

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

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Instrument Number 1031379 Pages 68

Recording 204.00 Mortgage

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Archive 5.00

Adrian T. Johns, Judge of Probate

1031379

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

**THIS AMENDMENT TO THE DECLARATION OF PHOENIX ON THE BAY II, A CONDOMINIUM**, dated the 9<sup>th</sup> day of April, 2001, and recorded the 5<sup>th</sup> day of July, 2001, in the records of the Judge of Probate of Baldwin County, Alabama, as Instrument Number 604761, is made this the 13<sup>th</sup> day of February, 2007, by TILLIS M. BRETT, a married man, THOMAS E. BRETT, an unmarried man, and WILLIAM T. ROBINSON, JR., a married man, hereinafter collectively called "DEVELOPER," for themselves and their respective heirs and assigns.

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

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

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

**WHEREAS**, Phase Two of the project consists of one (1) building containing a total of One Hundred Four (104) Residential Units, and One Hundred Four (104) Storage Units together with access, an outdoor pool, parking and appurtenant facilities herein described. There are various areas within the building which are reserved to the Developer as shown on the Plans or stated in this Declaration.

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

**DEFINITIONS**

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

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

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

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

1.04. "ASSOCIATION" means Phoenix On The Bay II Owners Association, Inc., an Alabama not-for-profit corporation, and its successors, and is the corporation organized under the ACT.

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

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

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

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

1.09. "COMMON EXPENSES" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.10. "COMMON SURPLUS" means the excess of all receipts of the Association arising out of the Common Elements over the amount of the Common Expenses.

1.11. "CONDOMINIUM" means Phoenix On The Bay II, a condominium, and consists of the Condominium Property submitted to the Condominium form of Ownership by this Declaration.

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

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

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

1.15. "DEVELOPER" means Tillis M. Brett, Thomas E. Brett, and William T. Robinson, Jr.

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 separately recorded and expressly made a part hereof as though fully set out herein. The final Plans shall be preceded by a certificate of completion executed by an independent registered engineer or registered architect in accordance with the ACT. It also certifies that the Plans contain all the information required by the ACT.

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

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

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

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

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

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

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

#### **NAME**

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

#### **THE REAL PROPERTY**

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

#### **PURPOSE**

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

#### **DEVELOPMENT PLAN**

5.01. General Description of Improvements. The Condominium Property consists essentially of one (1) building, together with covered and uncovered automobile parking areas, boat slips, lawn, and landscaping, and other facilities as more particularly set forth in the Plans. The Plat and Plans for the Condominium are being recorded concurrently with the recording of this instrument. Upon completion of construction the Developer shall record an amendment to this Declaration to include, if needed, a revised Plat and Plans reflecting any variation from the present recorded instruments, together with all statutorily required certificates. Phase Two of the Condominium Property consists essentially of one (1) building, together with covered and uncovered automobile parking areas, boat ramps, boat slips, lockers for boat slips, lawn and landscaping, and other facilities as more particularly set forth in the Plans. The Building contains eight (8) levels, one through eight. Each level also contains a storage Unit assigned to each condominium Unit for a total of one hundred four (104) storage Units. Each level contains thirteen (13) CONDOMINIUM RESIDENTIAL UNITS. There are six (6) types of condominium residential Units. There are a total of one hundred four (104) condominium residential Units as shown on the Plans.

5.02. Changes. In order to meet the possible unforeseen or varying demands for the number and type of Unit, or in order to meet particular requirements of prospective purchasers,

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

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

5.04. Easements -- Developer's Retained and the Association's. Easements are reserved to the Developer, and/or the Developer's heirs and assigns, throughout the Common Elements as may be reasonably necessary for the purpose of discharging the Developer's or Building Manager's obligations. Further, the Developer, and/or the Developer's heirs and assigns, reserves a perpetual nonexclusive easement for access, ingress and egress over and through all access routes, parking areas, and other common areas for its guests, licensees, lessees, customers and employees for the purpose of real estate sales or any other business operated by the Developer on such property, including all areas reserved by the Developer. Further, the Developer, and/or the Developer's heirs and assigns, retains the exclusive right to use and control the check-in area, sales office, housekeeping, maintenance areas, workshops, storage areas, as are indicated on the plans. Type Check-in, Type Maintenance, Type Housekeeping, and Type Sales Office, are commercial Units and are assigned a portion of the common elements, the others are limited common elements assigned to the maintenance Units. There is also a recorded easement granting access to the dockage area to a former Owner of the Real Property. Easements are reserved throughout the condominium property as may be required for utility services in order to adequately serve the condominium; provided, however, such easements to a Unit shall be only in accordance with the plans and specifications for the buildings or as the buildings are constructed, unless approved in writing by the Unit Owner. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located

in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units and located in such Unit. The Association shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the common elements contained therein or elsewhere in any building. Further, the property is subject to an easement granted by Instrument Number 590456 executed by the Developer to Alan B. Boan, granting him the exclusive use of Boat Slip S-13 as shown on Exhibit "C-1" as well as parking rights, egress and ingress rights, all as set out in that instrument.

