

DECLARATION OF CONDOMINIUM
OF
PHOENIX ON THE BAY II, A CONDOMINIUM
PHASE ONE

State of Alabama, Baldwin County
I certify this instrument was filed
and taxes collected on:
2001 July - 5 8:42PM
Instrument Number: 604761 Pages: 44
Recording: 132.00 Mortgage
Deed Min Tax
Index DP 1.00
Archive 3.00
Adrian T. Johns, Judge of Probate

THIS DECLARATION, is made this the 9th day of April, 2001, by
TILLIS M. BRETT, a married man, THOMAS E. BRETT, an unmarried man, and
WILLIAM T. ROBINSON JR., a married man, hereinafter collectively called
"DECLARANT" or "DEVELOPER," for themselves, their heirs, successors and assigns.

RECITALS

1. The Developer is the fee simple Owner of that certain parcel of Real Property situated in the County of Baldwin, State of Alabama, hereinafter more particularly described, and intends to improve said Real Property in the manner set out herein. Such property is designated as Phase One and Phase Two. Only Phase One is hereby committed to the condominium form of ownership.
2. The Developer proposes to establish a Condominium pursuant to the general laws of the State of Alabama and, by reference, the general provisions of the Alabama Uniform Condominium Act of 1991 (the "Act"). The Condominium shall be known as Phoenix on the Bay II, a condominium. The first phase consists of only one unit. The developer does not elect to provide that the Act be applicable to this instrument.
3. The Developer proposes to develop the Condominium in two (2) phases. The Developer anticipates and reserves the right to assign its reserved developer rights to Brett Real Estate, Robinson Development Company, Inc., an Alabama corporation.
4. Phase One consists of one private Unit, which includes land and an existing structure, together with access and appurtenant common areas as herein described. The Developer retains development rights, as set forth herein, over the area designated by this declaration as "common area." It is understood that the ownership of the common area is subject to dilution when Phase Two is made a part of this development.
5. The Developer may improve that part of the Real Property which is in excess of the property made a part of Phase One and which is described herein by constructing thereon additional Condominium Units, which said lands and improvements may be submitted to the Condominium form of ownership and use, by amendment or amendments to this Declaration, in one additional phase. An unexecuted proposed "Phasing Amendment One of Phoenix on the Bay II, Phase Two" is annexed to this declaration as Exhibit "B," which the Developer, or

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Developer's assigns, anticipates recording as a phasing amendment to this declaration. Should such instrument be recorded, the restrictions, covenants, obligations, and rights set forth therein shall be binding on the owner of the private unit created by this instrument as of the date of its recordation.

6. It is the intent of the Developer that should all or a portion of the property described herein be submitted to the terms of this Declaration by amendment or amendments hereto as Phase Two of the Condominium, as hereinafter provided, such property, along with Phase One, shall be operated and administered as a single Condominium property in accordance with the terms of the declaration as then amended.

7. Phase One of the Condominium will be created by the recording of this Declaration, which may be amended by the Developer as herein provided without requiring the approval or consent of the Unit Owner of the single unit created by this recording.

NAME

The name by which this condominium is identified is Phoenix On The Bay II, a condominium.

THE REAL PROPERTY

The Developer hereby submits the Real Property set out as Phase One described in Exhibit "A-1," together with all improvements, buildings, structures, and all other permanent fixtures thereon, and all rights and privileges belonging or in any way pertaining thereto, to the Condominium form of ownership and use in the manner provided for by the general laws of the State of Alabama and, as applicable or for reference purposes only, by the "Alabama Uniform Condominium Act of 1991," *Code of Alabama* (1975), Section 35-8A-101, et seq. Only those lands described as Phase One are herewith submitted to the condominium form of ownership.

DEVELOPMENT PLAN

The Developer shall have the unilateral right, privilege, and option from time to time at any time (subject to the provisions of this Declaration) to subject any part or all of the real property described in Exhibit "A-2" to the provisions of this Declaration. This Declaration may be amended by the Developer without the consent of any Unit Owner, Mortgagee, or other Person in order to exercise any Development Rights or Special Declarant Rights so long as said amendment complies with the requirements of the Act.

The property described in Exhibit "A-2," which the Developer may or may not submit to the Condominium form of ownership and use at a future date or dates as Phase Two, is not hereby submitted to the Condominium form of ownership and use. However, subject to and in

accordance with the following terms and provisions, said property, or a portion or portions thereof, including any portion or portions of each phase, may be submitted to the Condominium form of ownership and use.

If Phase Two, is developed and made subject to the terms of this Declaration, as provided for herein, said phase shall consist of the number of Units and density (ratio of number of units to land area) as is set out in the proposed Phasing Amendment One of Phoenix on the Bay II, Phase Two, which is annexed hereto. Accordingly, no assurance is made that Phase Two shall contain Common Elements and Limited Common Elements consistent with and complimentary to those existing in Phase One or that the buildings and other improvements will be compatible with existing buildings and improvements in the condominium in terms of architectural style and size. Quality of construction shall be compatible with the quality of construction of other "Phoenix" condominium projects in the area. Any such additional phase may be added to, and made subject to, this Declaration by the execution, by the Developer alone, of an amendment to this Declaration, which said amendment shall comply with the provisions of the Act and shall be recorded in the Probate Court records of Baldwin County, Alabama. Such amendment shall have attached to it exhibits similar to those attached to this Declaration, describing the Property so submitted to the Declaration and containing such other information concerning said Property and the improvements constructed, or to be constructed, thereon as is required by law. Further, should such instrument be recorded, the restrictions, covenants, obligations, and rights set forth therein shall be binding on the owner of the private unit created by this instrument. The right of the Developer to add an additional phase to the Condominium as herein provided shall cease and terminate ten (10) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama. Except as provided in the preceding sentence, no other time limitation shall be imposed on the right of the Developer to add an additional phase. Once such phase has been submitted to the terms and provision of this Declaration, it shall comprise a portion of the Condominium, to be governed by and subject to all of the provisions of the Condominium Documents to the extent that said documents are not inconsistent with the provisions of the amendment adding such phase to this Declaration. Each Person or entity who shall acquire any Unit in the Condominium or interest in or lien upon any such Unit, regardless of whether said Unit shall be located in Phase One or Two shall be deemed, by accepting a conveyance of or otherwise acquiring such Unit interest or lien, to have agreed and consented, within the meaning of this Declaration and of the Act to be bound by the terms and provisions hereof and to have further agreed and consented that any amendment to this Declaration executed by the Developer alone pursuant hereto shall be binding and effective as written notwithstanding the fact that the undivided interest of the Unit Owners in the Common Elements will be changed thereby. Anything contained herein to the contrary notwithstanding, Developer does not hereby commit itself to submit such subsequent phase, in whole or in part, to the Condominium form of ownership and use under the terms of this Declaration, and unless submitted to the terms of this Declaration under the provisions hereof, Developer shall have the right to develop the same or any portion thereof, in any manner and to any extent that it sees fit or to decline to develop said property entirely.

Easements are reserved to the Developer throughout the Common Elements as may be reasonably necessary for the purpose of discharging the Developer's obligations or exercising any Development Rights or Special Declarant Rights. Further, the Developer, its successors and assigns, reserves a perpetual nonexclusive easement for access, ingress and egress in, over and through all parking areas, and other common areas for its guests, licensees, lessees, customers and employees.

GENERAL DESCRIPTION OF IMPROVEMENTS

Phase One consists of common elements and a single, private Unit one (1) 3-story, stucco residential building and the surrounding lands, the metes and bounds description of which is set out in Exhibit "A-3." The structure was not constructed by the Developer but is an existing residential property. The Unit is assigned a name, "Unit A of Phase One, Phoenix on the Bay II." The legal description of such Unit shall consist of the identifying name, as shown on the Plans, the name of the Condominium, the name of the County in which the Unit is situated, the name of the office in which this Declaration is recorded, and the Instrument Number which is assigned to it. The Private Elements are all of the land and the improvements thereto, excluding the ingress-egress easement and also excluding the land situated between the Unit and Terry Cove which are Common Elements, as set forth on the plans. Appurtenant to the Unit are Limited Common Elements which are boat slips. The Unit also shall include all foundations and footings, slabs, columns, beams and supports of the Building and such component parts of exterior walls, roofs, girders beams, supports, stairs and stairways, porches, balconies, terraces, decks, patios, entry walks and entry porches of the Unit.

