No unit owner may dispose of a condominium unit or any interest therein by lease without approval of the Association, except to another unit owner.

(c) Gift. If any unit owner shall acquire his title by gift, the continuance of his ownership of his condominium unit shall be subject to the approval of the Association.

(d) Devise or Inheritance. If any unit owner shall acquire his title by devise or inheritance, the continuance of his ownership of his condominium unit shall be subject to the approval of the Association.

(e) Other Transfers. If any unit owner shall acquire his title by any manner not heretofore considered in the foregoing subsections, the continuance of his ownership of his condominium unit shall be subject to the approval of the Association.

.2. Approval by Association. The approval of the Association which is required for the transfer of condominium units shall be obtained in the following manner:

(a) Notice to Association.

(i) Sale. A unit owner intending to make a bona fide sale of his unit or any interest therein shall give to the Association at least thirty (30) days written notice of such intention, together with the name and address of the intended purchaser and such other information concerning the inteded purchaser as the Association may reasonably require.

(ii) Lease. A unit owner intending to make a bona fide lease of his unit or any interest therein shall give to the Association notice of such intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Association may reasonably require, and an executed copy of the proposed lease.

(iii) Gift, Devise or Inheritance; Other Transfers. A unit owner who has obtained his title by gift, devise, or inheritance, or by any other manner not heretofore considered, shall give to the Association notice of the acquiring of his title, together with such information concerning the unit owner as the Association may reasonably require, and a certified copy of the instrument evidencing the owner's title.

(iv) Failure to Give Notice. If the notice to the Association herein required is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a unit, the Association, at its election and without notice, may approve or disapprove the transaction or ownership. If the Association disapproves the transaction or ownership, the Association shall proceed as if it had received the required notice on the date of such disapproval.

(b) Certificate of Approval.

(i) Sale. If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the President or Secretary in recordable form and shall be delivered to the purchaser.

(ii) Lease. If the proposed transaction is a lease, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the President or Secretary in recordable form and shall be delivered to the lessee.

(iii) Gift, Devise or Inheritance; Other Transfers. If the unit owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the continuance of the unit owner's ownership of his unit. If approved, the approval shall be stated in a certificate executed by the President or Secretary in recordable form and shall be delivered to the unit owner.

(c) Approval of Corporate Owner or Purchaser. Inasmuch as the condominium may be used only for residential purposes, and a corporation cannot occupy a unit for such use, if the unit owner or purchaser of a unit is a corporation, the approval of ownership by the corporation may be conditioned by requiring that all persons to use or occupy the unit be also first approved by the Association.

.3. Disapproval by Association. If the Association shall disapprove a transfer of a unit; the matter shall be disposed of in the following manner:

(a) Sale. If the proposed transaction is a sale, then within sixty (60) days after notifying the unit owner of such disapproval, the Association shall deliver or mail by certifed mail to the unit owner an offer to purchase either by the Association, or by a purchaser approved by the Association, and to whom the unit owner must sell the unit upon the following terms:

(i) At the option of the purchaser to be stated in his offer, the price to be paid shall be that stated in the disapproval contract to sell, or, if less, then the fair market value, determined by arbitration in accordance with the then existing rules of the American Arbitration Association, who shall base their determination upon an average of their appraisals of the unit; and a judgment of specific performance of the sale upon any award rendered by the arbitrators may be entered in a court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(ii) The purchase price shall be paid in cash.

(iii) The sale shall be closed within ten (10) days following the determination of the sale price.

(iv) If the Association shall fail to purchase or to provide a purchaser as herein required, then notwithstanding the disapproval, such transfer of ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided.

.4. Unit Mortgage. No unit owner may mortgage his unit nor any interest therein without the approval of the Association except to a bank, life insurance company, a savings and loan association, or the Federal National Mortgage Association, like governmental groups or assigns. The approval of any other mortgage may be upon conditions determined by the Association or may be arbitrarily withheld.

.5. Blanket Mortgage. Notwithstanding any other provisions of this Declaration or the By-Laws, the entire condominium property or some or all of the units included therein may be subjected to a single or blanket mortgage constituting a first lien thereon created by a recordable instrument executed by all of the owners of the property or units covered thereby. The instrument creating any such mortgage shall provide a method whereby any unit owner may obtain a relese of his unit from the lien of such a mortgage, and a satisfaction and discharge in recordable form, upon payment to the holder of the mortgage of a sum equal to the proportionate share attributable to his unit of the then outstanding balance of unpaid principal and accrued interest and any other charges then due and unpaid, which proportionate share attributable to each unit shall be the proportion in which all unit owners whose units are then subject to the lien of such mortgage own among themselves the common elements and the private elements as provided in the Declaration, or such other reasonable proportion as shall be specifically provided in the mortgage instrument; and such mortgage may contain provisions for converting the same to individual mortgages on the individual units included therein.

.6. Exceptions. The forogoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to or purchase by any holder of the mortgage which comes into possession and title of the unit as a result of owning a mortgage upon the unit concerned, and this shall be so whether the title is acquired pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed from the mortgagor in lieu of foreclosure; nor shall such provisions apply to a transfer, sale or lease by such holder of the mortgage which so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a unit at a duly advertised public sale with open bidding as may be provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

.7. Unauthorized Transactions. Any sale, mortgage or lease which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

.8. Notice of Lien or Suit.