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

## **DESCRIPTIONS**

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

6.02. Private Residential Elements. There are six (6) basic floor plans for residential Units in Phase Two with square footage representing measurement from the center line of the common (party) walls to the outside of the exterior walls. The description of the private elements and the appurtenances thereto are determined with the aid of the plans therefore, attached hereto, and as follows:

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

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

c) Unit Type B. Unit Type B is a three (3) bedroom, three (3) bath Unit containing a kitchen, living and dining area combination with approximately 1,787 square feet of heated and cooled area not including the open balcony which contains approximately 308 square feet and serves the Unit as a limited common element. The Unit comes complete with carpet, vinyl flooring, wallpaper in designated areas, window blinds, range, dishwasher, refrigerator, washer and dryer. There are four (4) Type "B" Units each on levels 1 through 8, for a total of thirty-two (32) Type "B" Units.

d) Unit Type C. Unit Type C is a two (2) bedroom, two (2) bath Unit containing a kitchen, living and dining area combination with approximately 1,308 square feet of heated and cooled area not including the open balcony which contains approximately 192 square feet and serves the Unit as a limited common element. The Unit comes complete with carpet, vinyl flooring, wallpaper in designated areas, window blinds, range, dishwasher, refrigerator, washer and dryer. There are five (5) Type "C" Units each on levels 1 through 8, for a total of forty (40) Type "C" Units.

e) Unit Type D. Unit Type D is a three (3) bedroom, three and one-half (3.5) bath Unit containing a kitchen, living and dining area combination with approximately 2,342 square feet of heated and cooled area not including the open balcony which contains approximately 495 square feet and serves the Unit as a limited common element. The Unit comes complete with carpet, vinyl flooring, wallpaper in designated areas, window blinds, range, dishwasher, refrigerator, washer and dryer. There are a total of eight (8) Type "D" Units, one (1) each on levels 1 through 8.

f) Unit Type DR (D Reverse). Unit Type DR is a mirror image of Unit Type D. There are a total of eight (8) Type "DR" Units, one (1) each on levels 1 through 8.

g) Unit Type ER (E Reverse). Unit Type ER is a three (3) bedroom, three (3) bath Unit containing a kitchen, living and dining area combination with approximately 2032 square feet of heated and cooled area not including the open balcony which contains approximately 472 square feet and serves the Unit as a limited common element. The Unit comes complete with carpet, vinyl flooring, wallpaper in designated areas, window blinds, range, dishwasher, refrigerator, washer and dryer. There is one (1) Type "ER" Unit each on levels 1 through 8 for a total of eight (8) Type "ER" Units.

h) Unit Type G. Unit Type G is a three (3) bedroom, three (3) bath Unit containing a kitchen, living and dining area combination with approximately 1779 square feet of heated and cooled area not including the open balcony which contains approximately 507 square feet and serves the Unit as a limited common element. The Unit comes complete with carpet, vinyl flooring, wallpaper in designated areas, window blinds, range, dishwasher, refrigerator, washer and dryer. There is one (1) Type "G" Unit each on levels 1 through 8 for a total of eight (8) Type "G" Units.

i) Unit Type A. Unit Type A is described in the original Declaration.

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

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

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

c) Automobile parking spaces in the parking areas.

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, racquetball courts, tennis courts, meeting rooms, public restrooms, lobby and reception area, gazebos, guard house and locker room area.

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

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

k) All retaining walls, seawalls, bulkheads and jetties, and all areas for refuse collection or disposal.

l) All other parts of the development existing for the common use or necessary to the existence, maintenance and safety of the development.

m) All other items listed as such in the Alabama Uniform Condominium Act and located on the Property.

