

**DECLARATION OF CONDOMINIUM OF
PHOENIX ORANGE BEACH, A CONDOMINIUM**

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BALDWIN COUNTY, ALABAMA
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**DECLARATION OF CONDOMINIUM
OF
PHOENIX ORANGE BEACH, A CONDOMINIUM**

THIS DECLARATION, is made this the 14th day of FEBRUARY, 2019, by PHOENIX ORANGE BEACH, LLC, an Alabama limited liability company, hereinafter called "DEVELOPER," for its successors, grantees and assigns.

WHEREIN, Developer makes the following declaration; 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.

NOW, THEREFORE, Developer hereby makes the following declaration as to the division to which said real property and improvements thereon may be put, hereby specifying that said Declaration shall constitute covenants to run with the land and shall be binding upon Developer, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executor, 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., and as amended effective January 1, 2019.

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

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

1.04. "ASSOCIATION" means Phoenix Orange Beach Owners Association, Inc., an Alabama not for profit corporation, and its successors, and is the corporation organized under the ACT. The Certificated of Formation of Phoenix Orange Beach Owners Association, Inc. is recorded as Instrument No. 1729059 in the Office of the Judge of Probate, Baldwin County, Alabama.

- 1.05. "BOARD" means the Board of Directors of the Association.
- 1.06. "BUILDING" means all structures or structural improvements located on the Real Property and forming part of the Condominium.
- 1.07. "BY-LAWS" means the duly adopted By-Laws of the Association, identified as Exhibit "D" attached hereto and made a part hereof as if set out fully herein.
- 1.08. "COMMON ELEMENTS" means all portions of the condominium other than the Units.
- 1.09. "COMMON EXPENSES" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.10. "COMMON SURPLUS" means the excess of all receipts of the Association arising out of the Common Elements over the amount of the Common Expenses.
- 1.11. "CONDOMINIUM" means PHOENIX ORANGE BEACH, a condominium, and consists of the Condominium Property submitted to the Condominium form of ownership by this Declaration.
- 1.12. "CONDOMINIUM DOCUMENTS" means the Declaration, By-Laws, Articles and all Rules and Regulations adopted by the Association, and all exhibits attached thereto, as the same may be amended from time to time.
- 1.13. "CONDOMINIUM PROPERTY" or "PROPERTY" means all property, both real, personal or mixed, which is submitted to the Condominium form of ownership as provided for herein and includes the Real Property and all improvements now existing or hereafter placed thereon and all easements, rights, interests or appurtenances thereto, and all personal property now or hereafter used in connection therewith.
- 1.14. "DECLARATION" means this Declaration of Condominium any and amendments thereto which may be made from time to time.
- 1.15. "DEVELOPER" means PHOENIX ORANGE BEACH, LLC, an Alabama limited liability company.
- 1.16. "DEVELOPMENT" shall have the same meaning as "Condominium Property" or "Property."
- 1.17. "DEVELOPMENT RIGHTS" shall have the same meaning as is defined in the ACT and as set out in the Declaration.

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

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

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

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

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

1.23. "PLANS" mean the floor plans and elevations of the Condominium prepared by an independent registered engineer or registered architect, which are marked 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, registered architect, or licensed surveyor in accordance with the ACT. It also certifies that the Plans contain all the information required by the ACT.

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

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

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

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

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

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

NAME

The name by which this condominium is identified is PHOENIX ORANGE BEACH, 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. Improvements. The improvements are as shown upon the plans attached hereto as "Exhibit B," 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.

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 Developers reserve the right to change the size, dimensions, number and location of buildings, units and other improvements, and the size, dimensions, lay-out location and undivided percentage of ownership in the common elements of any unit for which a purchase agreement has not been executed by the Developer or with respect to which the purchaser is in default, provided such changes do not change the common elements of any unit already sold or under an executed purchase and sale agreement as to which the purchaser is not in default. The Developer further reserves the right to substitute for any of the materials, equipment and other articles herein mentioned, materials, equipment and articles of equal or better quality.

5.03. 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 Developers, shall constitute an amendment to this Declaration without approval of the Association, whether or not elsewhere required for an amendment.

5.04. Easements. Easements are reserved throughout the condominium property as may be required for utility services in order to adequately serve the condominium; provided, however, such easements to a unit shall be only in accordance with the plans and specifications for the buildings or as the buildings are constructed, unless approved in writing by the unit owner. Each unit owner shall have an easement in common with the owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units and located in such unit. The Association shall have a right of access to each unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the common elements contained therein or elsewhere in any building.

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

DESCRIPTIONS

6.01. The Building. The condominium will include access areas, parking areas, lawn areas, swimming pools, meeting rooms, a tennis court, a lazy river and slide amenity.

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

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

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

c) Unit Type A. Type A is a four (4) bedroom, three (3) bath unit containing a kitchen, living and dining area combination with approximately 1948 square feet, more or less, of heated and cooled area not including the open balcony which contains approximately 248 square feet, more or less, and serves the unit as a limited common element. The unit comes complete with 18" tile throughout, granite throughout, 10' ceilings, stainless steel appliances, wet bar,

cabinets over wet bar, brushed nickel or brushed bronze faucets and fixtures, tiled bar fronts, kitchen back splash, tall cabinets to fur down, comfort height toilets, Gulf front master bedroom, floor to ceiling glass, and large, private balconies. There is one (1) Type "A" Unit on levels 3 through 22 for a total of nineteen (19) Type "A" Units.

d) Unit Type A Reversed. Type A Reversed is a mirror image of Unit Type "A." There is one (1) Type "A Reversed" Unit on levels 3 through 22 for a total of nineteen (19) Type "A Reversed" Units.