CONVERSION DISCLOSURES

NO REPRESENTATIONS ARE MADE IN REGARD TO THE AGE OR CONDITIONS OF THE STRUCTURAL COMPONENTS AND MECHANICAL AND ELECTRICAL INSTALLATIONS OF THE EXISTING STRUCTURE. The Developer is unaware of any outstanding notices of building code or other municipal violations.

RIGHTS AND RESPONSIBILITIES

The Unit Owner shall be deemed to own and shall have the exclusive right and duty to repair and maintain, paint, repaint, tile, wax, paper or otherwise finish and decorate the surfacing materials on the exterior and interior of all walls and the surfacing materials of the floors of the Unit; all window screens; 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, whether located in the boundaries of the Unit or in common areas, which are for the exclusive use of the Unit; and all ceilings and walls. The Unit Owner shall have the exclusive right and duty to wash and keep clean the interior and exterior surfaces of windows and doors bounding his or her Unit. The Unit Owner shall have the exclusive right and duty to maintain the landscaping on the grounds which are a part of the unit.

COMMON ELEMENTS

Prior to the recordation of a phasing amendment adding Phase Two to the condominium form of ownership, the Unit Owner shall own all of the "common elements" described herein, subject only to the rights of development reserved herein. No owner's association shall be established prior to the recordation of a phasing amendment. Upon recordation of such amendment the Unit Owner will own a percentage of undivided interest of the Common Elements of Phase One and Phase Two as will be set out in such amendment. The ownership interest in the Common Elements shall not be conveyed, transferred, encumbered or otherwise affected separate from the ownership of the Unit, and any agreement to the contrary shall be void. At such time the Unit Owner shall have the right to use the Common Elements in conjunction with the Owners of other Units as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the Condominium Property. At such time the ingress-egress easement shall be vacated and the same shall be a part of the Common Elements of the Condominium Property. The common expenses shall be charged to unit owners according to a formula set out in such phasing amendment and will be no greater than the assessment made on the smallest private unit in Phase Two. The initial monthly assessment will be in the amount of \$300 as calculated by a formula which will be set out in such amendment. The right to use the Common Elements shall be subject to and governed by the provisions of the Act, Condominium Documents and the By-Laws of the Home Owners' Association provided for in such amendment. In addition, the Association shall have the authority to lease, grant concessions or grant easements with respect to parts of the Common Elements subject to the provisions of the Declaration and By-Laws.

LIMITED COMMON ELEMENTS

Boat slips number 6 and 11, as depicted on Exhibit "C," annexed hereto are Limited Common Elements as defined in the Act and are appurtenant to the Unit created herein. Prior to the recording of a phasing amendment, the owner of Unit A of Phase One shall have an easement of ingress and egress to such boat slips over the property set out in Exhibit "A-2" and shall be responsible for the maintenance of the same. Upon the recording of such amendment, the maintenance of the same will pass to the home owner's association as may be provided for in the amendment.

INSURANCE

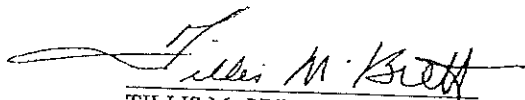
The Unit Owner shall obtain, maintain and pay for comprehensive public liability insurance on his or her interest in the Condominium Property with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limits covering the activities of such Unit Owner on or about the condominium property.

The Unit Owner shall be and is hereby deemed responsible for maintaining sufficient hazard insurance on his or her Unit so as to provide replacement value thereof (or in such amounts as may be reasonably obtained) in the event of a casualty, including, without

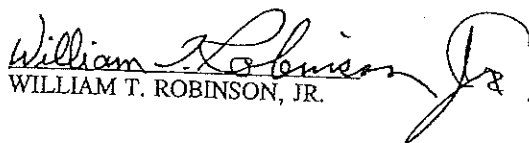
limitation: (i) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; (ii) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including, but not limited to, vandalism, malicious mischief and windstorm; and (iii) flood insurance, if it can reasonably be obtained.

Upon the recordation of a phasing amendment the Unit Owner shall continue to maintain and pay for the insurance set out above, and the same shall not be considered a common expense.

IN WITNESS WHEREOF, the said TILLIS M. BRETT, THOMAS E. BRETT, and WILLIAM T. ROBINSON, JR., have hereunto set their hands and seals on this 7th day of April, 2001.


TILLIS M. BRETT


THOMAS E. BRETT


WILLIAM T. ROBINSON, JR.

For Exhibit "A-1" to
Declaration of Condominium
of
Phoenix on the Bay II, a Condominium
Phase One

See Apt Book 21 page 130

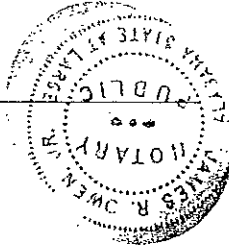
STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, James R. Owen Jr., the undersigned authority, a Notary Public in and for said County in said State, hereby certify that TILLIS M. BRETT, THOMAS E. BRETT, and WILLIAM T. ROBINSON, JR., whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day, that being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 9th day of April, 2001.


Notary Public



My Commission Expires: 2/18/2004

THIS INSTRUMENT PREPARED BY:

Jule R. Herbert Jr.
Jule R. Herbert Jr., P. C.
Attorney at Law
P.O. Drawer 3889
Gulf Shores, AL 36547
(334) 968-4764

EXHIBIT "A-2"

The following is property over which the Developer has the right to add to Phoenix on the Bay II, a condominium, by a phasing amendment:

PARCEL A:

From the Northeast corner of Section 4, Township 9 South, Range 5 East, run East 3249 feet to the Northwest corner of the Dryer Tract; thence run South along the West line of the Dryer Tract and its Southerly extension, 1317.4 feet to the South right of way line of Alabama Highway 180 and the Point of Beginning; thence run in Northeasterly direction along the South line of said Highway 180, 50.9 feet to a point 50 feet due East of the Southerly extension of the West line of the Dryer Tract; thence run South, parallel to said Southerly extension of the Dryer Tract West line, 865 feet, more or less, to the North margin of Terry Cove; thence run in a Westerly direction along the North margin of Terry Cove, 50 feet, more or less, to a point on the Southerly extension of the West line of the Dryer Tract; thence run North along the Southerly extension of the West line of the Dryer Tract, 860 feet, more or less, to the Point of Beginning.

PARCEL B:

The West one-half of the following described property:

From the Northeast corner of Section 4, Township 9 South, Range 5 East, run East 3249 feet to the Northwest corner of the Dryer Tract; thence run South along the West line of the Dryer Tract and its Southerly extension, 1317.4 feet to the South right of way line of Alabama Highway 180; thence run in a Northeasterly direction along the South line of said Highway 180, 50.9 feet to a point 50 feet due East of the Southerly extension of the West line of the Dryer Tract and the Point of Beginning; thence continue in a Northeasterly direction along the South line of said Highway 180, 102 feet to a point 150 feet due East of the Southerly extension of the West line of the Dryer Tract; thence run South, parallel to said Southerly extension of the Dryer Tract West line, 890 feet, more or less, to the North margin of Terry Cove; thence run in Westerly direction along the North margin of Terry Cove, 100 feet, more or less, to a point 50 feet due East of a Southerly extension of the West line of the Dryer Tract; thence run North 865 feet, more or less, to the Point of Beginning.

PARCEL C:

The East one-half of the following described property:

From the Northeast corner of Section 4, Township 9 South, Range 5 East, run East 3249 feet to the Northwest corner of the Dryer Tract; thence run South along the West line of the Dryer Tract and its Southerly extension, 1317.4 feet to the South right of way line of Alabama

Highway 180; thence run in a Northeasterly direction along the South line of said Highway 180, 50.9 feet to a point 50 feet due East of the Southerly extension of the West line of the Dryer Tract and the Point of Beginning; thence continue in a Northeasterly direction along the South line of said Highway 180, 102 feet to a point 150 feet due East of the Southerly extension of the West line of the Dryer Tract; thence run South, parallel to said Southerly extension of the Dryer Tract West line, 890 feet, more or less, to the North margin of Terry Cove; thence run in Westerly direction along the North margin of Terry Cove, 100 feet, more or less, to a point 50 feet due East of a Southerly extension of the West line of the Dryer Tract; thence run North 865 feet, more or less, to the Point of Beginning.