#### 6.04. Limited Common Elements.

A. The limited common elements include the Storage Units assigned to each Residential Unit, as shown on the plans, the Maintenance and Storage Room areas located on levels 1 through 8, and shown on the plans with the designation of M plus a numeral and all other items listed as such in the Alabama Uniform Condominium Act. The limited common

elements also include the Boat Lockers, as shown on the plans, which have been assigned by the Developer as being appurtenant to either a unit or a boat slip as shown either on the plans or as set out in a deed conveying a unit. Boat Lockers not so assigned by the Developer are common elements to be regulated by the Association.

B. The Boat Slips are Limited Common Elements to the extent that they are considered as the exercise of riparian rights appurtenant to the Land which this Declaration commits to the condominium form of Ownership. Their use is restricted to the Unit to which they are appurtenant and deeded and must either be held by the Association or a Unit Owner. They are built on and above water which covers submerged land which is subject to an agreement between the Developer and the State of Alabama styled "Riparian Easement of State-Owned Submerged Lands" which contains a provision requiring annual easement fees to be paid to the State of Alabama. Individual boat slips may be conveyed by deed by the Developer as an appurtenance to a Unit, for the exclusive use of Unit Owners. Each boat slip not retained by the Developer shall be appurtenant to a Unit or shall be assigned to the Association. Unit Owners may exchange or assign the use of these slips to other Unit Owners in Phoenix on the Bay II, but not otherwise, by the procedure set out in *Code of Alabama* (1975) §35-8A-208(b).

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.

6.08. Developer's Limited Warranty By recording this Declaration, the Developer herewith provides a limited warranty covering latent defects of the common areas or common elements for one (1) year from the date of recordation. A latent defect is hereby defined as a defect not apparent at the time of occupancy or closing, but which becomes apparent within one (1) year, and such defect has been directly caused by the failure of construction of the building in accordance with the standards of construction prevailing in the geographical area of the Unit. The Developer shall not be liable under this limited warranty unless written notice of the latent defect shall be given by the Association to the Developer before the expiration of said one (1) year warranty period. Steps taken by the Developer to correct any such defect shall not act to extend the warranty period as to other matters. The 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, including Unit A of Phase One, in the common areas is attached hereto, marked Exhibit "C" and by reference made a part hereof. The formula to determine the percentage of Ownership and Voting Rights in the common elements is also shown on Exhibit "C." The common expenses shall be charged to the Unit Owners according to the formula shown on Exhibit "C-1." The formula to determine the percentage of common surplus and voting in all matters requiring action by the Owners is shown on Exhibit "C." 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**

9.01. All present and future Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of the Act, this Declaration, the By-Laws and the Rules and Regulations as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Act, this Declaration, the By-Laws and the Rules and Regulations, as may be amended from time to time, are accepted and ratified by such Owner, tenant and occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or

estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. In the event of a conflict in any of the provisions of any such documents, the documents shall govern or control in the following order of the preference: (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.

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

9.03. 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 damage caused to a Unit in the performance of any of the foregoing work.

v) To maintain and repair the boat slips. The Association may separately assess those Unit Owners who have a boat slip or slips as an appurtenance to a Unit for expenses associated with such repairs and maintenance. The initial assessment for each boat slip is set out in Exhibit "C-1." However, as to Unit A of Phase One, the \$300 monthly assessment in place includes any general monthly or periodic assessment which may be assessed against boat slip Owners.

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.

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

11.04. Rental Pending Foreclosure. In any foreclosure of a lien for assessments, the Owner of the Unit subject to the lien shall be required to pay a reasonable rental for the Unit.

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

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

## ASSOCIATION

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

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

12.02. Powers. The powers and duties of the Association shall include those set forth in the Alabama Uniform Condominium Act, and 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 certified copy of such instrument, the Owner designated by such instrument thereby becoming a member of the Association. The membership of the prior Owner shall be thereby terminated.

c) Voting Rights. Each Unit shall be entitled to one (1) vote, which the weight of 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 or similar entity, 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 shares of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

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

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

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

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

## **INSURANCE**

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

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

13.02. Coverage:

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

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

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

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

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

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

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

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

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

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

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

d) Contain a waiver by the insurer of any right of subrogation to any right of the Association or either against the Owner 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 untenable, the building should be reconstructed.