e) Unit Type B. Type B is a three (3) bedroom, three (3) bath unit containing a kitchen, living and dining area combination with approximately 1770 square feet, more or less, of heated and cooled area not including the open balcony which contains approximately 248 square feet, more or less, and serves the unit as a limited common element. The unit comes complete with 18" tile throughout, granite throughout, 10' ceilings, stainless steel appliances, wet bar, cabinets over wet bar, brushed nickel or brushed bronze faucets and fixtures, tiled bar fronts, kitchen back splash, tall cabinets to fur down, comfort height toilets, Gulf front master bedroom, floor to ceiling glass, and large, private balconies. There are two (2) Type "B" Units on levels 3 through 21 for a total of thirty-eight (37) Type "B" Units.

f) Unit Type B Reversed. Type B Reversed is a mirror image of Unit Type "B." There are two (2) Type "B Reversed" Unit on levels 3 through 21 for a total of thirty-eight (37) Type "B Reversed" Units.

g) Unit Type C and C Reversed. The 22nd level has two custom penthouse units, each of which is a combined Type B and Type B Reversed.

h) Non-residential Units. Units MH1, SD1, SA1, O1, and O2 are service units as shown on the plans and located on levels one and two.

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

a) The land described in Exhibit "A" attached hereto, subject to the exceptions set out therein.

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

c) Automobile parking spaces in the parking areas.

- d) All outdoor and exterior lights.
- e) Balconies and decking.
- f) All attics, foundations, columns, girders, beams, and supports of buildings, and such component parts of walls, roofs, floors and ceilings as are not located within the units.
- g) Lawn areas, landscaping, trees, curbs and walkways.
- h) Recreation areas and facilities, including but not limited to, the swimming pools, sun deck, whirlpools, saunas, tennis courts, meeting room, public restrooms, lobby and reception area, and guard house.
- i) Exterior steps, ramps, handrails, stair and stairwells.
- j) All tanks, pump houses, wells, motors, fans, compressors and control equipment, fire fighting equipment, garbage equipment, elevators and equipment which are not reserved for the use of certain units.
- k) All retaining walls, sea walls, bulkheads and jetties, and all areas for refuse collection or disposal.
- l) All other parts of the development existing for the common use or necessary to the existence, maintenance and safety of the development.
- m) All other items defined as common elements in the Alabama Uniform Condominium Act, and located on the Property.

6.04. Limited Common Elements. The limited common elements include items listed as such in the Alabama Uniform Condominium Act. Areas shown on the Plans as ST1, ST2, or which are labeled "exclusive use" are limited common elements allocated for the exclusive use of Unit SD1.

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

slabs. The lower horizontal boundary of floors of the units shall be the upper surfaces of the floor slab.

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

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

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

- a) defects in appliances and pieces of equipment which are covered by manufacturer's warranties;
- b) incidental, consequential or secondary damages caused by a breach of this warranty;
- c) defects which are the result of characteristics common to the materials used, such as, but not limited to: warping and deflection of wood; mildew and fading; chalking and checking of paint due to sunlight; cracks due to drying and curing of concrete, stucco,

plaster, bricks and masonry; drying, shrinking and cracking of caulking and weatherstripping;

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

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

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

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

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

7.01. Ownership and Voting Percentages. A schedule setting forth the percentage of undivided interest of each unit in the common areas is attached hereto, marked Exhibit "C" and by reference made a part hereof. The common expenses shall be charged to the unit owners according to the formula shown on Exhibit "C." The formula to determine the percentage of common surplus and voting in all matters requiring action by the owners is shown on Exhibit "C." 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

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

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

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

Declaration, the By-Laws and the Rules and Regulations. Nothing herein contained shall prevent, in a proper case, an independent action by an aggrieved unit owner for such relief.

MAINTENANCE

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

10.01. Units:

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

i) To maintain, repair and replace all portions of a unit, except interior surfaces and surfacing materials, contributing to the support of the building, which portions shall include but not be limited to the outside walls of the building and all fixtures thereon, and boundary walls of units, floors, load-bearing columns and load-bearing walls.

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

iii) To maintain and replace all balconies and balcony railings.

iv) To repair all incidental damaged caused to a unit in the performance of any of the foregoing work.

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

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

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

iii) To maintain the surfacing materials within the unit.

iv) To maintain, repair and replace the heating, air conditioning, utility and mechanical equipment, and all sewer and water lines including all pipes, ducts, wires, cables

and conduits used in connection therewith, which are for the exclusive use of his unit, whether or not located within the boundaries of his unit.

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

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

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

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

10.02. Common Elements.

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

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

or registered engineer or architect.

ASSESSMENTS

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

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

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

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

pursuant to foreclosure does not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any Assessments made thereafter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.05. No Exemption from Assessments. No owner of a unit may exempt himself from liability for contribution toward the common expenses and other charges by waiver of the use or enjoyment of any of the common elements or by the abandonment of his unit, or by any other means.

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

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

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

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

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

d) Any proposed action that requires the consent of a specified percentage of mortgagees. In such cases, however, a mortgagee shall be considered to have given implied consent when it fails to submit a response to any written proposal for a proposed action within 60 days after it receives proper notice of the proposal as evidenced by delivery of such notice by

certified or registered mail, with a "return receipt" returned by the postal service indicating proper delivery.

ASSOCIATION

The operation and administration of condominium shall be by the Association of the unit owners, pursuant to the provision of the Alabama Uniform Condominium Act, which said Association shall be incorporated by the Certificate 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 Orange Beach Owners Association, Inc.

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

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 photocopy of such recorded 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, the value of which vote shall be the percentage assigned to the unit as stated in Exhibit "C" attached hereto. The vote for a unit shall be cast by the owner thereof or the owner of possessory interest therein, or in

the case of a corporate owner, by the officer or employee thereof designated as the voting representative of such unit, as hereinafter provided, owners of more than one (1) unit shall be entitled to a vote for each unit owned. However, should the Association be a unit owner, it shall not have the voting rights for that unit.

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

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

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

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

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

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

ii) Such Other Risks. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location 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 and/or bonds as it may deem necessary. The Board is authorized to provide coverage for payment of maintenance charges on behalf of an owner whose unit is rendered uninhabitable by a peril insured against, and to absolve such an owner of the obligation to pay maintenance charges to the extent that the same are offset by proceeds from such coverage.