PARCEL D:

From the Northeast corner of Section 4, Township 9 South, Range 5 East, run East 3249 feet to the Northwest corner of the Dryer Tract; thence run South along the West line of the Dryer Tract and its Southerly extension, 1317.4 feet to the South right of way line of Alabama Highway 180; thence run in a Northeasterly direction along the South line of said Highway 180, 152.9 feet to a point 150 feet due East of the Southerly extension of the West line of the Dryer Tract and the Point of Beginning; thence continue in a Northeasterly direction along the South line of said Highway 180, 155.2 feet to a point 300 feet due East of the Southerly extension of the West line of the Dryer Tract; thence run South, parallel to said Southerly extension of the Dryer Tract West line, 895 feet, more or less, to the North margin of Terry Cove; thence run in a Westerly direction along the North margin of Terry Cove, 150 feet, more or less, to a point 150 feet due East of a Southerly extension of the West line of the Dryer Tract; thence run North 890 feet, more or less, to the Point of beginning.

LESS AND EXCEPT FROM PARCELS A, B, C AND D, THE FOLLOWING DESCRIBED PROPERTY:

Commencing at the Northeast corner of Section 4, Township 9 South, Range 5 East, run East 3249 feet to the Northwest corner of the Dryer Tract; thence run South along the West line of the Dryer Tract and its Southerly extension, 1317.4 feet to an old iron pipe located at the South right of way of Alabama Highway No. 180 and the Point of Beginning; thence run Northeasterly along the arc of a curve of said South right of way, having a radius of 2914.79 feet and an arc length of 307.79 feet, with a chord bearing and distance of North 77°11'35" East, for 307.65 feet to an old iron pipe; thence run South 00°00'00" East, for 579.30 feet to a ½" rebar set pipe; thence continue South 00°00'00" East, for 292.70 feet to an old iron pipe located on the North margin of Terry Cove; thence run South 78°55'56" West, along said North margin for 208.89 feet to a point; thence run North 00°00'00" East, for 209.43 feet to a ½" rebar set pipe; thence run South 90°00'00" West, for 95.00 feet to a ½" rebar set pipe; thence run North 00°00'00" East for 334.60 feet to the Point of Beginning.

PARCEL E:

Commencing at the Northeast corner of Section 4, Township 9 South, Range 5 East, run East 3249 feet to the Northwest corner of the Dryer Tract; thence run South along the West line of the Dryer Tract and its Southerly extension, 1317.4 feet to an old iron pipe located at the South right of way of Alabama Highway No. 180 and the Point of Beginning; thence run Northeasterly along the arc of a curve of said South right of way, having a radius of 2914.79 feet and an arc length of 307.79 feet, with a chord bearing and distance of North 77°11'35" East, for 307.65 feet to an old iron pipe; thence run South 00°00'00" East, for 579.30 feet to a ½" rebar set pipe; thence continue South 00°00'00" East, for 292.70 feet to an old iron pipe located on the North margin of Terry Cove; thence run South 78°55'56" West, along said North margin for 208.89 feet to a point; thence run North 00°00'00" East, for 209.43 feet to a ½" rebar set pipe; thence run South 90°00'00" West, for 95.00 feet to a ½" rebar set pipe; thence run North 00°00'00" East for 334.60 feet to the Point of Beginning.

PARCEL F:

Avenue A, South of Highway 180, should the same be vacated by the adjoining property owners.

Less and except from all parcels: The land which is a part of Phase One of Phoenix on the Bay II.

EXHIBIT "A-3"

Unit A of Phase One of Phoenix on the Bay II, a Condominium, is described as the following real property located in Baldwin County, Alabama, as well as the improvements located thereon:

Commencing at the Northwest corner of Lot 7, Villa Torcon Subdivision, as recorded on Slide 1816A in the Office of the Judge of Probate, Baldwin County, Alabama; thence run South a distance of 638.60 feet to the point of beginning of the property herein described; thence run East a distance of 1.00 feet to a point; thence run North a distance of 4.00 feet to a point; thence run East a distance of 24.00 feet to a point; thence run South a distance of 4.00 feet to a point; thence run East a distance of 52.58 feet to a point; thence run South a distance of 1.25 feet to a point on a curve to the left having a radius of 9.00 feet; thence run Southeastwardly along said curve (Chord bearing South 45°00'00" East, Chord = 12.73 feet) an arc distance of 14.14 feet to a point; thence run East a distance of 4.97 feet to a point; thence run South 00°02'01" East a distance of 26.96 feet to a point; thence run East a distance of 2.19 feet to a point on a curve to the right having a radius of 9.00 feet; thence run Southeastwardly along said curve (Chord bearing South 45°00'00" East, Chord = 12.73 feet) an arc distance of 14.14 feet to a point; thence run South a distance of 2.27 feet to a point; thence run East a distance of 3.90 feet to a point; thence run South a distance of 142.32 feet to a point; thence run West a distance of 106.65 feet to a point; thence run North 190.79 feet to the Point of Beginning. Contains 0.452 Acres.

PHASING AMENDMENT ONE
TO
PHOENIX ON THE BAY, II
PHASE TWO

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EXHIBIT "A"

Real Property

EXHIBIT "B"

Certification of Completion and Compliance

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**PHASING AMENDMENT ONE
TO
PHOENIX ON THE BAY, II
PHASE TWO**

THIS AMENDMENT TO THE DECLARATION OF PHOENIX ON THE BAY, III, A CONDOMINIUM, which is recorded in the records of the Judge of Probate of Baldwin County, Alabama, as Instrument No. _____ is made this the ____ day of _____, by Brett Real Estate, Robinson Development Company, Inc., an Alabama corporation, hereinafter called "DEVELOPER," for its successors and assigns.

WHEREIN, Developer is the successor developer to the developer of the aforesaid Declaration and is vested with the reserved developer rights set out therein; and

WHEREAS, Developer is the fee simple owner of that certain parcel of real property situated in the County of Baldwin, State of Alabama, and has improved said real property in the manner set out herein, which said parcel of land is more particularly described in Exhibit "A" attached hereto and incorporated herein as if fully set out; and

WHEREAS, the Developer wishes to add this property to Phoenix on the Bay II, a condominium; and

WHEREAS, Phase Two of the project consists of one (1) building containing a total of sixty-five (65) Residential Units, and (65) Storage Units together with access, an outdoor pool, parking and appurtenant facilities herein described. There are various areas within the building which are reserved to the Developer as shown on the Plans or stated in this Declaration.

NOW, THEREFORE, Developer hereby makes the following amendment to the 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 Developer, the Developer's heirs and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

DEFINITIONS

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

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

1.02. "ARTICLES" means the Articles of Incorporation of the Association, recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

PROPOSED - THIS INSTRUMENT NOT EXECUTED

EXHIBIT "B"

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- 1.03. "ASSESSMENT" means proportionate share of the funds required for the payment of the Common Elements which from time to time may be levied against each Unit Owner.
- 1.04. "ASSOCIATION" means Phoenix On The Bay II Owners Association, Inc., an Alabama not for profit corporation, and its successors, and is the corporation organized under the ACT..
- 1.05. "BOARD" means the Board of Directors of an Association.
- 1.06. "BUILDING" means all structures or structural improvements located on the Real Property and forming part of the Condominium.
- 1.07. "BY-LAWS" means the duly adopted By-Laws of the Association, identified as Exhibit "D" attached hereto and made a part hereof as if set out fully herein.
- 1.08. "COMMON ELEMENTS" means all portions of the condominium other than the Units.
- 1.09. "COMMON EXPENSES" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.10. "COMMON SURPLUS" means the excess of all receipts of the Association arising out of the Common Elements over the amount of the Common Expenses.
- 1.11. "CONDOMINIUM" means Phoenix On The Bay II, a condominium, and consists of the Condominium Property submitted to the Condominium form of ownership by this Declaration.
- 1.12. "CONDOMINIUM DOCUMENTS" means the Declaration, By-Laws, Articles and all Rules and Regulations adopted by the Association, and all exhibits attached thereto, as the same may be amended from time to time.
- 1.13. "CONDOMINIUM PROPERTY" or "PROPERTY" means all property, both real, personal or mixed, which is submitted to the Condominium form of ownership as provided for herein and includes the Real Property and all improvements now existing or hereafter placed thereon and all easements, rights, interests or appurtenances thereto, and all personal property now or hereafter used in connection therewith.
- 1.14. "DECLARATION" means this Declaration of Condominium and any amendments thereto which may be made from time to time.
- 1.15. "DEVELOPER" means Brett Real Estate, Robinson Development Company, Inc., an Alabama corporation.