(a) Notice of Lien. A unit owner shall give notice to the Association of every lien upon his unit other than for permitted mortgages, taxes and special assessments, within five (5) days after the owner's receipt of notice thereof.

(b) Notice of Suit. A unit owner shall give notice to the Association of every suit or other proceeding which may affect the title to his unit, such notice to be given within five (5) days after the unit owner receives knowledge thereof.

(c) Failure to Comply with this subsection concerning liens will not affect the validity of any judicial sale.

17. Compliance and Default. Each unit owner shall be governed by and shall comply with the terms of the condominium documents and regulations as 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:

.1. 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.

.2. Costs and Attorneys' 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.

.3. 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.

18. Covenant Against Partition. 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.

19. Amendment. This Declaration of Condominium and the By-Laws of PHOENIX III ASSOCIATION, INC., may be amended in the following manner:

.1. 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.

.2. 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 therafter 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 be by not less than a majority of the Directors and by not less than a majority of the votes of the Association; provided, however, that any such amendment shall have been approved in writing by all mortgagees who are the holders of the mortgages which liens on the units of the approving owners; 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.

.3. 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.

.4. 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.

.5. 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 not 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.

.6. Provisions Pertaining to the Developer.

(a) Notwithstanding any other provisions herein contained, for so long as the DEVELOPER continues to own any of the units, the DEVELOPER reserves the unrestricted right to sell, assign or lease any unit which it continues to own after the recording or filing of this Declaration, and to post signs on the condominium property.

(b) Provided, however, that until the DEVELOPER of the condominium has completed and sold all of the units of the condominium or until February 1, 1988, or until DEVELOPER elects to terminate its control of the condominium, whichever shall first occur; and provided, further, that until the DEVELOPER of the condominium has completed and sold eighty percent (80%) of the aggregate of all units of the condominium, or until the DEVELOPER elects to terminate its control over the condominium, whichever shall first occur, the following additional provisions shall be deemed to be in full force and effect:

(i) The DEVELOPER reserves the right to amend the By-Laws of the Association.

(ii) The Directors of the Association shall be designated by the DEVELOPER and such Directors as may be so designated need not be unit owners.

(c) None of the provisions in this subparagraph contained shall be construed so as to relieve the DEVELOPER from any obligations of a unit owner to pay assessments as to each unit owned by it, in accordance with the condominium documents.

20. <u>Proportionate Changes in Common Expenses, Common Surplus, and Voting Rights</u>. In the event of any one (1) 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 (a) the Association has become the owner of a unit by foreclosure of its lien as heretofore provided, or (b) 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.

21. <u>Termination</u>. The condominium may be terminated in the manner provided by the Condominium Ownership 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 20 hereof.

22. <u>Eminent Domain</u>.

.1. <u>Partial Taking Without Direct Effect on Units</u>. 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 such 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 negotiation and litigation of the issues with respect to the taking and compensation affecting the common elements, without limitation on 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 own 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.

.2. 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 or 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 22, 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 22. In the event that the Board of Directors determines that such a taking so removed land and buildings containing units that they cannot effectively be restored or replaced substantially in compliance with the building plans, and unless seventy-five (75%) of the units vote to accept an alternative plan, the award shall be distributed as provided in subsection .1. of this paragraph 22.

.3. 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 so to do.

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

24. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phase or word, 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 BRETT REAL ESTATE, ROBINSON DEVELOPMENT COMPANY, INC., has caused THESE PRESENTS to be executed by its officers, all thereunto duly authorized, this the day and year first above written.

BRETT REAL ESTATE,
ROBINSON DEVELOPMENT COMPANY, INC.

By: Thomas E. Brett
Its: Pres.

ATTEST:

William T. Robinson Jr.
Secretary

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Thomas E. Brett as President, and William T. Robinson Jr., as Secretary, of BRETT REAL ESTATE, ROBINSON DEVELOPMENT COMPANY, INC., and who are known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing, as such officers and with full authority, they executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal this 18th day of July, 1985.

Rosemary C. Byrd
NOTARY PUBLIC

NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:
MICHAEL J. SALMON
P.O. Box 162
Gulf Shores, Alabama 36542

EXHIBIT "A"

Commencing at the Northeast Corner of Lot No. 8, Block B of part of Lot or Subdivision 2 of Fractional Section 18, Township 9 South, Range 5 East, Baldwin County, Alabama as recorded in Map Book 5, Page 133 of the Baldwin County Probate Records; run thence North 68 degrees 48 minutes 25 seconds East a distance of 8.28 feet to the point of beginning of the property herein described, said point being on the South margin of Alabama Highway No. 182 (120 foot right-of-way); thence continue North 68 degrees 48 minutes 25 seconds East a distance of 257.63 feet to the Northeast Corner of Lot 10, said Block B; thence run South 00 degrees 01 minutes 05 seconds East and along the West line of Lot No 11, as shown on a survey by Perry A. Hand Engineering & Surveying, Inc., dated April 3, 1984, a distance of 757.5 feet more or less to the approximate tide line of the Gulf of Mexico; thence run in a southwestwardly direction along the said approximate tide line of the Gulf of Mexico to a point that is due South a distance of 729 feet more or less from the point of beginning; thence run North a distance of 729 feet more or less to the point of beginning. Described property being Lot No. 9, except for the West 8 feet and Lot No 10, Block B of part of Lot or Subdivision 2 of Fractional Section 18, Township 9 South, Range 5 East, Baldwin County, Alabama, as recorded in Map Book 5, Page 133 of the Baldwin County Probate Records.