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

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

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

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

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

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

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

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

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

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

#### **USE RESTRICTIONS**

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

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

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

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

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

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

## COMPLIANCE AND DEFAULT

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

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

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

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

### COVENANT AGAINST PARTITION

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

### AMENDMENT

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

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

18.02. Resolution. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by members having not less than ten percent (10%) of the total percentage values of those votes entitled to be cast at a meeting, and after being so proposed and thereafter approved by one (1) of such bodies, it must then be approved by the other to become effective. Directors and members not present at the meeting considering the amendment may express their approval or disapproval in writing provided such approval or disapproval is delivered to the Secretary at or prior to the meeting. Such approvals must be not be by less than a majority of the Directors and by not less than two-thirds (2/3) of the votes of the Association; provided, however, that any such amendment shall have been approved in writing by all mortgagees who are the holder of the mortgages which liens on the Units of the approving Owners; and provided, further, that every amendment that alters the percentage of undivided interest of an Owner in the common areas and facilities or that alters or impairs any common area and facility or any easement or hereditament shall require the unanimous approval of all such Owners and all such mortgagees.

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

18.04. Agreement. In the alternative, an amendment may be made by an agreement signed and acknowledged by all of the record Owners, including first mortgagees, of Units in

the condominium in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

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

18.06. Provisions Pertaining to the Developer.

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

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

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

### **PROPORTIONATE CHANGES IN COMMON EXPENSES, COMMON SURPLUS AND VOTING RIGHTS**

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

### **TERMINATION**

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

### **EMINENT DOMAIN**

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

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

21.02. Partial or Total Taking Directly Affecting Units. If part or all of the condominium shall be taken or condemned by any authority having the power of eminent domain in such manner that any Unit or part thereof is taken, the Association shall have the right to act on behalf of the Unit Owners with respect to common areas as in subsection .01. of this Paragraph 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 15 of this Declaration, to the extent possible attempting to rebuild buildings containing new Units of the same number, size and basic plan as the Units taken, and with any excess award distributed as provided in subsection .01. of this Paragraph 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.

## **TABLE AND HEADINGS**

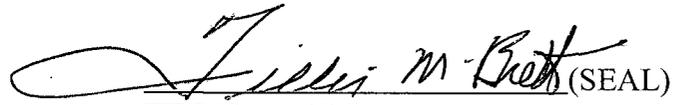
This table of contents and headings used in this Declaration have been inserted for convenience and do not constitute matter to be construed in interpretation.

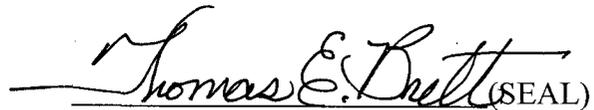
## **SEVERABILITY**

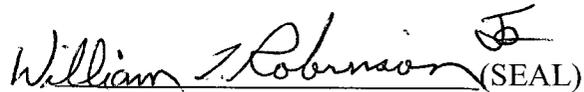
The invalidity in whole or in part of any covenant or restriction, or any Article, subsection, sentence, clause, phrase or work, or other provision of this Declaration of

Condominium and the By-Laws of the Association shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, TILLIS M. BRETT, THOMAS E. BRETT, and WILLIAM T. ROBINSON, JR., have caused THESE PRESENTS to be executed this day and year as first above written.

 (SEAL)  
TILLIS M. BRETT

 (SEAL)  
THOMAS E. BRETT

 (SEAL)  
WILLIAM T. ROBINSON, JR.

STATE OF ALABAMA )

COUNTY OF Baldwin )

I, James R. Owen, Jr., the undersigned authority, a Notary Public in and for said County in said State, hereby certify that TILLIS M. BRETT, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 13<sup>th</sup> day of February, 2007.

  
Notary Public

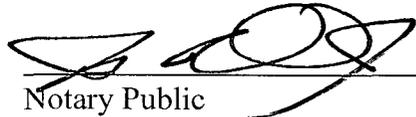
My Commission Expires: 2/18/08

STATE OF ALABAMA )

COUNTY OF Baldwin )

I, James R. Owen Jr., the undersigned authority, a Notary Public in and for said County in said State, hereby certify that THOMAS E. BRETT, whose name 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 13<sup>th</sup> day of February, 2007.

  
Notary Public

My Commission Expires: 2/18/08

STATE OF ALABAMA )

COUNTY OF Baldwin )

I, James R. Owen Jr., the undersigned authority, a Notary Public in and for said County in said State, hereby certify that WILLIAM T. ROBINSON, JR., whose name 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 13<sup>th</sup> day of February, 2007.