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

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

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

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

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

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

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

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

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

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

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

1.27. "UNIT OWNER" means the Owner of a Unit.

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

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

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The following is added to the Declaration by way of addition and not substitution:

NAME

The name by which this condominium is identified is Phoenix On The Bay II, a condominium.

THE REAL PROPERTY

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, which are attached hereto as Exhibit "A."

PURPOSE

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

DEVELOPMENT PLAN

5.01. General Description of Improvements. The improvements are as shown upon the plans thereof, recorded as Instrument No. _____ in the records of the Judge of Probate of Baldwin County, Alabama, 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, as well as his verified statement, attached hereto as Exhibit "B," that such plans have been completed and are in sufficient detail to identify the common elements and the private elements comprising the units as built and which said plans are supplemented and complimented by the narrative and the graphic descriptions herein contained. Phase Two of the Condominium Property consists essentially of one (1) building, together with covered and uncovered automobile parking areas, boat ramps, lawn and landscaping, and other facilities as more particularly set forth in the Plans. The Building contains five (5) levels, one through five. Each level also contains a storage unit assigned to each condominium for a total of 65 storage units. Each level contains thirteen (13) CONDOMINIUM RESIDENTIAL UNITS. There are five (5) types of condominium residential units. There are a total of sixty-five (65) condominium residential units as shown on the Plans.

5.02. Changes. In order to meet the possible unforeseen or varying demands for the number and type of unit, or in order to meet particular requirements of prospective purchasers, lending institutions or title insurance companies, or for any other reason, the Developer reserves the right to change the size, dimensions, number and location of buildings, units and other improvements, and the size, dimensions, lay-out location and undivided percentage of ownership in the common elements of any unit for which a purchase agreement has not been executed by the

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Developer or with respect to which the purchaser is in default, provided such changes do not change the common elements of any unit already sold or under an executed purchase and sale agreement as to which the purchaser is not in default. The Developer further reserves the right to substitute for any of the materials, equipment and other articles herein mentioned, materials, equipment and articles of equal or better quality.

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

5.04. Easements -- Developer's Retained and the Association's. Easements are reserved to the Developer, its successors and assigns, throughout the Common Elements as may be reasonably necessary for the purpose of discharging the Developer's or Building Manager's obligations. Further, the Developer, its successors and assigns, reserves a perpetual nonexclusive easement for access, ingress and egress over and through all access routes, parking areas, and other common areas for its guests, licensees, lessees, customers and employees for the purpose of real estate sales or any other business operated by the Developer on such property, including all areas reserved by the Developer. Further, the Developer, its successors and assigns, retains the exclusive right to use and control the check-in area, sales office, housekeeping, custodial areas, workshops, storage areas, as are indicated on the plans. There is also a recorded easement granting access to the dockage area to a former owner of the Real Property. 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.

5.05. Access. Each unit has a right of access to a public street or highway, that is to say East Canal Road, Orange Beach, Alabama, upon and over common elements, providing such access all as shown upon the site plan (attached hereto as part of Exhibit "B"). The immediate

access all as shown upon the site plan (attached hereto as part of Exhibit "B"). The immediate common elements by which each unit has access to such public street or highway are: (i) the concrete walkways running along the face of the buildings and ground; and (ii) the parking area, driveways and streets all as shown upon the site plan (Attached hereto as part of Exhibit "B").

DESCRIPTIONS

6.01. Features. The condominium includes access areas, parking areas, parking garages, lawn and garden areas, and the swimming pool.

6.02. Private Elements. There are five (5) basic floor plans with square footage representing measurement from the center line of the common (party) walls to the outside of the exterior walls. The description of the private elements and the appurtenances thereto are determined with the aid of the plans therefore, attached hereto, and as follows:

a) Units Numbered. Each unit is assigned an alpha/numeric name which is indicated on the drawings attached hereto as part of Exhibit "B" to this Declaration. The first number shall designate the floor of the unit; this shall be followed by a letter which shall designate the unit type; followed by a number designating the specific unit.

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

c) Type B. Type B is a three (3) bedroom, three (3) bath unit containing a kitchen, living and dining area combination with approximately 1,787 square feet of heated and cooled area not including the open balcony which contains approximately 308 square feet and serves the unit as a limited common element. The unit comes complete with carpet, vinyl flooring, wallpaper in designated areas, window blinds, range, dishwasher, refrigerator, washer and dryer. There are five (5) Type "B" Units each on levels 1 through 5, for a total of twenty-five (25) Type "B" Units.

d) Type C. Type C is a two (2) bedroom, two (2) bath unit containing a kitchen, living and dining area combination with approximately 1,308 square feet of heated and cooled area not including the open balcony which contains approximately 192 square feet and serves the unit as a limited common element. The unit comes complete with carpet, vinyl flooring, wallpaper in designated areas, window blinds, range, dishwasher, refrigerator, washer and dryer. There are five (5) Type "C" Units each on levels 1 through 5, for a total of twenty-five (25) Type "C" Units.

e) Type D. Type D is a three (3) bedroom, three and one-half (3.5) bath unit containing a kitchen, living and dining area combination with approximately 2,342 square feet of heated and cooled area not including the open balcony which contains approximately 495 square feet and serves the unit as a limited common element. The unit comes complete with carpet, vinyl

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flooring, wallpaper in designated areas, window blinds, range, dishwasher, refrigerator, washer and dryer. There are a total of five (5) Type "D" Units, one (1) each on levels 1 through 5.

f) Type D Reverse. Unit Type D Reverse is a mirror image of Unit Type D. There are a total of five (5) Type "D Reverse" Units, one (1) each on levels 1 through 5.

g) Type E. Type E is a three (3) bedroom, three (3) bath unit containing a kitchen, living and dining area combination with approximately 2032 square feet of heated and cooled area not including the open balcony which contains approximately 472 square feet and serves the unit as a limited common element. The unit comes complete with carpet, vinyl flooring, wallpaper in designated areas, window blinds, range, dishwasher, refrigerator, washer and dryer. There is one (1) Type "E" Unit each on levels 1 through 5 for a total of five (5) Type "E" Units.

h) Type A. Type A is described in the original Declaration.

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

a) The land described in Exhibit "A" attached hereto, subject to the exceptions set out therein (excluding the land which is a part of Unit A of Phase One).

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

c) Automobile parking spaces in the parking areas, but not including those located in the parking garages.

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.

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h) Recreation areas and facilities, including but not limited to, the swimming pools, 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, pump houses, wells, motors, fans, compressors and control equipment, fire fighting equipment, garbage equipment, elevators and equipment which are not reserved for the use of certain units.

k) All retaining walls, 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 Alabama Uniform Condominium Act, and located on the Property.

6.04. Limited Common Elements.

A. The limited common elements include the Maintenance and Storage Room areas located on levels 1 through 5, and shown on the plans with the designation of M plus a numeral and all other items listed as such in the Alabama Uniform Condominium Act.

B. The Boat Slips are Limited Common Elements to the extent that they are considered as the exercise of riparian rights appurtenant to the Land which this Declaration commits to the condominium form of ownership. They are built on and above water which covers submerged land which is subject to an agreement between the Developer and the State of Alabama styled "Riparian Easement of State-Owned Submerged Lands" which contains a provision requiring annual easement fees to be paid to the State of Alabama.