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

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 or lessee of any unit; and

e) Contain a standard mortgage clause which shall:

i) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any unit, whether or not named therein; and

ii) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Association or unit owners or any persons under any of them; and

iii) Waive any provision invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

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

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

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

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

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

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

RECONSTRUCTION OR REPAIR AFTER CASUALTY

In the event of the damage or destruction of all or part of the property, then, unless it be determined by a vote of one hundred percent (100%) of the owners and one hundred percent

(100%) of all record owners of liens on the units not to repair or reconstruct such damaged or destroyed property, the following provisions shall apply:

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

b) Building.

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

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

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

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

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

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

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

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

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

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

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

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

USE RESTRICTIONS

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

15.01. Single Family Residences. Each of the residential units shall be occupied only by a single family and its guests as a residence and for no other purpose. Non-residential units for the furnishing of services and facilities herein provided for the enjoyment of such residences are also shown on the plans.

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

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

15.04. Leasing. Entire Units may be leased by the Unit Owners; provided, however, that such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Units and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including eviction. No individual rooms may be rented. Anything to the contrary notwithstanding, the Developer, and its assigns, retain the right to maintain sales offices, management offices, leasing and operations offices and models on the Condominium property as provided in Paragraph 18.06.

Such lease or rental agreement shall be in writing. Each Unit Owner who leases his Unit empowers and authorizes the Association or its managing agent to enforce the Rules and Regulations of the Condominium Association and to terminate the lease of and evict any tenant who fails to comply with said rules or who provides other sufficient cause for termination of the lease and eviction in accordance with the laws of the State of Alabama, the Declaration, the By-Laws, Rules and Regulations, or any contract for lease. The Association, the Board of Directors or its managing agent will not be liable to any Unit owner or sublessor or other party for any loss of rents or other damages resulting from the reasonable exercise of these rights.

15.05. Rules and Regulations. The Rules and Regulations of the Association shall be in the form attached hereto as Exhibit "E". 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.

15.06 Sea Turtle Nesting. The Association must keep and maintain drapes on all exterior glass of the 2nd floor on the South, East and West sides to protect the nesting habits of sea

turtles. These drapes must be closed from sundown to sunrise during the nesting season which runs from May 1 to October 31 annually.

COMPLIANCE AND DEFAULT

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

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

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

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

COVENANT AGAINST PARTITION

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

AMENDMENT

This Declaration of Condominium and the By-Laws of Phoenix Orange Beach 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. Manner. This Declaration and the By-Laws of the Association may be amended as provided in the Act by the affirmative vote or agreement of unit owners of units to which at least

two-thirds of the vote of the Association are allocated or as otherwise provided in the Act or in this instrument.

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

18.04. 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.

18.05. Provisions Pertaining to the Developer.

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

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

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

PROPORTIONATE CHANGES IN COMMON EXPENSES, COMMON SURPLUS AND VOTING RIGHTS

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

TERMINATION

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

EMINENT DOMAIN

21.01. Partial Taking Without Direct Effect on Units. If part of the condominium shall be taken or condemned by any authority having the power of eminent domain in such manner that no unit is taken, compensation and damages for and on account of the taking of the common elements, exclusive of compensation for consequential damages to affected units shall be payable to the Association as Trustee for all unit owners and mortgagees of record according to the loss or damages to their respective interests in the common elements. The Association, acting through its Board of Directors, shall have the right to act on behalf of the unit owners with respect to the taking and compensation affecting the common elements, without limitation of the right of the unit owners to represent their own interests. Such proceeds shall be paid to the Association and shall be used promptly to the extent necessary for restoring or replacing improvements so taken on the remaining property in a substantial compliance with the original plans and elevations of the improvements as soon as possible and so as to restore the general value of the condominium. In the event such restoration or reconstruction is impossible or impractical, or in the event there is an award in excess of the amount necessary to so substantially

restore or reconstruct the common elements, the amount of such award or the excess, as the case may be, shall be distributed by the Association to the unit owners in proportion to their share of undivided interest in the common elements. Nothing herein shall be deemed to prevent unit owners whose units are affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their behalf for damages relating to loss of value of the affected units, or personal improvements therein, exclusive of damages related to the taking of common elements. In the event the condemnation award does not allocate damages to specific units, but includes an award for reduction in value of the units without such allocation, the award shall be distributed to the affected unit owners and mortgagees of record in proportion to each unit owner's undivided interest in the common elements.

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

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

ENVIRONMENTAL REGULATIONS

22.01. Additional Environmental Regulations - Every effort has been made to conform the provisions of this declaration and the condominium project to the terms and provisions of current

federal and state environmental regulations. However, the land is subject to the jurisdiction of US Fish & Wildlife and the Alabama Department of Environmental Management.

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.

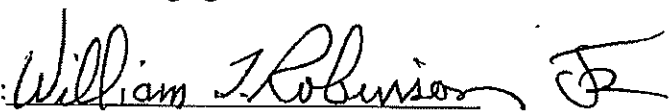
SEVERABILITY

The invalidity in whole or in part of any covenant or restriction, or any section, 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.

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

Phoenix Orange Beach, LLC
An Alabama limited liability company:

By: 
THOMAS E. BRETT
Its: Managing Member

By: 
WILLIAM T. ROBINSON, JR.
Its: Managing Member

STATE OF ALABAMA)

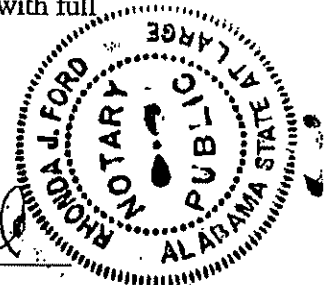
COUNTY OF Baldwin)

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

Given under my hand and seal this the 14th day of February, 2019.