STATE OF ALABAMA,
BALDWIN COUNTY
I certify that this instrument was filed on
JUL 22 1985 11:30 A.M.
and that no tax was collected. Recorded in Misc.
Book 54
Page 1854-65
Judge of Probate
D.P. $1.00 Index $

EXHIBIT D

BY-LAWS
OF
PHOENIX III ASSOCIATION, INC.

1. IDENTITY.

These are the By-Laws of PHOENIX III ASSOCIATION, INC., an association organized pursuant to the "Condominium Ownership Act," Act No. 1059, 1973 Regular Session, Alabama Legislature (Title 47, Sec. 313 (1), (35-8-1, et seq., Code of Alabama of 1975, as amended), for the purpose of administering PHOENIX III, a condominium, located in Baldwin County, Alabama.

.1. The office of the Association shall be at Highway 59, Gulf Shores, Alabama, P.O. Box "U", Gulf Shores, Alabama 36542.

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

2. MEMBERS' MEETINGS.

.1. The first meeting of the unit owners to organize the Association shall be held within thirty (30) days after the Developer has sold and conveyed title to eighty (80%) percent of the units, and in no event later than February 1, 1988, at which time the Board of Directors designated by the Developer shall resign and all of the unit owners, including the Developer, if then a unit owner, shall elect a new Board of Directors.

.2. Thereafter the annual meetings of the unit owners shall be held at the office of the Association at 7:30 p.m., the local time, on the third Friday in May 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.

.3. Change of Date. The time of holding the annual meeting of members may be changed at any time prior to fifteen (15) 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 notice of such 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 one (1) month of the date on which it should regularly have been held but for such change.

.4. Special members' meetings shall be held whenever called by the President or Vice President or by a majority of the Board of

MISC. 54 PAGE 1854

Directors, and must be called by such officers upon receipt of a written request from members entitled to cast twenty-five (25%) percent of the votes in the Association.

.5. 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.

.6 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 the owner, as stated in the Declaration of Condominium.

.7. A quorum at members' meetings shall consist of persons entitled to cast a majority of the votes of the entire membership. As used in these By-Laws, the term "majority" means fifty-one (51%) percent of the votes in accordance with the percentages assigned in the Declaration of Condominium.

.8. 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.

.9. 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.

.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 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.

.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) Reports of officers,
(f) Reports of committees,
(g) Election of Directors,
(h) Unfinished business,
(i) New business,
(j) Adjournment.

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

.13. Proviso. Provided, however, that until the Developer of the condominium has completed and sold all of the units of the condominium or until February 1, 1988, or until Developer elects to terminate its control of the condominium, whichever shall first occur, there shall be no meeting of members of the Association unless a meeting is called by the Board of Directors; and provided, further, that until the Developer of the condominium has completed and sold eighty (80%) percent of the aggregate of all of the units of the condominium or until four (4) years after the date of the filing of a certificate by the Developer, or until Developer elects to terminate its control over the condominium, whichever shall first occur, there shall be no meeting of members of the Association unless a meeting is called by the Board of Directors.

3. BOARD OF DIRECTORS.

.1. 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 eight (8) with staggered terms, as shall, from time to time, be determined, and affixed by a vote of a majority 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 .2.(d) below.

.2. 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, that until the Developer of the condominium has completed and sold all of the units of the condominium or until February 1, 1988 , or until Developer elects to terminate its control of the condominium, whichever shall first occur, there shall be no meeting of members of the Association unless a meeting is called by the Board of Directors; and provided, further, that until the Developer of the condominium has completed and sold eighty (80%) percent of the aggregate of all of the units of the condominium or until two (2) years after the date of the filing of a certificate by the Developer or until Developer elects to terminate its control over the condominium, whichever shall first occur, there shall be no meeting of members of the Association unless a meeting is called by the Board of Directors.

.3. The term of each Director's services shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

.4. The organization meeting of a newly elected Board of Directors shall be held within ten (10) days of 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.

.5. 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 telegraph, at least three (3) days prior to the day named for such meeting.

.6. 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 telegraph, which notice shall state the time, place and purpose of the meeting.

.7. 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.

.8. 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.

.9. The presiding officer of Directors' meetings shall be the President. In the absence of the President, the Directors present shall designate one of their members to preside.

.10. Directors shall serve without compensation, and a Director may not be an employee of the Association.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

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

.1. 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.

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

.3. To provide or cause to be provided all goods and services required by the By-Laws or by law, or which the Board, in 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. 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.

.5. To maintain a class action, and to settle a cause of action, on behalf of owners with reference to the common elements, the roof and structural components of a building or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a building as distinguished from 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 unit; all as the Board deems advisable.

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

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

.8. 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 any such duties so conferred upon the managing agent or manager by the Board of Directors may at any moment be revoked, modified or amplified by the majority of the votes in a duly constituted meeting.

.9. To designate and remove personnel necessary for the maintenance, repair and replacement of the common elements.

.10. 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 Directors' and officers liability insurance if the Board deems it advisable; and the premium of such bonds and insurance shall be paid by the Association as common expense.

.11. 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.

.12. 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, the Declaration, or the By-Laws.

.13. 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 thereunto duly authorized by a like resolution of the Board of Directors, 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 or members of the Association.