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

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6.06. Surfaces. An owner shall not be deemed to own the studs and structural components of the perimeter walls and/or of load-bearing walls, nor the windows and doors bounding the unit, nor balconies, nor balcony railings enclosing a balcony area assigned to the exclusive use of the unit. An owner, however, shall be deemed to own and shall have the exclusive right and duty to repair, maintain, replace, paint, repaint, tile, wax, paper or otherwise finish and decorate the surfacing materials on the interior of the exterior walls and on the interior walls separating a unit from other units, and, the surfacing materials of the floors of his unit, and all appurtenant installations, including all pipes, ducts, wires, cables and conduits used in connection therewith for services such as power, light, telephone, sewer, water, heat, air conditioning and television, whether located in the boundaries of the unit or in the common areas, which are the exclusive use 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.

6.07. Balconies. A valid exclusive easement is hereby declared and established for the benefit of each unit and its owner consisting of the exclusive right to use and occupy the balcony or balconies serving his unit.

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

- (a) defects in appliances and pieces of equipment which are covered by manufacturer's warranties;
- (b) incidental, consequential or secondary damages caused by a breach of this warranty;
- (c) defects which are the result of characteristics common to the materials used, such as, but not limited to: warping and deflection of wood; mildew and fading; chalking and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco, plaster, bricks and masonry; drying, shrinking and cracking of caulking and weatherstripping;
- (d) conditions resulting from condensation on, or expansion or contraction of materials;

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

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

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

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

7.01. Ownership and Voting Percentages. A schedule setting forth the percentage of undivided interest of each unit, including Unit A of Phase One, in the common areas is attached hereto, marked Exhibit "C" and by reference made a part hereof. The formula to determine the percentage of ownership in the common elements is also shown on Exhibit "C." The common expenses shall be charged to the unit owners according to the formula shown on Exhibit "C-1." The formula to determine the percentage of common surplus and voting in all matters requiring action by the owners is shown on Exhibit "C-1." The common surplus shall be a trust fund for the unit owners according to the respective units' ownership 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.

ENCROACHMENTS

8.01. If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any building, a valid easement for the encroachment and for the maintenance of the same so long as such building stands shall exist. In the event any building, any unit, any adjoining unit, or any adjoining common element shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the common elements upon any unit or of any unit upon any other unit or upon any portion of the common elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such building shall stand.

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

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All present and future owners, tenants and occupants of units shall be subject to and shall comply with the provisions of the Act, this Declaration, the By-Laws and the Rules and Regulations as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any unit shall constitute an agreement that the provisions of the Act, this Declaration, the By-Laws and the Rules and Regulations, as may be amended from time to time, are accepted and ratified by such owner, tenant and occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest of estate in such unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. In the event of a conflict in any of the provisions of any such documents, the documents shall govern or control in the following order of the preference: (i) the Act; (ii) the Declaration; (iii) the Articles of Incorporation of the Association; (iv) the By-Laws of the Association; and (v) the Rules and Regulations of the Association.

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

9.02. Enforcement. Failure of any owner to comply strictly with the provisions of this Declaration, the By-Laws and the Rules and Regulations shall be grounds for an action to recover sums due, or damages, or injunctive relief, or any or all of them. Such actions may be maintained by the Association on its own behalf or on behalf of the unit owners aggrieved. In any case of flagrant or repeated violation by a unit owner, he may be required by the Association to give sufficient surety or sureties for his future compliance with the provisions of this Declaration, the By-Laws and the Rules and Regulations. Nothing herein contained shall prevent, in a proper case, an independent action by an aggrieved unit owner for such relief.

MAINTENANCE

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

10.01. Units:

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

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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.

v.) To maintain and repair the boat slips. The Association may separately assess those unit owner's who have a boat slip or slips as an appurtenance to a Unit for expenses associated with such repairs and maintenance.

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

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

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

iii) To maintain the surfacing materials within the unit.

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

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

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

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

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

10.02. Common Elements.

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

b) Additions, Alterations and Improvements. After the completion of the improvements included in the common elements which are contemplated by this Declaration, there shall be no further additions to common elements (except by incremental development as elsewhere herein provided) without the prior approval in writing of seventy-five percent (75%) of votes of the unit owners, and the approval in writing of the mortgagees who are the holders of mortgages comprising first liens on the units so approving, provided, however, that any alteration or improvements of common elements which constitute or are contained in the boundaries of units bearing the approval in writing of unit owners entitled to cast fifty-one percent (51%) of the votes in the Association, and the approval in writing of all mortgagees who are the holders of mortgages comprising first liens on the units of such approving unit owners and which does not prejudice the rights of any owners not consenting, may be done if the owners who do not approve are relieved from the initial cost thereof. There shall be no change in the share and rights and obligations of a unit owner in the common elements which are altered or further improved, whether or not the unit owner contributes to the initial costs thereof. Any such alteration or addition shall be done in accordance with complete plans and specifications therefor first approved in writing by the Board; and promptly upon completion of such additional building or structural alteration or addition to any structure, the Association shall duly record or file of record in the Office of the Judge of Probate of Baldwin County, Alabama, such amendment, together with a complete set of plans of the condominium, as so altered, certified "as built" by a licensed or registered engineer or architect.

ASSESSMENTS

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

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

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11.02. Interest, Application of Payments. Assessments, and installments thereon, paid on or before ten (10) days after the date when due shall not bear interest, but to all sums not paid on or before ten (10) days after the date when due shall be added a \$15.00 penalty and interest at the rate of ten percent (10%) per annum after date due until paid.

11.03. 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: i) tax lien on the unit in favor of the state, the county, any municipality and any special district; and ii) 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%) 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.

11.04. 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.

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

11.06. Statement of Unpaid Assessments. The Association shall promptly provide any unit owner and/or the holder of a mortgage comprising a first lien on any unit or the grantee

in any voluntary conveyance of a unit so requesting the same in writing with a written statement of all unpaid assessments due from the unit owner.

ASSOCIATION

The operation and administration of condominium shall be by the Association of the unit owners, pursuant to the provision of the Alabama Uniform Condominium Act, which said Association shall be incorporated by the Articles of Incorporation recorded in the Office of the Judge of Probate of Baldwin County, Alabama. The Association shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or non-exercise of its powers. It shall have authority and the power to maintain a class action and to settle a cause of action on behalf of unit owners of the condominium of the condominium with reference to the common elements, the roof and structural components of a building or other improvements, and mechanical, electrical and plumbing elements serving in improvement or a building as distinguished from mechanical elements serving only a unit, and with reference to any and all other matters in which all the unit owners of the condominium have a common interest. The Association shall be further organized and shall fulfill its functions pursuant to the following provisions.

12.01. Name. The name of the Association shall be Phoenix On The Bay II Owners Association, Inc.

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

12.03. Members:

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

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

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

such unit, as hereinafter provided, owners of more than one (1) unit shall be entitled to a vote for each unit owned. However, should the Association be a unit owner, it shall not have the voting rights for that unit.

d) Designation of Voting Representative. In the event a unit is owned by one (1) person, his right to vote shall be established by the record title to his unit. If a unit is owned by more than one (1) person, the person entitled to cast the vote for the unit shall be designated by a certificate signed by all of the record owners of the unit and filed with the Secretary of the Association. If a unit is owned by a corporation, the officer or employee thereof entitled to cast the vote for the unit shall be designated by a certificate of appointment signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association. If such a certificate is not on file with the Secretary of the Association for a unit owned by more than one (1) person or by a corporation, the membership or vote of the unit concerned shall not be considered in determining the requirement for a quorum nor for any purpose requiring the approval of the person entitled to cast the vote for the unit. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the unit concerned is effected. A certificate designating the person entitled to cast the vote of a unit may be revoked by any owner thereof.

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

f) Restraint Upon Assignment of Shares in Assets. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.

12.04. Board of Directors. The affairs of the Association shall be conducted by a Board of Directors which shall consist of such number not less than three (3) nor more than eight (8) as shall from time to time be determined and fixed by a vote of a majority of the voting rights present in any annual meeting of the members.

12.05. Indemnification. Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, whether or 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 interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

12.06. Limitation of Liability. Notwithstanding the liability of the Association to maintain and repair parts of the condominium property, the Association shall not be liable for injury or damage caused by a latent condition of the property to be maintained and repaired by the Association, nor for the injury or damage caused by the elements, or other owners or persons.

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

INSURANCE

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

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

13.02. Coverage:

a) Casualty. The Association must obtain, maintain and pay the premiums upon, as a Common Expense, the property insurance required by the ACT for condominium structures with horizontal boundaries. All buildings 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.