Rhonda J. Ford
Notary Public

My Commission Expires: 5/3/2022



STATE OF ALABAMA)

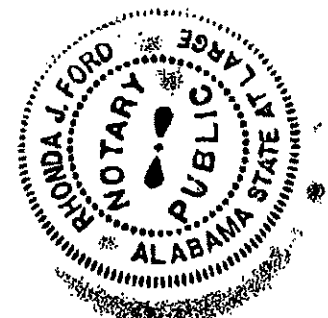
COUNTY OF Baldwin)

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

Given under my hand and seal this the 14th day of February, 2019.

Rhonda J. Ford
Notary Public

My Commission Expires: 5/3/2022



THIS INSTRUMENT PREPARED BY:

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

EXHIBIT "A"

Phoenix Orange Beach - GRID

	22AR1	22C2	22CR3	22A4	
	21AR1	21B2	21BR3	21B4	21BR5
	20AR1	20B2	20BR3	20B4	20BR5
	19AR1	19B2	19BR3	19B4	19BR5
	18AR1	18B2	18BR3	18B4	18BR5
	17AR1	17B2	17BR3	17B4	17BR5
	16AR1	16B2	16BR3	16B4	16BR5
	15AR1	15B2	15BR3	15B4	15BR5
	14AR1	14B2	14BR3	14B4	14BR5
WEST	12AR1	12B2	12BR3	12B4	12BR5
	11AR1	11B2	11BR3	11B4	11BR5
	10AR1	10B2	10BR3	10B4	10BR5
	9AR1	9B2	9BR3	9B4	9BR5
	8AR1	8B2	8BR3	8B4	8BR5
	7AR1	7B2	7BR3	7B4	7BR5
	6AR1	6B2	6BR3	6B4	6BR5
	5AR1	5B2	5BR3	5B4	5BR5
	4AR1	4B2	4BR3	4B4	4BR5
	3AR1	3B2	3BR3	3B4	3BR5
	Lobby, Fitness Center & Meeting Room				
	Indoor Pool				

EXHIBIT "A"

All that real property situated in the County of Baldwin, State of Alabama, described as follows, to-wit:

Commencing at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East; thence run South 00° 12' 40" East a distance of 613.60 feet to the south right of way of Alabama State Highway 182; thence run North 75° 50' 12" East along said South right of way a distance of 2553.91 feet to the Point of Beginning; thence continue North 75° 48' 13" East along said south right of way a distance of 249.37 feet; thence run South 00° 02' 25" East, a distance of 490.89 feet to the Mean High Tide Line Pre-Isadore for Orange Beach, Alabama, shown on Slide 2144-B, recorded in Baldwin County, Alabama, Probate Records; thence run South 74° 50' 17" West along said Mean High Tide Line a distance of 250.15 feet; thence run North 00° 04' 32" West, a distance of 495.16 feet to the south right of way of Alabama State Highway No. 182 and the Point of Beginning of said described parcel.

LESS AND EXCEPT such oil, gas, and other mineral interests, and all rights and privileges in connection therewith, as may have been reserved or conveyed by prior owners, if any.

THIS CONVEYANCE IS MADE SUBJECT TO THE FOLLOWING:

1. Reservation of all interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Noel M. Turner and Viola F. Turner to Alabama Gulf Coast Development Corporation, dated April 24, 1967, and recorded in Deed Book 374, page 982, including those rights specifically set out in said deed.
2. Reservation of all interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from James M. Wright, Jr., et. al. to Gulf Land Company, Inc., dated February 5, 1973, and recorded in Deed Book 441, page 87.
3. Mineral Assignment from Alabama Gulf Coast Development Corporation to Joe T. Pilcher, et al, dated August 5, 1972 and recorded in Deed Book 429 page 643.
4. Any and all easements or matters shown on plat of survey of Noel Turner Lands in Section 8, 17 & 18-9-5, by J. B. Allen, dated August 8, 1972, and recorded in Deed Book 432, page 583-590.
5. Mineral Assignment from Joe T. Pilcher, Jr. to Jody T. Pilcher, III, et. al., dated April 14, 1987, and recorded in Real Property Book 284, page 955.
6. Reservation of all interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Associated Gulf Land Corporation to Philip A. Sellers and J. LaDon Dewrell, dated June 27, 1975, and recorded in Deed Book 479, page 81.

EXHIBIT "A"

7. Reservation of all interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Anne G. Pilcher and Joe T. Pilcher, Jr. to Associated Gulf Land Corporation, dated June 23, 1975, and recorded in Deed Book 479, page 106.
8. Reservation of all interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Philip A. Sellers, Caroline Sellers and J. LaDon Dewrell to East Beach, Inc., dated June 21, 1978, and recorded in Real Property Book 22, page 338.
9. Any land lying between the Mean High Tide Line Pre-Isadore for Orange Beach, Alabama, defined by Lucido & Oliver, recorded on Slide No. 2144-B, Probate Records, Baldwin County, Alabama, and the Gulf of Mexico.
10. Rights, if any, of the public to use as a public beach or recreation area any part of the herein described land lying between the Gulf of Mexico and the Mean High Tide Line Pre-Isadore for Orange Beach, Alabama, defined by Lucido & Oliver, recorded on Slide No. 2144-B.
11. Easement for Placement, Construction, Maintenance, and use of Sand and Associated Sand Stabilization Structures, Vegetation, Vegetation Irrigation Systems, and Access Structures granted The City of Orange Beach, Alabama, and the State of Alabama, by and through the Commissioner of the Department of Conservation and Natural Resources, dated August 6, 2004, and recorded at Instrument 834021.
12. Easement from Trustmark National Bank and Beach Community Bank to Balmaquien Hospitality, L.L.C., dated March 5, 2013, and recorded at Instrument 1385922.
13. Right of Way from Noel M. Turner and Justa B. Turner to the state of Alabama, dated October 17, 1948, and recorded in Deed Book 141, page 51,
14. Terms and conditions and agreements contained within the deed from East Beach, Inc. to William D. Dobbins III or Veronica A. Dobbins, as Trustee, dated March 23, 1979, and recorded in Real Property Book 47, page 1373.
15. Subdivision Regulations of the City of Orange Beach, Alabama as recorded at Instrument 1028536, and any amendments thereto.
16. City of Orange Beach Community Preservation and Growth Management Plan filed August 7, 2007 at Instrument 1066859, and all amendments thereto.
17. Easement for Placement, Construction, Maintenance, and use of Sand and Associated Sand Stabilization Structures, Vegetation, Vegetation Irrigation Systems, and Access Structures granted The City of Orange Beach, Alabama, and the State of Alabama, by and through the Commissioner of the Department of Conservation and Natural Resources, dated August 17, 2004, and recorded at Instrument 856728.