.14. 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. <u>OFFICERS</u>.

.1. The <u>executive officers</u> of the Association shall be a President, who <u>shall be a Director</u>; 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.

.2. 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 president of an association.

.3. 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.

.4 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 offfice of the secretary of an association as may be required by the Directors or the President.

.5. 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.

.1. 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. Copies of the budget and proposed assessments shall be transmitted to each member on or before December 20th preceding the year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member. Delivery of a copy of the budget to each owner shall not affect the liability of any owner for any existing or future assessments.

.2. Assessments for Recurring Expenses. Assessments for recurring common expenses shall be made for the calendar year annually in advance, on or before December 20th preceding the year for which the assessments are made. The Board may include a Maintenance Fund Reserve for contingencies in such assessments, and such Maintenance Funds 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 Condominium Ownership 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 their respective proportionate shares. Such assessments shall be due in monthly installments on the first day of the month 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 (120%) percent 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, 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.

.3. 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 in the Association, the Board may establish and maintain one (1) or more capital reserve accounts, by the assessment of and payment by all the unit owners in equal monthly installments of their respective proportionate shares of such reasonable annual amount, for such term of years, as the Board may estimate as needed to cover each unit owner's obligations 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 unit 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 their respective proportionate shares.

.4. 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 (1/2) 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 of the Association may require.

.5. Acceleration of assessment installments 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 after 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. 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 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 in 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 timeof the 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 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.

.7. 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.

.8. 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.

.1. 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.

.2. 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.

.3. 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 so to do, the Association may sue to recover sums due, and/or damages, and/or injuctive relief, and for its costs and expenses therein, including a reasonable attorney's fee.

.4. Right of entry. The manager 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 the 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.

.5. 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 his 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.

.6. 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 the 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:	Tillis M. Brett
RESIDENT ADDRESS:	P.O. Box "U" Gulf Shores, Alabama 36542

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.

These By-Laws may be amended by following the provision of paragraph 19 of the Declaration of Condominium.

The foregoing were adopted as the By-Laws of PHOENIX III ASSOCIATION, INC., at the first meeting of the Board of Directors on July 15, 1985.

MISC. 51 PAGE 1565

William T. Edwards, Jr.
Secretary

Approved:

Thomas E. Brett
President

THIS INSTRUMENT PREPARED BY:
MICHAEL J. SALMON
P.O. Box 162
Gulf Shores, Alabama 36542

ARTICLES OF CORRECTION
OF
PHOENIX III ASSOCIATION, INC.

THOMAS E. BRETT, President of Phoenix III Association, Inc., a corporation, does hereby file under Title 10-3A-62, Code of Alabama of 1975, under oath, Articles of Correction of the Articles of Incorporation of Phoenix III Association, Inc., dated July 18, 1985 and recorded in Miscellaneous Book 54, Pages 1292 - 1294 Probate Court records of Baldwin County, Alabama as follows:

"FIFTH: The address of the initial registered office of corporation is Highway 182 East Beach Road, Gulf Shores, Alabama, and the name of its initial registered agent at such address is Tillis M. Brett."

DATED this 15th day of August, 1985.

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THOMAS E. BRETT
President
Phoenix III Association, Inc.

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said State and County hereby certify that THOMAS E. BRETT, as President of Phoenix III Association, Inc. whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that, being informed of the contents of this instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 15th day of August, 1985.

NOTARY PUBLIC

NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:
Michael J. Salmon
P.O. Box 162
Gulf Shores, Alabama 36542

STATE OF ALABAMA,
BALDWIN COUNTY
I certify that this Instrument was filed on
AUG 16 1985 8 AM
and that no tax was collected. Recorded in Misc
55
263
Judge of Probate

AMENDMENT TO EXHIBIT D

BY-LAWS
OF
PHOENIX III ASSOCIATION, INC.

EXHIBIT D, the By-Laws of Phoenix III Association, Inc., dated July 18, 1985 and recorded in Miscellaneous Book 54, Pages 1854-1865, is hereby amended by Brett Real Estate, Robinson Development Company, Inc., as follows:

1. 1.1. is amended to read as follows:
"The office of the Association shall be at 1145 South Highway 59, Gulf Shores Parkway, P.O. Box 1727, Gulf Shores, Alabama 36547."

2. 2.1. is amended to read as follows:
"The first meeting of the unit owners to organize the Association shall be held within thirty (30) days after the Developer has sold and conveyed title to seventy-five (75%) of the units, or after two (2) years from the time units have ceased to be sold, at which time the Board of Directors designated by the Developer shall resign and all of the unit owners, including the Developer, if then a unit owner, shall elect a new Board of Directors."

3. 2.13. is amended to read as follows:
"Provided, however, that until the Developer has sold seventy-five (75%) of the units of the Condominium, or until two (2) years after 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."

4. Paragraph 8. is amended to read as follows:
"<u>AGENT TO RECEIVE SERVICE OF PROCESS</u>. 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:	Tillis M. Brett
RESIDENT ADDRESS:	P.O. Box 1727 Gulf Shores, Alabama 36547."

This Amendment, dated this ___ day of __________, 1991.

BRETT REAL ESTATE, ROBINSON DEVELOPMENT COMPANY, INC.