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

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

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

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

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

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

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

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

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

c) Provide that such policy may not be cancelled (whether or not requested by the Association) except by the insurer giving at least thirty (30) days prior written notice thereof to the Association, the fee owner, and every other person in interest who shall have requested such notice of the insurer.

d) Contain a waiver by the insurer of any right of subrogation to any right of the Association or either against the owner of lessee of any unit; and

- e) Contain a standard mortgage clause which shall:
- i) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any unit, whether or not named therein; and
 - ii) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Association or unit owners or any persons under any of them; and
 - iii) Waive any provision invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

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

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

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

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

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

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

RECONSTRUCTION OR REPAIR AFTER CASUALTY

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

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

b) Building.

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

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

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

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

14.03. Estimates of Costs. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair so as to place the damaged property in condition as good as that before the casualty.

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

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14.05. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty for which the Association is responsible which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessment against unit owners, shall be disbursed in payment of such costs in the following manner:

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

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

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

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

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

USE RESTRICTIONS

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

15.01. Single Family Residences. The condominium property shall be used only for single family residences, and for the furnishing of services and facilities herein provided for

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the enjoyment of such residences. Each of the units shall be occupied only by a single family and its guests as a residence and for no other purpose.

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

15.03. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the condominium property nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

15.04. Leasing. 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.

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

COMPLIANCE AND DEFAULT

Each unit owner shall be governed by and shall comply with the terms of the condominium documents and regulations 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:

16.01. Negligence. A unit owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, negligence or carelessness or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a unit or its appurtenances.

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

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

COVENANT AGAINST PARTITION

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

AMENDMENT

This Declaration of Condominium and the By-Laws of Phoenix On The Bay II Owners Association, Inc., may be amended in the following manner:

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

18.02. Resolution. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by members having not less than ten percent (10%) of the total percentage values of those votes entitled to be cast at a meeting, and after being so proposed and thereafter approved by one (1) of such bodies, it must then be approved by the other to become effective. Directors and members not present at the meeting considering the amendment may express their approval or disapproval in writing provided such approval or disapproval is delivered to the Secretary at or prior to the meeting. Such approvals must be not be by less than a majority of the Directors and by not less than two-thirds (2/3) of the votes of the Association; provided, however, that any such amendment shall have been approved in writing by all mortgagees who are the holder 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.

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

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

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

18.06. Provisions Pertaining to the Developer.

Subject to the provisions herein, until the earliest of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Developer; (ii) two (2) years after the Developer, its successors or assigns, have ceased to offer Units for sale in the ordinary course of business; or (iii) two (2) years after any Development Right to add new units was last exercised, the By-Laws and rules adopted by the Developer shall govern and the Developer shall have the exclusive right to appoint, remove, and designate the officers and members of the Board of Directors (which need not be Unit Owners), and neither the Unit Owners nor the Association nor the use of the Condominium Property by Unit Occupants shall interfere with the completion of the contemplated improvements and the sale of the Units. The Developer may voluntarily surrender the right to appoint and remove officers and members of the Board; but, in that event, the Developer may require, for the duration of the period of Developer control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Developer, be approved by the Developer before they become effective. Provided, however, not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Owners other than the Developer, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than the Developer. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than the Developer, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Unit Owners other than the Developer. Except as provided for in the ACT, not later than the termination of any period of Developer control, the Unit Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Unit Owners other than the Developer.

The Developer may make such use of the unsold Units and of the common areas and facilities as may facilitate such completion and sale, including but not limited to showing of the Property and the display of signs. The Developer may maintain sales offices, management offices, leasing and operations offices, and models in any Unit of the Condominium or on Common Elements in the Condominium without restriction as to the number, size or location of said sales offices, management offices, leasing and operations offices and models. The Developer shall be permitted to relocate said sales offices, management offices, leasing and operations offices and models from one Unit location to another or from one area of the Common Elements to

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another area of the Common Elements in the Condominium. The Developer may maintain signs on the Common Elements advertising the Condominium. The rights of the Developer as provided for in this paragraph shall cease and terminate ten (10) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama.

PROPORTIONATE CHANGES IN COMMON EXPENSES, COMMON SURPLUS AND VOTING RIGHTS

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

TERMINATION

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

EMINENT DOMAIN

21.01. Partial Taking Without Direct Effect on Units. If part of the condominium shall be taken or condemned by any authority having the power of eminent domain in such manner that no unit is taken, compensation and damages for and on account of the taking of the common elements, exclusive of compensation for consequential damages to affected units shall be payable to the Association as Trustee for all unit owners and mortgagees of record according to the loss or damages to their respective interests in the common elements. The Association, acting through its Board of Directors, shall have the right to act on behalf of the unit owners with respect to the taking and compensation affecting the common elements, without limitation of the right of the unit owners to represent their own interests. Such proceeds shall be paid to the Association and shall be used promptly to the extent necessary for restoring or replacing improvements so taken on the remaining property in a substantial compliance with the original plans and elevations of the improvements as soon as possible and so as to restore the general value of the condominium. In the event such restoration or reconstruction is impossible or impractical, or in the event there is an award in excess of the amount necessary to so substantially restore or reconstruct the common elements, the amount of such award or the excess, as the case may be, shall be distributed by the Association to the unit owners in proportion to their share of undivided interest in the common elements. Nothing herein shall be deemed to prevent unit owners whose units are affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their

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behalf for damages relating to loss of value of the affected units, or personal improvements therein, exclusive of damages related to the taking of common elements. In the event the condemnation award does not allocate damages to specific units, but includes an award for reduction in value of the units without such allocation, the award shall be distributed to the affected unit owners and mortgagees of record in proportion to each unit owner's undivided interest in the common elements.

21.02. Partial or Total Taking Directly Affecting Units. If part or all of the condominium shall be taken or condemned by any authority having the power of eminent domain in such manner that any unit or part thereof is taken, the Association shall have the right to act on behalf of the unit owners with respect to common areas as in subsection .01. of this Paragraph 23, 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 15 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 .01. of this Paragraph 23. In the event that the Board of Directors determines that such a taking so removed land and buildings containing units that they cannot effectively restore or replace substantially in compliance with the building plans, and unless seventy-five percent (75%) of the units vote to accept an alternative plan, the award shall be distributed as provided in subsection .01. of this Paragraph 23.

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

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.

SEVERABILITY

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

PROPOSED - THIS INSTRUMENT NOT EXECUTED

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IN WITNESS WHEREOF, the said Brett Real Estate, Robinson Development Co., Inc.,
has caused **THESE PRESENTS** to be executed this day and year as first above written.

BRETT REAL ESTATE,
ROBINSON DEVELOPMENT CO., INC.
An Alabama corporation

By: _____

Its: _____

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, _____, the undersigned authority, a Notary Public in
and for said County in said State, hereby certify that _____, whose
name as _____, of BRETT REAL ESTATE, ROBINSON
DEVELOPMENT CO., INC., an Alabama corporation, is signed to the foregoing instrument and
who is known to me, acknowledged before me on this day, that being informed of the contents of
said instrument, he, as such officer duly authorized, has executed the same voluntarily on behalf
of the corporation on the day the same bears date.

Given under my hand and seal this the ____ day of _____, _____.