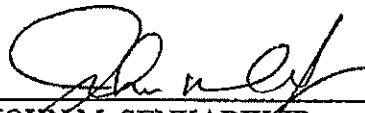
EXHIBIT "A"

18. Easement for Placement, Construction, Maintenance, and use of Sand and Associated Sand Stabilization Structures, Vegetation, Vegetation Irrigation Systems, and Access Structures granted The City of Orange Beach, Alabama, and the State of Alabama, by and through the Commissioner of the Department of Conservation and Natural Resources, dated April 29, 2004, and recorded at Instrument 814872.
19. Easement for Placement, Construction, Maintenance, and use of Sand and Associated Sand Stabilization Structures, Vegetation, Vegetation Irrigation Systems, and Access Structures granted The City of Orange Beach, Alabama, and the State of Alabama, by and through the Commissioner of the Department of Conservation and Natural Resources, dated April 9, 2004, and recorded at Instrument 805832.
20. Easement for Placement, Construction, Maintenance, and use of Sand and Associated Sand Stabilization Structures, Vegetation, Vegetation Irrigation Systems, and Access Structures granted The City of Orange Beach, Alabama, and the State of Alabama, by and through the Commissioner of the Department of Conservation and Natural Resources, dated June 25, 2004, and recorded at Instrument 833983.
21. Easement for Placement, Construction, Maintenance, and use of Sand and Associated Sand Stabilization Structures, Vegetation, Vegetation Irrigation Systems, and Access Structures granted The City of Orange Beach, Alabama, and the State of Alabama, by and through the Commissioner of the Department of Conservation and Natural Resources, dated July 28, 2004, and recorded at Instrument 833993.
22. Terms and conditions of that certain Sewer Agreement by and between East Beach, Inc., Breakers Developments, Inc. and Tom McCown, dated July 17, 1980, and recorded in Miscellaneous Book 36, page 1523.

EXHIBIT "B"
to
**DECLARATION OF CONDOMINIUM OF
PHOENIX ORANGE BEACH, A CONDOMINIUM**

CERTIFICATION

I, the undersigned, John M. Senkarik Jr., a Registered Architect in the State of Alabama, Registration Number 1912, pursuant to Section 35-8A-209, *Code of Alabama* (1975) (as amended), hereby certify that the PLANS labeled Exhibit "B", recorded in Apartment Book 28, Pages 88 thru 110, and as Instrument Number 1743840, in the Office of the Judge of Probate, Baldwin County, Alabama, and made a part of the Declaration of Condominium of Phoenix Orange Beach, a condominium, show the layout, location, Unit numbers and dimensions of the Units and the improvements. I further certify that the improvements shown on the PLANS are substantially complete. I further certify that to the best of my knowledge and belief, the PLANS contain all of the information required by *Code of Alabama* (1975), §35-8A-201(c) and §35-8A-209, and that all structural components and mechanical systems of all buildings containing or comprising of any units of Phoenix Orange Beach, a condominium, as described in the Declaration of Condominium, are substantially completed in accordance with the plans.

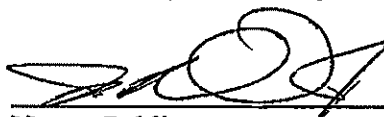


JOHN M. SENKARIK JR.

Registered Architect License Number: 1912

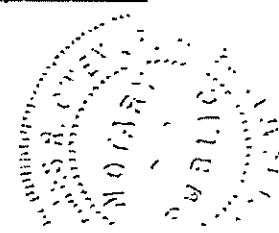
Date: 2/15/2019

Subscribed and sworn to before me, this 15th day of February, 2019.