By Tillis M. Brett

Its Vice President

ATTEST:

William L. Robinson, Jr.
Secretary

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned Notary Public in and for the State and County, hereby certify that ______________________ as Vice Pres., and ______________________ as Secretary of BRETT REAL ESTATE, ROBINSON DEVELOPMENT COMPANY, INC., and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, as such officers and with full authority, they executed the same voluntarily for and as the act of said corporation on this ___ day of __________, 1991.

Given under my hand and seal this ___ day of __________, 1991.

____
NOTARY PUBLIC

NOTARY PUBLIC

This instrument prepared by:

Michael J. Salmon
P.O. Box 162
Gulf Shores, AL 36547

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PHOENIX III

OWNERSHIP PERCENTAGES

TOTAL SQUARE FOOTAGE = 113,468

SQUARE FOOTAGE		NO. OF UNITS/ TYPE		TOTAL SQ.FT.	% PER UNIT	% TOTAL
1356	X	27 (3 BEDROOMS)	=	36,612	1.1950505	32.2663630
926	X	39 (2 BEDROOMS)	=	36,114	.8160891	31.8274740
691	X	54 (1 BEDROOM)	=	37,314	.6089822	32.8850380
400	X	1 (1D1)	=	400	.3525222	.3525222
144	X	1 (1E1)	=	144	.1269080	.1269080
1137	X	1 (G1)	=	1,137	1.0020446	1.0020446
904	X	1 (G2)	=	904	.7967003	.7967003
843	X	1 (G3)	=	843	.7429407	.7429407
				113,468		99.9999890

AMENDMENT TO THE
DECLARATION OF CONDOMINIUM OF
PHOENIX III, A CONDOMINIUM

WHEREAS, the Declaration of Condominium of Phoenix III, a condominium, dated July 18, 1985 and recorded in Miscellaneous Book 54, Pages 1295 and recorded in Miscellaneous Book 51, Page 1295, et. seq. of the records in the office of the Judge of Probate of Baldwin County, Alabama on July 22, 1985, as amended, and,

WHEREAS, the owners of the units of Phoenix III, a condominium, do wish to amend and revise the Declaration of Condominium of Phoenix III, a condominium, according to Paragraph 19 of said Declaration of Condominium, and,

WHEREAS, notice of the subject matter of this proposed revision was included in a notice of a general meeting given to all unit owners to be held on the 11th day of October, 2003, and,

WHEREAS, a majority of the Board of Directors has adopted and approved prior to that time the proposed revision given below, and,

WHEREAS, said proposed revision, having been approved by the Directors and by a majority of the votes of the unit owners according to their ownership and by all eligible mortgagees.

780109

THEREFORE the Declaration of Condominium of Phoenix III, a condominium, shall be amended as follows:

Subparagraph 10.1(c) is hereby amended to read as follows:

(c) *Alteration and Improvement. Neither a unit owner nor the Association shall make any alterations in the portions of a unit which are to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do any work which would jeopardize the safety or soundness of the building, or impair any easement, without first obtaining approval in writing of the owners of all other units in the building concerned and the approval of the Board of Directors of the Association.*

Subparagraph 10.2(b) is hereby amended to read as follows:

(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 the common elements without the prior approval of the majority of the unit owners. 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.

Subparagraph 11.2 is hereby amended to read as follows:

.2 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 $25.00 penalty and interest at the maximum rate allowed by law, but in no case shall the rate exceed 1.5% per month, after date due, until paid.

Subparagraph 11.7 is hereby added and shall read as follows:

.7 Right to Assign Future Income. The Association may assign its right to future income, including the right to receive common expense assessments.

Paragraph 14 is hereby amended to read as follows:

14. 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 seventy-five percent (75%) of the owners not to repair or reconstruct such damage or destroyed property, the following provisions shall apply

Subparagraph 19.2 is hereby amended to read as follows:

.2 Resolution. A resolution adopting a proposed amendment may be proposed by either the Board or 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 be by not less than a majority of the Directors and by not less than a majority of the votes of the Association; 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 of any easement or hereditament shall require the unanimous approval of all such owners and all such mortgages.

PHOENIX III

By: Geza J.S. Papp

Geza J.S. Papp, Its President

Attest:

By: Suzanne P. Alexander

, Its Secretary

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the Undersigned, a Notary Public in and for said State and County, hereby certify that Geza J. S. Papp and Suzanne P. Alexander whose names as President and Secretary, respectively, of PHOENIX III, an Alabama Non-Profit Corporation, are signed to the foregoing Amendment to the Amendment of the Declaration of Condominium of Phoenix III, and who are known to me, acknowledged before me on this date that being informed of the contents of said Amendment, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation on the date the same bears date.

Given under my hand and seal on this the 4th day of Nov, 2003.

NOTARY PUBLIC

My Commission Expires: 1/2/05

This Instrument Prepared By:
DANIEL H. CRAVEN, P.C.
Professional Court Building B
224 West 19th Avenue
Post Office Drawer 4489 (36547)
Gulf Shores, Alabama 36542
(251) 968-8170
(251) 968-4837 fax

AMENDMENT TO THE BY-LAWS OF
PHOENIX III ASSOCIATION, INC., A CONDOMINIUM
ASSOCIATION OF PHOENIX III, A CONDOMINIUM

WHEREAS, the By-Laws of Phoenix III Association, Inc. dated July 18, 1985 and recorded in Miscellaneous Book 54, Pages 1854 through 1865 inclusive, of the records in the office of the Judge of Probate of Baldwin County, Alabama and amended by Instrument dated January 7, 1991, recorded in Miscellaneous Book 68, Page 1690, as amended, and,

WHEREAS, the members of the Phoenix III Association, Inc., a condominium association of Phoenix III, a condominium, do wish to amend and revise the By-Laws of said Association according to Paragraph 10 of said By-Laws, and,

WHEREAS, notice of the subject matter of this proposed revision was included in a notice of a general meeting given to all unit owners held on the 11th day of October, 2003, and,

WHEREAS, a majority of the Board of Directors has adopted and approved prior to that time the proposed revision given below and,

WHEREAS, said proposed revision was approved by the Directors and by a majority of the votes of the members/unit owners according to their proportional ownership and by all eligible mortgagees.