Notary Public

My Commission Expires: _____

THIS INSTRUMENT PREPARED BY:

Jule R. Herbert Jr.
Jule R. Herbert Jr., P. C.
Attorney at Law
P.O. Drawer 3889
Gulf Shores, AL 36547
(334) 968-4764

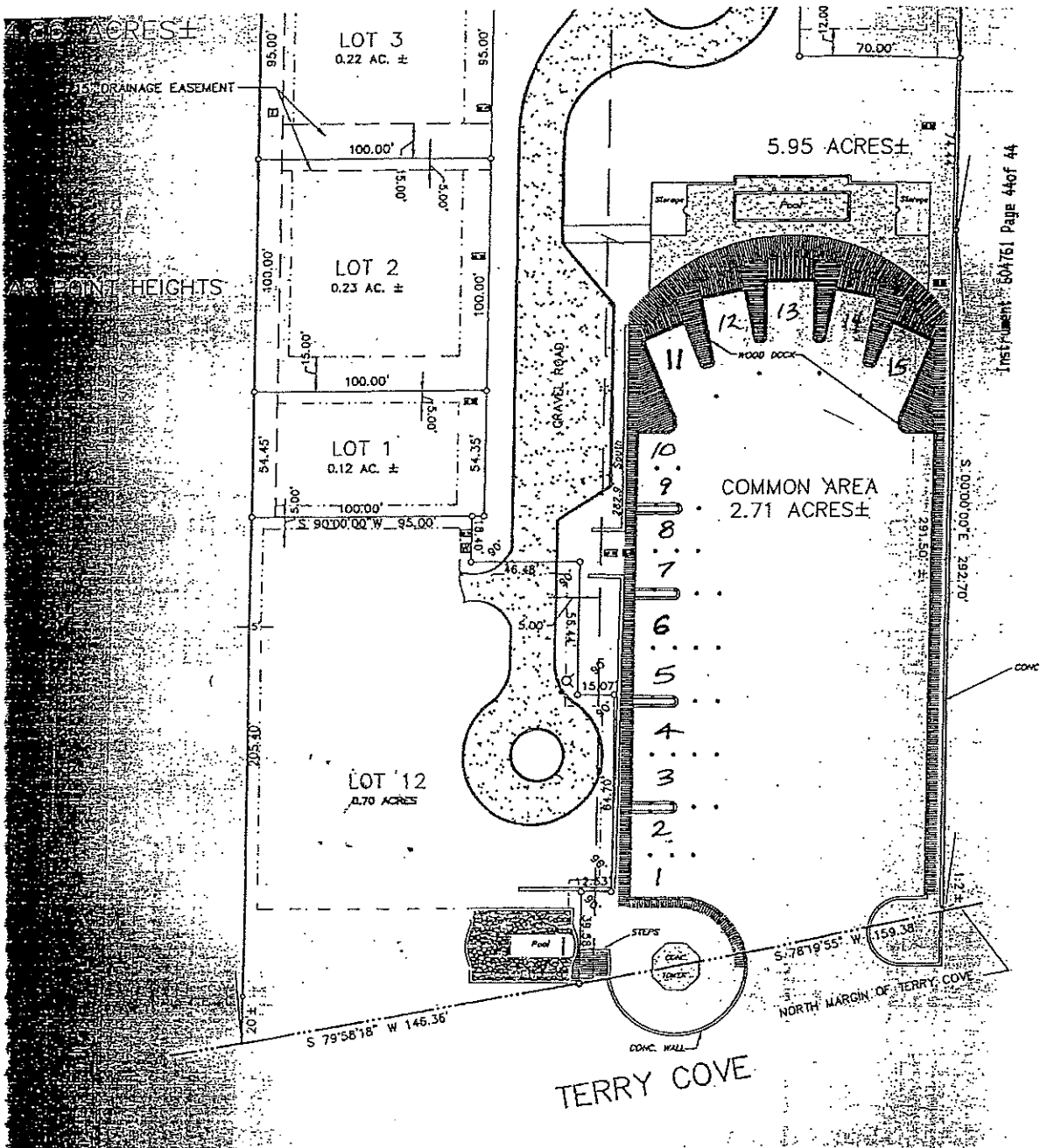


Exhibit D

BY-LAWS

OF

PHOENIX ON THE BAY II OWNERS ASSOCIATION, INC.

1. IDENTITY.

These are the By-Laws of Phoenix on the Bay II Owners Association, Inc., an association organized pursuant to the Alabama Uniform Condominium Act, 35-8A-101 et seq., *Code of Alabama*, as amended, for the purpose of administering Phoenix on the Bay II, a Condominium, located in Baldwin County, Alabama.

1.01. The office of the Association shall be at 3259 Gulf Shores Parkway, Gulf Shores, Alabama, 36542, Post Office Box 1727, Gulf Shores, Alabama, 36547.

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

2. MEMBERS' MEETINGS.

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

2.02. Thereafter, the annual meeting of the unit owners shall be held at the office of the Association at a time and date set by the Board of Directors each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the members.

2.03. 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 such notice of change be mailed to each member of record at such address as appears upon the records of the Association not less than ten (10) days before the holding of such meeting; and further provided that each annual meeting of members shall be held within one (1) month of the date on which it should regularly have been held but for such change.

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

2.05. Notice of all members' meetings stating the time and place and the

Exhibit D

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

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

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

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

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

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

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

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

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

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

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

3. BOARD OF DIRECTORS.

3.01. Membership. The affairs of the Association shall be conducted by the Board of Directors, which shall consist of such number not less than three (3) nor more than eight (8), with staggered terms, as shall from time to time be determined and affixed by a vote of the voting rights present at any annual meeting of the members. Each Director shall be an owner of a unit, except as provided in subparagraph 2.(d) below.

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

- (a) Directors shall be elected at the annual meeting of the members of the Association.
- (b) Except as to vacancies created by removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors.
- (c) Any Director may be removed by concurrence of two-thirds (2/3) of the members of the Association at a special meeting of the members called for that purpose. The vacancy thus created shall be filled at the same meeting by the members of the Association in the same manner as was provided for the election of the removed Director.
- (d) Provided, however, that until the Developer of the condominium has completed and sold all of the units of the condominium or until December 31, 2007, or until the Developer elects to terminate its control of 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; and provided, further, that until the Developer of the condominium has completed and sold seventy-five percent (75%) 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.

3.03. 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.

3.04. 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.

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

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

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

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

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

3.10. 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:

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

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

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

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

4.05. To maintain a class action, and to settle a cause of action on behalf of owners with references to the common elements, the roof and structural components of a building or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a building as distinguished from mechanical elements serving only a unit; and to bring an action and to settle the same on behalf of two (2) or more of the owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one (1) condominium; all as the Board deems advisable.

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

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

4.08. To employ a management agent or manager, at a compensation established by the Board, to perform such duties and services as the Board shall authorize,

including, but not limited to, the duties listed in this Section, and 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.

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

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

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

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

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

5. OFFICERS.

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

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

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

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

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

6. FISCAL MANAGEMENT.

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

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

budget is last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the Board.

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

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

mentioned or described in the conveyance thereof. In case the condominium regime hereby created shall be terminated and the property removed from the Condominium Ownership Act, any part of each such capital reserve account remaining after full payment of all common expenses of the Association shall be distributed to all unit owners in the respective proportionate shares.

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

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

6.06. Default.

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

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

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

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

7. OBLIGATIONS OF THE OWNERS.

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

7.02. Maintenance and Repair.

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

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

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

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

7.04. Right of entry. The 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 purpose of performing authorized installations, alterations or repairs to the common elements therein for central services, provided that requests for entry are made in advance.

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

7.06. Mortgages.

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

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

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

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

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

8. AGENT TO RECEIVE SERVICE OF PROCESS.

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

NAME:	Tillis M. Brett
RESIDENT:	Post Office Box 1727 3259 Gulf Shores Parkway Gulf Shores, AL 36547

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 on the Bay II Owners Association, Inc., at the first meeting of the Board of Directors on _____,

SECRETARY

APPROVED:

PRESIDENT

ARTICLES OF INCORPORATION

OF

PHOENIX ON THE BAY II OWNERS ASSOCIATION, INC.

State of Alabama, Baldwin County
certify this instrument has filed
and taxes collected on:
2007 February -14 8:27AM
Instrument Number 1031377 Pages 9
Recording 25.00 Mortgage
Deed Min Tax
Index DP 5.00
Archive 5.00
Adrian T. Johns, Judge of Probate

BY THESE ARTICLES, the undersigned natural persons over the age of Nineteen (19) hereby associate themselves for the purpose of forming a not for profit corporation under the Alabama Nonprofit Corporation Act, §10-3-1, et seq., *Code of Alabama* (1975); and the Alabama Uniform Condominium Act of 1991, §35-8A-101, et seq., *Code of Alabama* (1975), and verify as follows:

ARTICLE I
NAME AND DEFINITIONS

The name of the corporation shall be Phoenix On The Bay II Owners Association, Inc. The corporation is herein referred to as the "Association," and the terms used herein shall have the meaning for each stated in the Alabama Nonprofit Corporation Act, §10-3-1, et seq., *Code of Alabama* (1975), and the Alabama Uniform Condominium Act of 1991, §35-8A-101, et seq., *Code of Alabama* (1975), (hereinafter referred to as the "Acts") and the Declaration of Condominium of Phoenix On The Bay II, a condominium, to be recorded in the Public Records of Baldwin County, Alabama, unless the context otherwise requires.