Notary Public

My Commission Expires: 3/18/2020

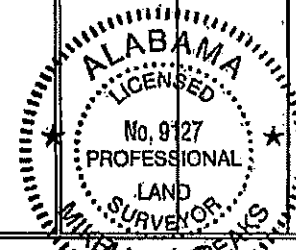


Part of Exhibit "B"
ELEVATIONS ON PHOENIX ORANGE BEACH, ALABAMA
Page 1 of 2

LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.	LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.	LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.
GROUND FLOOR	MH1 116	16.70 16.70	27.30 31.11	7TH FLOOR	7AR1 7B2 7BR3 7B4 7BR5 7A6 008 013 014 (Storage) (Closet)	89.69 89.69 89.69 89.69 89.69 89.69 89.69 89.69 89.69 89.69 89.69	99.58 99.58 99.58 99.58 99.58 99.58 97.67 97.69 97.69 99.49 99.59	12TH FLOOR	12AR1 12B2 12BR3 12B4 12BR5 12A6 008 013	142.92 142.92 142.92 142.92 142.92 142.92 142.92 142.92	152.84 152.84 152.84 152.84 152.84 152.84 150.90 150.90
2ND FLOOR	SD1 01 02 SA1 008, 217 Common Space	31.94 31.94 31.94 31.94 31.94 31.94	39.84 39.84 39.84 43.54 46.19 43.84	8TH FLOOR	8AR1 8B2 8BR3 8B4 8BR5 8A6 008 013	100.33 100.33 100.33 100.33 100.33 100.33 100.33 100.33	110.24 110.24 110.24 110.24 110.24 110.24 108.33 108.33	14TH FLOOR	14AR1 14B2 14BR3 14B4 14BR5 14A6 008 013 014 (Storage) (Closet)	153.58 153.58 153.58 153.58 153.58 153.58 153.58 153.58 153.58 153.58 153.58	163.46 163.46 163.46 163.46 163.46 163.46 161.58 161.58 161.58 163.48 163.48
3RD FLOOR	3AR1 3B2 3BR3 3B4 3BR5 3A6 008 013	47.11 47.11 47.11 47.11 47.11 47.11 47.11 47.11	56.98 56.98 56.98 56.98 56.98 56.98 55.01 55.01	9TH FLOOR	9AR1 9B2 9BR3 9B4 9BR5 9A6 008 013	111.02 111.02 111.02 111.02 111.02 111.02 111.02 111.02	120.88 120.88 120.88 120.88 120.88 120.88 119.02 119.02	15TH FLOOR	15AR1 15B2 15BR3 15B4 15BR5 15A6 008 013	164.17 164.17 164.17 164.17 164.17 164.17 164.17 164.17	174.05 174.05 174.05 174.05 174.05 174.05 172.17 172.17
4TH FLOOR	4AR1 4B2 4BR3 4B4 4BR5 A6 008 013	57.78 57.78 57.78 57.78 57.78 57.78 57.78 57.78	67.67 67.67 67.67 67.67 67.67 67.67 65.78 65.78	10TH FLOOR	10AR1 10B2 10BR3 10B4 10BR5 10A6 008 013	121.64 121.64 121.64 121.64 121.64 121.64 121.64 121.64	131.52 131.52 131.52 131.52 131.52 131.52 129.64 129.64	16TH FLOOR	16AR1 16B2 16BR3 16BR4 16BR5 16A6 008 013	174.81 174.81 174.81 174.81 174.81 174.81 174.81 174.81	184.68 184.68 184.68 184.68 184.68 184.68 182.81 182.81
5TH FLOOR	5AR1 5B2 5BR3 5B4 5BR5 5A6 008 013	68.43 68.43 68.43 68.43 68.43 68.43 68.43 68.43	78.29 78.29 78.29 78.29 78.29 78.29 76.43 76.43	11TH FLOOR	11AR1 11B2 11BR3 11B4 11BR5 11A6 008 013	132.28 132.28 132.28 132.28 132.28 132.28 132.28 132.28	142.14 142.14 142.14 142.14 142.14 142.14 140.28 140.28	17TH FLOOR	17AR1 17B2 17BR3 17B4 17BR5 17A6 008 013	185.43 185.43 185.43 185.43 185.43 185.43 185.43 185.43	195.32 195.32 195.32 195.32 195.32 195.32 193.43 193.43
6TH FLOOR	6AR1 6B2 6BR3 6B4 6BR5 6A6 008 013	79.07 79.07 79.07 79.07 79.07 79.07 79.07 79.07	88.95 88.95 88.95 88.95 88.95 88.95 87.07 87.07								

Part of Exhibit "B"
ELEVATIONS ON PHOENIX ORANGE BEACH, ALABAMA
Page 2 of 2

LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.	LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.	LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.
18TH FLOOR	18AR1	196.06	205.93								
	18B2	196.06	205.93								
	18BR3	196.06	205.93								
	18B4	196.06	205.93								
	18BR5	196.06	205.93								
	18A6	196.06	205.93								
	008	196.06	204.06								
	013	196.06	204.06								
19TH FLOOR	19AR1	206.67	216.54								
	19B2	206.67	216.54								
	19BR3	206.67	216.54								
	19B4	206.67	216.54								
	19BR5	206.67	216.54								
	19A6	206.67	216.54								
	008	206.67	214.67								
	013	206.67	214.67								
20TH FLOOR	20AR1	217.29	227.14								
	20B2	217.29	227.14								
	20BR3	217.29	227.14								
	20B4	217.29	227.14								
	20BR5	217.29	227.14								
	20A6	217.29	227.14								
	008	217.29	225.29								
	013	217.29	225.29								
21ST FLOOR	21AR1	227.92	237.77								
	21B2	227.92	237.77								
	21BR3	227.92	237.77								
	21B4	227.92	237.77								
	21BR5	227.92	237.77								
	21A6	227.92	237.77								
	008	227.92	235.92								
	013	227.92	235.92								
22ND FLOOR	22AR1	238.55	248.42								
	22C2	238.55	248.42								
	22CR3	238.55	248.42								
	22A6	238.55	248.42								
	008	238.55	246.55								
	013	238.55	246.55								



I, MIKELL D. SPEAKS, A REGISTERED LAND SURVEYOR IN THE STATE OF ALABAMA, HEREBY CERTIFY THAT THE ABOVE ELEVATIONS FOR THE UNITS IN PHOENIX ORANGE BEACH ARE TRUE AND CORRECT.

Mikell D. Speaks
ALABAMA REGISTRATION NO. 9127
February 1, 2019

The formula for arriving at the undivided ownership in the common element, voting rights, and common expense liability is a percentage derived by dividing the approximate square footage of a unit by the approximate total square footage of all units and rounding the quotient to the nearest one thousandth of a percent.