THEREFORE, the By-Laws of Phoenix III Association, Inc., a condominium association of Phoenix III, a condominium, shall be amended as follows:

Subparagraph 2.7 is hereby amended to read as follows:
.7 A <u>quorum</u> at members' meetings shall consist of persons entitled to cast ten percent (10%) of the fractional voting interest of the entire membership.

Subparagraph 6.2 is hereby amended to add the following language at the end of said subparagraph:
Any unit owner renting or leasing their unit themselves, or renting through a rental agent, must notify the Association of that agent's name and address. The owner, or agency, shall pay over to the Association as a rental privilege fee an amount equal to five percent (5%) of the gross amount collected.

Paragraph 10 is hereby amended to read as follows:
10. <u>Amendments</u>.
These bylaws may be amended by a majority of members present

according to their fractional voting interest at a duly called meeting of the members at which a quorum exist.

PHOENIX III

By: Geza J.S. Papp

Geza J.S. Papp, Its President

Attest:

By: Suzanne P. Alexander

, Its Secretary

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the Undersigned, a Notary Public in and for said State and County, hereby certify that Geza J.S. Papp and Suzanne P. Alexander whose names as President and Secretary, respectively, of PHOENIX III, an Alabama Non-Profit Corporation, are signed to the foregoing Amendment to the Amendment of the Declaration of Condominium of Phoenix III, and who are known to me, acknowledged before me on this date that being informed of the contents of said Amendment, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation on the date the same bears date.

Given under my hand and seal on this the 4th day of November, 2003.

NOTARY PUBLIC

My Commission Expires: 1/2/05

This Instrument Prepared By:
DANIEL H. CRAVEN, P.C.
Professional Court Building B
224 West 19th Avenue
Post Office Drawer 4489 (36547)
Gulf Shores, Alabama 36542
(251) 968-8170
(251) 968-4837 fax

RESOLUTION: TO RECOMMEND AMENDING THE BY-LAWS OF PHOENIX III ASSOCIATION, INC.

WHEREAS, the Board of Directors of Phoenix III Association, Inc. recommends to amend its by-laws in accordance with Paragraph 10 of said current by-laws which were effective on July 22, 1985, be it

RESOLVED that Phoenix III Association, Inc. an Alabama Non-Profit Corporation, hereby changes its By-Laws in accordance with the proposed Amendment to By-Laws as annexed hereto, and,

The undersigned hereby certifies that he/she is the duly elected and qualified Secretary and the custodian of the books and records and seal of Phoenix III Association, Inc. an Alabama Non-Profit Corporation duly formed pursuant to the laws of the State of Alabama and that the foregoing is a true record of a resolution duly adopted at a meeting of the Board of Directors, and that said meeting was held in accordance with state law and the by-laws of the above-named corporation on the 15th day of August, 2003.

IN WITNESS WHEREOF, I have executed my name as Secretary of Phoenix III Association, Inc. this the 4th day of November, 2003.

A True Record.

Attest.

Suzanne P. Alexander, Secretary
Phoenix III Association, Inc.

RESOLUTION: TO RECOMMEND THE AMENDMENT OF
THE DECLARATION OF CONDOMINIUM OF
PHOENIX III, A CONDOMINIUM

WHEREAS, the Board of Directors of Phoenix III Association, Inc. recommends to amend its Declaration of Condominium of Phoenix III Association, Inc. in accordance with Paragraph 19 of said current Declaration which was effective on July 22, 1985, be it

RESOLVED that Phoenix III Association, Inc. an Alabama Non-Profit Corporation, hereby changes its Declaration of Condominium in accordance with the proposed Amendment to Declaration of Condominium as annexed hereto, and,

The undersigned hereby certifies that he/she is the duly elected and qualified Secretary and the custodian of the books and records and seal of Phoenix III Association, Inc. an Alabama Non-Profit Corporation duly formed pursuant to the laws of the State of Alabama and that the foregoing is a true record of a resolution duly adopted at a meeting of the Board of Directors, and that said meeting was held in accordance with state law and the Declaration of the above-named corporation on the 15th day of August, 2003.

IN WITNESS WHEREOF, I have executed my name as Secretary of Phoenix III Association, Inc. this the 4th day of November, 2003.

A True Record.

Attest.

Suzanne P. Alexander, Secretary
Phoenix III Association, Inc.

State of Alabama, Baldwin County
I certify this instrument was filed
and taxes collected on:

2003 December -22 9:54AM

Instrument Number 780109 Pages 7
Recording 21.00 Mortgage
Deed Min Tax
Index DP 5.00
Archive 5.00
Adrian T. Johns, Judge of Probate

STATE OF ALABAMA
BALDWIN COUNTY
I certify that this instrument was filed
JUL 22 1985
and that no tax was collected. Recorded in
Judge of Probate

ARTICLES OF INCORPORATION
OF
PHOENIX III ASSOCIATION, INC.