ARTICLE II
PURPOSE

The Association is organized for the purpose or purposes of transacting any and all lawful business, including but not limited to the following:

- (1) To maintain, operate and manage the condominium known as Phoenix On The Bay II, a condominium, located in Orange Beach, Baldwin County, Alabama, and to do all things

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incident, necessary, convenient, expedient, ancillary, or in aid of the accomplishment of the foregoing.

(2) To own, operate, lease, sell, trade, or otherwise deal with such property, real or personal, as may be necessary or convenient in the administration of the Condominium,

ARTICLE III POWERS

3.01. Implied Powers. The Association shall have all of the common law and statutory powers of a not for profit corporation which are not in conflict with the purposes of the Association as set forth in this Article, the Declaration of Condominium and the Acts.

3.02. Specific Powers. In furtherance of the purposes of the Association, the Association shall have all of the powers set forth in the Acts, and all of the powers reasonably necessary to operate the Condominium pursuant to the Declaration of Condominium, including but not limited to the following irrevocable rights, powers, and authority:

(1) To enforce the covenants and restrictions contained in the Declaration, and to make, establish, and enforce reasonable Rules and Regulations governing the administration, management, and use of the Condominium Property;

(2) To establish a budget for the operations of the Condominium; to designate those expenses which shall constitute the Common Expenses of the Condominium; to make, levy, and collect assessments against Unit Owners of the Condominium to provide the funds to pay for Common Expenses of the Condominium as provided for in the Condominium documents

and in the Act; and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association;

(3) To maintain, repair, replace, and operate those portions of the Condominium Property that the Association has the duty or right to maintain, repair, replace, and operate under the Condominium Documents.

(4) To have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any Common Elements or Limited Common elements therein or accessible therefrom, or, to have immediate access at any time as may be necessary for making emergency repairs necessary to prevent damage to any other Unit or Units;

(5) To contract for the management of the Condominium Property and to delegate to such agent(s) all or some of the powers, duties, and responsibilities of the Association;

(6) To employ personnel to perform the services required for proper operation of the Condominium;

(7) To purchase and maintain all forms of insurance on the Condominium Property for the protection of the Association and its members;

(8) To reconstruct the Condominium Property after casualty or other loss;

(9) To make additional improvements on and to the Condominium Property;

(10) To approve or disapprove the transfer, mortgage, and ownership of Units to the extent such power is granted to it under the Condominium Documents;

(11) To retain legal counsel at the expense of the Association and to enforce by legal action the provisions of the Condominium Documents and the Rules and Regulations of the Association;

(12) To acquire, by purchase or otherwise, Units in the Condominium, and to hold, lease, mortgage, and convey the same;

(13) To lease or license the use of Common Elements and Limited Common Elements in a manner not inconsistent with the rights of Unit Owners;

(14) To pay taxes and assessments which are liens against any part of the Condominium other than individual Units (unless the individual Units are owned by the Association) and the appurtenances thereto, and to assess the same against the Units.

(15) To pay the cost of all power, water, sewer, trash, garbage, and other utility services rendered to the Condominium and not billed to the individual Units.

(16) To adopt and establish By-Laws for the operation of the Condominium Association.

ARTICLE IV ASSOCIATION FUNDS AND PROPERTY

The Association shall pay no dividend, and shall distribute no part of its income to its Members, Directors, or Officers. Nevertheless, the Association may pay compensation in an reasonable amount to its Members, Directors, and Officers for services rendered, and it may confer benefits on its Members in conformity with the Declaration of Condominium and the purposes of the Association. On termination, the Association may make distributions to its

Members as permitted by law, and no such payment, benefit, or distribution shall be deemed to be a dividend or distribution of income. All funds and property acquired by the Association and all proceeds therefrom shall be held and used for the benefit of the Members of the Association in accordance with the provisions of the Declaration, these Articles and the By-Laws.

ARTICLE V MEMBERS

5.01. Qualification. The Members of the Association shall consist of all of the Unit Owners of record in the Condominium.

5.02. Certification of Membership. This Corporation shall issue no shares of stock of any kind or nature whatsoever.

5.03. Change in Membership. Change of membership in the Association shall be established by the recording in the public records of Baldwin County, Alabama, of a deed of other instrument establishing a record title to a Condominium Unit, and delivery to the Association of a certified copy of such instrument. The new Unit Owner designated by such instrument shall thereupon become a Member of the Association, and the membership of the prior unit owner shall thereby be terminated.

5.04. Transfer of Membership. The membership of a Member in the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance to such Member's Unit.

5.05. Meetings. The By-Laws, subject to any proviso therein, shall provide for an annual meeting of Members and may provide for regular and special meetings other than the annual meeting.

5.06. Voting. The owner of each Unit shall be entitled to the number of votes specified in the Declaration of Condominium for that unit. The manner of exercising voting rights shall be determined by the By-Laws.

ARTICLE VI DIRECTORS

6.01. Number. The property, business, and affairs of the Association shall be managed by a Board of Directors consisting of the number of Directors determined by the By-Laws, but which shall consist of not less than three Directors nor more than five Directors. Except as may otherwise be provided in the By-Laws, each Director shall be either a person designated by the Developer or a person entitled to cast a vote in the Association.

6.02. Election. Directors may be designated or elected and removed, and vacancies on the Board of Directors shall be filled as provided in the By-Laws.

6.03. Authority. All of the duties and powers of the Association existing under the Condominium Act, the Declaration of Condominium, these Articles, and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors, or employees, subject only to approval by Unit Owners when such approval is specifically required by the Condominium Act, the Declaration of Condominium, these Articles, or the By-Laws.

6.04. Initial Directors. The names and address of the three members of the initial Board of Directors, who shall hold office until the election or appointment of their successors, are as follows:

Tillis M. Brett
1090 Industrial Parkway
Saraland, AL 36571

Thomas E. Brett
1090 Industrial Parkway
Saraland, AL 36571

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

ARTICLE VII OFFICERS

The affairs of the Association shall be administered by the officers designated in accordance with the By-Laws. The names and addresses of the officers who shall serve until the election or appointment of their successors in accordance with the By-Laws are as follows:

President

Tillis M. Brett
1090 Industrial Parkway
Saraland, AL 36571

Secretary

Thomas E. Brett
1090 Industrial Parkway
Saraland, AL 36571

Treasurer

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

ARTICLE VIII DURATION

The duration of the Association shall be perpetual; provided, however, that the Association shall be terminated by the termination of the Condominium in accordance with the terms of the Declaration of Condominium.

ARTICLE IX REGISTERED OFFICE AND AGENT

The initial registered office of the Association is 26800 Perdido Beach Boulevard,
Orange Beach, Alabama, 36561, and the name of the initial agent at that address is Tillis M.
Brett, whose mailing address is P.O. Box 1727, Gulf Shores, AL 36547-1727.

ARTICLE X
INCORPORATORS

The name and address of each incorporator of the Association is:

Tillis M. Brett
1090 Industrial Parkway
Saraland, AL 36571

Thomas E. Brett
1090 Industrial Parkway
Saraland, AL 36571

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

IN WITNESS WHEREOF, the Incorporators, Tillis M. Brett, Thomas E. Brett and
William T. Robinson Jr., have hereto affixed their signatures this 13th day of February, 2007

INCORPORATORS


TILLIS M. BRETT


THOMAS E. BRETT

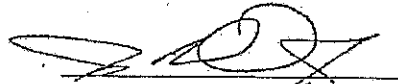

WILLIAM T. ROBINSON, JR.

STATE OF ALABAMA)

COUNTY OF Baldwin)

Before me, James R. Owens Jr., a Notary Public in and for said county in said State, personally appeared TILLIS M. BRETT, THOMAS E. 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 ON THE BAY OWNERS 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 the 13th day of February, 2007.


NOTARY PUBLIC

My Commission Expires: 2/18/08

THIS INSTRUMENT PREPARED BY:

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