EXHIBIT "C"

PHOENIX ORANGE BEACH PERCENTAGE OF OWNERSHIP CALCULATIONS BY SQUARE FEET

F	U	B	Square Feet	% of Ownership
3	AR	1	1,948	0.924%
3	B	2	1,770	0.839%
3	BR	3	1,770	0.839%
3	B	4	1,770	0.839%
3	BR	5	1,770	0.839%
3	A	6	1,948	0.924%
4	AR	1	1,948	0.924%
4	B	2	1,770	0.839%
4	BR	3	1,770	0.839%
4	B	4	1,770	0.839%
4	BR	5	1,770	0.839%
4	A	6	1,948	0.924%
5	AR	1	1,948	0.924%
5	B	2	1,770	0.839%
5	BR	3	1,770	0.839%
5	B	4	1,770	0.839%
5	BR	5	1,770	0.839%
5	A	6	1,948	0.924%
6	AR	1	1,948	0.924%
6	B	2	1,770	0.839%
6	BR	3	1,770	0.839%
6	B	4	1,770	0.839%
6	BR	5	1,770	0.839%
6	A	6	1,948	0.924%
7	AR	1	1,948	0.924%
7	B	2	1,770	0.839%
7	BR	3	1,770	0.839%
7	B	4	1,770	0.839%
7	BR	5	1,770	0.839%
7	A	6	1,948	0.924%
8	AR	1	1,948	0.924%
8	B	2	1,770	0.839%
8	BR	3	1,770	0.839%
8	B	4	1,770	0.839%
8	BR	5	1,770	0.839%
8	A	6	1,948	0.924%

EXHIBIT "C"

F	U	B	Square Feet	% of Ownership
9	AR	1	1,948	0.924%
9	B	2	1,770	0.839%
9	BR	3	1,770	0.839%
9	B	4	1,770	0.839%
9	BR	5	1,770	0.839%
9	A	6	1,948	0.924%
10	AR	1	1,948	0.924%
10	B	2	1,770	0.839%
10	BR	3	1,770	0.839%
10	B	4	1,770	0.839%
10	BR	5	1,770	0.839%
10	A	6	1,948	0.924%
11	AR	1	1,948	0.924%
11	B	2	1,770	0.839%
11	BR	3	1,770	0.839%
11	B	4	1,770	0.839%
11	BR	5	1,770	0.839%
11	A	6	1,948	0.924%
12	AR	1	1,948	0.924%
12	B	2	1,770	0.839%
12	BR	3	1,770	0.839%
12	B	4	1,770	0.839%
12	BR	5	1,770	0.839%
12	A	6	1,948	0.924%
14	AR	1	1,948	0.924%
14	B	2	1,770	0.839%
14	BR	3	1,770	0.839%
14	B	4	1,770	0.839%
14	BR	5	1,770	0.839%
14	A	6	1,948	0.924%
15	AR	1	1,948	0.924%
15	B	2	1,770	0.839%
15	BR	3	1,770	0.839%
15	B	4	1,770	0.839%
15	BR	5	1,770	0.839%
15	A	6	1,948	0.924%
16	AR	1	1,948	0.924%
16	B	2	1,770	0.839%
16	BR	3	1,770	0.839%
16	B	4	1,770	0.839%
16	BR	5	1,770	0.839%
16	A	6	1,948	0.924%
17	AR	1	1,948	0.924%

EXHIBIT "C"

F	U	B	Square Feet	% of Ownership
17	B	2	1,770	0.839%
17	BR	3	1,770	0.839%
17	B	4	1,770	0.839%
17	BR	5	1,770	0.839%
17	A	6	1,948	0.924%
18	AR	1	1,948	0.924%
18	B	2	1,770	0.839%
18	BR	3	1,770	0.839%
18	B	4	1,770	0.839%
18	BR	5	1,770	0.839%
18	A	6	1,948	0.924%
19	AR	1	1,948	0.924%
19	B	2	1,770	0.839%
19	BR	3	1,770	0.839%
19	B	4	1,770	0.839%
19	BR	5	1,770	0.839%
19	A	6	1,948	0.924%
20	AR	1	1,948	0.924%
20	B	2	1,770	0.839%
20	BR	3	1,770	0.839%
20	B	4	1,770	0.839%
20	BR	5	1,770	0.839%
20	A	6	1,948	0.924%
21	AR	1	1,948	0.924%
21	B	2	1,770	0.839%
21	BR	3	1,770	0.839%
21	B	4	1,770	0.839%
21	BR	5	1,770	0.839%
21	A	6	1,948	0.924%
22	AR	1	1,948	0.924%
22	C	2	3,540	1.679%
22	CR	3	3,540	1.679%
22	A	4	1,948	0.924%

Non-Residential

MH1	(Ground Floor Service)	1,488	0.706%
SD1	(2nd Floor Service Desk)	372	0.176%
SA1	(2nd Floor Sales)	168	0.080%
O1	(2nd Floor Office 1)	149	0.071%
O2	(2nd Floor Office 2)	149	0.071%
Building Total		<u>210,870</u>	<u>100.000%</u>

EXHIBIT "D"

BALDWIN COUNTY, ALABAMA
HARRY D'OLIVE, JR. PROBATE JUDGE
Filed/cert. 1/16/2019 2:57 PM
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12 Pages

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BY-LAWS

OF

PHOENIX ORANGE BEACH OWNERS ASSOCIATION, INC.

1. IDENTITY.

These are the By-Laws of PHOENIX ORANGE BEACH 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 Orange Beach, 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, with a mailing address Post Office Box 1339, 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 9:00 a.m., the local time, on the First Saturday of September of each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the members; provided, however, if that day is a legal holiday, the meeting shall be held at the same hour on the next day following that is not a legal holiday.

2.03. Change of Date. 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 at a previous membership meeting, provided that such notice of change be mailed to each member of record at such address as appears upon the records of the Association not less than ten (10) days before the holding of such meeting; and further provided that each annual meeting of members shall be held within two (2) month of the date on which it should regularly have been held but for such change.

EXHIBIT "D"

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

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

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

2.07. A quorum at members' meetings shall consist of persons entitled to cast 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,

EXHIBIT "D"

- (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 3.02(d) below.

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

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

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

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

(d) Provided, however, 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

EXHIBIT "D"

shall first occur, there shall be no meeting of the members of the Association unless a meeting is called by the Board of Directors.

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

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

3.05. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or 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.

EXHIBIT "D"

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 the following Section, except those powers delegated to the President, all as set out in the employment agreement.

EXHIBIT "D"

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.