We, the the undersigned natural persons acting as incorporators of a corporation under the Alabama Non-Profit Corporation Act (Act No. 578, 1955 Acts of the Legislature of Alabama, approved September 12, 1955; Title 10, Sec 204, et seq., Code of Alabama Recompiled, as amended), and the Condominium Ownership Act (Act No 1059, 1973 Regular Session, Alabama Legislature, approved September 17, 1973; Title 47, Sec 313(1), et seq., Title 35-8-1 et seq., Code of Alabama of 1975 as amended), adopt the following Articles of Incorporation for such corporation.

FIRST: The name of the corporation is "PHOENIX III ASSOCIATION, INC."

SECOND: The period of its duration is perpetual unless and until hereafter lawfully dissolved.

THIRD: Purpose and Powers-This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for the maintenance, preservation and architectural control of the apartment units and the common areas and facilities within that certain condominium known as PHOENIX III, and to promote the health, safety and welfare of the residents within said condominium, and for these purposes to:

1. Exercise all of the powers and privileges and perform all of the duties and obligations of an association of unit owners as provided in the Condominium Ownership Act of Alabama, and as set forth in that certain Declaration and By-Laws applicable to the property and recorded or to be recorded in the office of the Judge of Probate of Baldwin County, Alabama, and as the same may be amended from time to time as therein provided, said Declaration and By-Laws being incorporated herein as if herein set forth at large and at length.

2. Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; pay all expenses in connection therewith and all office or other expenses incident to the conduct of the business of the Association.

3. Acquire (by gift, purchase or otherwise), own, hold improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association.

4. Borrow money and, with the assent of a majority of the votes entitled to be cast at a meeting of the Association, mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5. Maintain the above mentioned condominium, and all improvements located thereon, make payments of taxes, insurance, repairs, and any other expenses necessary

to the maintenance of said property as a condominium, and pay operating expenses of every kind and character whatsoever, and any other expenses necessary therefor, or beautify and make other desirable improvements from time to time as this corporation shall deem best,

6. Transact all business being not for profit consistent with the purposes for which the corporation is organized, and the proceeds of all operations of the corporation to remain with the corporation, to be used in the payment of all indebtedness that may be incurred by the corporation and for such other purposes as may be lawful.

7. Exercise all of the authorities and powers given and granted to an association of unit owners under and pursuant to the provisions of the Condominium Ownership Act of Alabama, which a corporation organized under the Non-Profit Corporation Law of the State of Alabama by law may now or hereafter have or exercise.

FOURTH: Membership - This corporation shall issue no shares of stock of any kind or nature whatsoever. Every person or entity who is a record owner of a fee or undivided fee interest in any apartment unit in PHOENIX III, a condominium, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any apartment unit which is subject to assessment by the Association. The members shall enjoy such qualifications, rights and voting rights as may be fixed in the Declaration of PHOENIX III, a condominium, and in the By-Laws of the corporation.

FIFTH: Registered Agent - The address of the initial registered office of corporation is Post Office Box "U", Gulf Shores, Alabama 36542, and the name of its initial registered agent at such address is Tillis M. Brett.

SIXTH: Board of Directors - The number of directors constituting the initial board of directors of the corporation is three (3), and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and shall qualifiy are:

Tillis M. Brett	1090 Industrial Parkway Saraland, Alabama 36571
Thomas E. Brett	1090 Industrial Parkway Saraland, Alabama 36571
William T. Robinson, Jr.	1090 Industrial Parkway Saraland, Alabama 36571

SEVENTH: Incorporators - The names and address of each incorporator are:

Tillis M. Brett	1090 Industrial Parkway Saraland, Alabama 36571
Thomas E. Brett	1090 Industrial Parkway Saraland, Alabama 36571

William T. Robinson, Jr. 1090 Industrial Parkway
Saraland, Alabama 36571

EIGHTH: Dissolution - The corporation is not organized for pecuniary profit and not part of its net earnings shall inure to the benefit of any member, Director, or individual. The corporation shall be dissolved upon the termination of the condominium in the manner provided in the Condominium Ownership Act of Alabama, and in the manner provided by the Law of Alabama. Upon dissolution of the corporation, the assets of the corporation, if any, and all money received by the corporation from its operations, after the payment in full of all debts and obligations of the corporation of whatsoever kind and nature, shall be used and distributed soley and exclusively in the manner provided by the Condominium Ownership Act of Alabama.

IN WITNESS WHEREOF, the subscribers hereto have set their hands and seals this 18th day of July, 1985.

Tillis M. Brett
TILLIS M. BRETT

Thomas E. Brett
THOMAS E. BRETT

William T. Robinson Jr
WILLIAM T. ROBINSON, JR.

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STATE OF ALABAMA
COUNTY OF BALDWIN

Before me, Rosemary C. Byrd, a Notary Public in and for said County in said State, personally appeared TILLIS M. BRETT, THOMAS M. BRETT and WILLIAM T. ROBINSON, JR., being known to me and who, being by me first duly sworn, depose and say that they are the initial incorporators of PHOENIX III ASSOCIATION, INC.; that they are authorized to make this verification as such initial subscribers of the corporation, and that the facts contained in the above and foregoing declaration are true and correct.