EXHIBIT "D"

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

EXHIBIT "D"

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

EXHIBIT "D"

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

EXHIBIT "D"

shall be deposited. Withdrawal of moneys from such accounts shall be only by check signed by such persons as are authorized by the Directors.

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

7. OBLIGATIONS OF THE OWNERS.

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

7.02. Maintenance and Repair.

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

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

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

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

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

EXHIBIT "D"

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

7.06. Mortgages.

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

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

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

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

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

8. AGENT TO RECEIVE SERVICE OF PROCESS.

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

NAME: John M. Brett

SERVICE ADDRESS: 24325 Perdido Beach Blvd.
Orange Beach, AL 36561

EXHIBIT "D"

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 18 of the Declaration of Condominium.

The foregoing were adopted as the By-Laws of Phoenix Orange Beach Owners Association, Inc., at the first meeting of the Board of Directors on 15th of January, 2019.

William T. Robinson Jr
SECRETARY

APPROVED:

Thomas E. Dell
PRESIDENT
STATE OF Alabama
COUNTY OF Baldwin

I, Rhonda J. Ford, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that William T. Robinson Jr whose name as Secretary of Phoenix Orange Beach Owners Association, 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 and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal this the 15th day of January, 2019.

Rhonda J. Ford
Notary Public
My Commission Expires: 5/3/2022

THIS INSTRUMENT PREPARED BY:

Jule R. Herbert, Jr.
HERBERT LAW FIRM, LLC
Post Office Drawer 3889
Gulf Shores, AL 36547
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herbert@herbertlawfirm.com

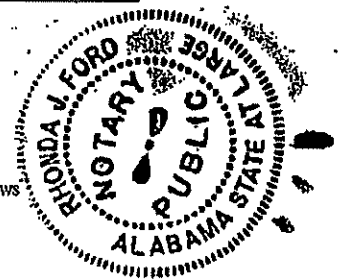


EXHIBIT "E"

**RULES AND REGULATIONS CONCERNING USE
OF
PHOENIX ORANGE BEACH, A CONDOMINIUM**

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

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

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

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

3. Unit Owners are reminded that alteration and repair of the common elements are the responsibility of the Association, except for those matters which are stated in the Declaration to be the responsibility of a Unit Owner. No work of any kind is to be done upon or affecting those portions of exterior building walls or interior boundary walls which are the responsibility of the

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Association without first obtaining the approval required by the Declaration of Condominium.

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

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

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

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

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

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

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

10. Nothing shall be done in any Unit or on the Common Elements that may impair the structural integrity of the Building or that may change the Building structurally, nor shall

EXHIBIT "E"

anything be altered or constructed on or removed from the common elements, except upon the prior written consent of the Board.

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

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

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

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

15. Unit Owners may identify their Units with a name plate of a type and size approved by the Association and mounted in a place and manner approved by the Association. No other signs may be displayed except as approved by the Association. This restriction shall not apply to the Developer until after all Units are sold, or to the owner(s) of the non-residential units.

EXHIBIT "E"

16. No Unit Owner shall make or permit any disturbing noises or activity in the Building, or do or permit anything to be done therein, which will interfere with the rights, comforts or conveniences of other Unit Owners or tenants. No Unit Owner shall play upon or cause to be played upon any musical instrument, or operate or permit to be operated a phonograph, radio, television set, loud speaker or other sound amplification device in such Unit Owner's Unit between 10 p.m. and the following 9 a.m., if the same shall disturb or annoy other occupants of the Building, and in no event shall practice or cause to be practiced either vocal or instrumental music between the hours of 10 p.m. and the following 9 a.m. No construction or repair work or other installation involving noise shall be conducted in any Unit except on weekdays (not including legal holidays) and only between the hours of 8:00 a.m. and 5:00 p.m., unless such construction or repair work is necessitated by an emergency. Unit Owners shall not cause or permit any unusual or objectionable noises or odors to be produced upon or to emanate from their Units or any terrace or deck appurtenant thereto.

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

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

19. The agents of the Board, and any contractor or workman authorized by the Board, may enter any room or Unit at any reasonable hour of the day for the purpose of inspecting such Unit

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for the presence of any vermin, insects or other pests and for the purpose of taking such measures as may be necessary to control or exterminate in a reasonable manner so as not to unreasonably interfere with the use of such Unit for its permitted purposes.

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

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

22. Unless otherwise authorized by the Association, the parking areas may not be used for any purpose other than parking automobiles. No buses, trucks, trailers, boats, recreational or commercial vehicles shall be parked in the parking areas or in driveways except in those areas, if any, designated specifically for such parking by the Board. All vehicles must have current license plates and be in good operating condition. No vehicles shall be parked on the Property with conspicuous "For Sale" signs attached.

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23. All Unit Owners shall observe and abide by all parking and traffic regulations as posted by the Association or by municipal authorities. Vehicles parked in violation of any such regulations may be towed away at the Unit owner's sole risk and expense.

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

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

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

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

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

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

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

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

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

32. The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, invitees and licensees for access, ingress to, and egress from the respective Units and for such other purposes incidental to use of the Units. However, other areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or

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unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession or easement, presently in existence or entered into by the Board at some future time, affecting any part or all of said Common Elements. No Unit Owner or Occupant of a Residential Unit shall place, distribute or maintain any sign, poster or bill in any portion of the Common Elements outside the Unit Owner's Unit without the approval of the Board of Directors, nor shall "For Sale" signs or similar signs be posted in Unit windows.

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

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

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

36. The Association regulates the presence of pets on the condominium property. Owner's pets are permitted under such restrictions and conditions as the Board shall impose from time to time. Persons other than Unit Owners may not bring pets upon the condominium property. Restrictions may be imposed to satisfy various government regulations or policies.

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

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

I certify that the above set out Rules and Regulations were adopted by the Phoenix Orange Beach Owners Association, Inc., acting through its Board of Directors, at its regular meeting held on the _____ day of February, 2019.

[pending]
Secretary