Given under my hand and seal this 18th day of July, 1985.

Rosemary C. Byrd
NOTARY PUBLIC

ROSEMARY C. BYRD NOTARY PUBLIC ALABAMA STATE AT LARGE

THIS INSTRUMENT PREPARED BY
MICHAEL J. SALMON
P.O. Box 162
Gulf Shores, Alabama 36542

Phoenix III
Rules and Regulations

Parking

A. General

1. All vehicles must display a current, authorized pass.
2. Absence of a pass for identification will result in vehicle being towed from parking lot at vehicle owner's expense.
3. If identifiable, vehicle owner will be notified if pass is improper. Vehicle owner will have four (4) hours to obtain proper pass or remove vehicle or a $50 fine will be assessed to unit owners only.

B. Condo Owners

1. Owners will be allotted two passes per unit owned. The authorized owner's permit is physically transferable from one vehicle to another. Permanent residents j(year round residents) will be permitted two additional passes.
2. Owners who have misplaced passes must purchase new ones at a cost of $25.00 each.
3. Owners may leave passes at the front desk for use by non renting guests. However, Brett/Robinson will not be responsible for ensuring the passes are returned, or for lost or stolen passes.
4. When a unit is sold, the previous owner should give the new owner all vehicle passes.
5. Owner's Parking area
   a. Owner's parking passes do not guarantee an owner's parking space.
   b. Section I-A.1 also applies to owner parking area.
   c. Owners may not leave their vehicle in owner's parking area while not occupying their unit.

C. Renters

1. All guests must pay the Association service fee, which is in effect year round, plus tax for the authorized vehicle pass.
   a. Renters are allowed to purchase one vehicle pass for a one bedroom unit, and two vehicle passes for both two and three bedroom units.
   b. During periods when ample parking is available, additional passes can be purchased.
   c. The service fee/pass is valid for the entire visit(Reservation).
   d. All renters vehicle passes will be available at the check-in desk, and must be displayed immediately

f. The service is not a guarantee of a parking space.

g. The Association nor the agent assumes responsibility for damage by storm, theft, accident, nor loss of articles left in vehicles.

2. Day passes.

a. During non peak periods and on a space available basis, visitors may receive a "no charge" day pass valid for one day only, expiring at 10:00 p.m. Visitors wishing to stay after 10:00 p.m. must obtain a pass.

D. RV's, Boats, trailer, etc.

1. No long term storage is allowed.
2. Each parking space occupied requires a vehicle pass per above rules

E. Handicapped Parking

1. A handicapped parking permit does not guarantee a handicapped parking space.
2. Owners, renters, and visitors may use handicapped parking space if vehicle is so permitted. Section I-A also applies.

II. Pets

A. Absolutely no pets are allowed by renters or their guests. A pet, or evidence of a pet, found on the premises will result in forfeiture of all rents and deposits, and immediate eviction.

B. Owners may have pets only in their condo or on a leash to and from authorized "walking area" which is outside the fence, north of parking lots. Owners must pick up after pets. All other areas are off limits to pets.

C. Pets are not permitted on the beach by city ordinance.

III. Beach

A. Walking or playing on dunes and habitat area is prohibited. If toys or equipment inadvertently lands there, retrieve with least disturbance.

B. parties after 10:00 p.m. must be quiet.

C. No jet ski type water craft will be permitted to operate from the Phoenix beach. In order to park jet skis in the parking lot (provided space is available), the owner must sign a statement agreeing not to operate it the Phoenix beach.

D. Open fires are prohibited on the beach by city ordinance.

IV. Balconies/Deck

A. Hanging towels, swimsuits, etc. from the balcony railings is prohibited.

B. The use of grills on balconies or decks is prohibited.

C. Feeding birds from the balconies is prohibited.

D. Noises, music, instruments, etc. loud enough to disturb neighbors is prohibited.

E. The throwing or dropping of any item from balconies is prohibited.

V. Other Property

A. Racquetball Court

1. Must be 12 years old or accompanied by an adult
2. Eye protection must be worn.
3. Half-hour time limit if others are waiting.
4. Absolutely no black marking shoes, tennis shoes only and no wet clothing.
5. Court will be closed at 10 p.m.

B. Fitness Room

1. No food or drink permitted.
2. Children under 16 years of age are not allowed.
3. Use at your own risk.
4. Keys are at the front desk.
5. Please keep door closed and locked

C. Sauna

1. No children under 16 years of age are allowed in the sauna.
2. Keys are at the front desk.

D. Rollerblading and skateboarding is prohibited on the property.

E. Bicycling is allowed only across parking lot to and from street.

F. Use of fireworks on beach and property is prohibited.

G. Obey all posted rules and signs at pools and other locations.

H. Property belonging to on Association may not be taken to another building except by Brett/Robinson employees who must be responsible for its return.

VI. Enforcement of Rules

A. Owners

1. Violation of those rules for which penalty is not so above stated will be referred to the Association board for assessment of penalty.

B. Renters

1. Violation of those rules which penalty is not so above stated will be referred to Brett/Robinson Gulf Corp. Property Manager for penalty.
2. Failure to comply can lead to eviction and forfeiture of rents and deposits.

C. Enforcement

Brett/Robinson Gulf Corporation, our management company, has been instructed to enforce the rules.