  
Notary Public

My Commission Expires: 2/18/08

**THIS INSTRUMENT PREPARED BY:**  
**Jule R. Herbert Jr.**  
**Herbert & Harrell LLC**  
**Attorneys at Law**  
**P.O. Drawer 3889**  
**Gulf Shores, AL 36547**  
**(251) 968-4764**

## EXHIBIT "A"

Commencing at the Northeast corner of Lot 1, Bear Point Heights (Block 20, Slide 79A) as recorded in the Office of the Judge of Probate of Baldwin County, Alabama; thence run North 80°57'12" East a distance of 25.42 feet to the point of beginning of the property herein described, said point also being on a curve to the left having a radius of 2914.79 feet; thence run Eastwardly along said curve (chord bearing North 77°12'27" East, Chord = 307.68 feet) an arc distance of 307.79 feet; thence run South 00°02'44" West a distance of 870.85 feet to a point on the North shore of Terry Cove (Ornocor Bay); thence run South 82°39'29" West a distance of 301.82 feet; thence run North 00°00'00" East a distance of 841.29 feet to the point of beginning; containing 5.870 acres (255708.43 square feet).

### LESS AND EXCEPT:

Unit A of Phase One, Phoenix On The Bay II, a condominium, according to that certain Declaration of Condominium, and all exhibits thereto of record in the Office of the Judge of Probate, Baldwin County, Alabama, recorded as Instrument Number 604761, et seq.

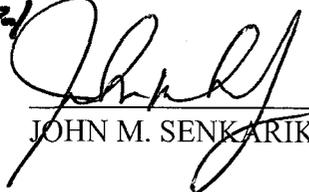
### THIS PROPERTY IS SUBJECT TO THE FOLLOWING:

1. Subdivision Regulations of the City of Orange Beach, Alabama, as recorded as Instrument Number 943772, and any amendments thereto.
2. Rights of other parties in and to the easements as described in the Declaration of Condominium, of Phase One, Phoenix On The Bay II, as recorded as Instrument Number 604761, and any amendments thereto.
3. Rights of the United States of America, State of Alabama, or other parties in and to the bed, shore and water of Terry Cove.
4. 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 body of water abutting said land and the natural line of vegetation, dunes, extreme high water line or other apparent boundary lines separating the publicly used area from the upland private area.
5. Easement granted Baldwin County Electric Membership Corporation, dated November 28, 1995, and recorded in Real Property Book 670, Page 255.
6. Encroachments of stucco wall, fence, and asphalt as shown on survey by Robert E. Hire dated January 28, 1993, drawing #019367.
7. Easement Agreement by and between Thomas E. Brett, Tillis M. Brett and William T. Robinson, Jr., and Alan D. Boan dated April 9, 2001, and recorded as Instrument Number 590456.

## 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," Pages 1 through 10, recorded in Apartment Book 25, Pages 92 thru 101, and as Instrument Number 1031378, in the Office of the Judge of Probate, are made a part of this Declaration of Condominium of Phoenix on the Bay II, Phase Two, a condominium, show the layout, location, Unit numbers and dimensions of the Units and the improvements. I further certify that the PLANS show the dimensions of the improvements and the Units and 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-209 and that all structural components and mechanical systems of all buildings containing or comprising any units of Phoenix on the Bay II, Phase Two, a condominium, as described in the Declaration of Condominium, are substantially completed in accordance with the plans.

*\* Together with the elevation certificate attached hereto as Exhibit B.*

  
\_\_\_\_\_  
JOHN M. SENKARIK JR.

ELEVATIONS ON PHOENIX ON THE BAY II AT ORANGE BEACH, ALABAMA

*Exhibit B-1 Phoenix on The Bay II Phase Two*

LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.	LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.	LEVEL	UNIT NUMBER	FLOOR ELEV.	CEILING ELEV.
GROUND FLOOR	MAINT. ROOM	8.56	17.35	3RD FLOOR	3G1	38.24	47.33	6TH FLOOR	6G1	67.61	76.61
					3C2	38.24	47.33		6C2	67.61	76.61
1ST FLOOR	CHECK-IN	18.12	37.44		3B3	38.24	47.33		6B3	67.61	76.61
					3C4	38.24	47.33		6C4	67.61	76.61
	SALES OFFICE	18.12	37.44		3B5	38.24	47.33		6B5	67.61	76.61
					3C6	38.24	47.33		6C6	67.61	76.61
	HOUSE-KEEPING	17.81	27.49		3B7	38.24	47.33		6B7	67.61	76.61
					3C8	38.24	47.33		6C8	67.61	76.61
	1G1	18.12	27.66		3B9	38.24	47.33		6B9	67.61	76.61
	1C2	18.12	27.66		3C10	38.24	47.33		6C10	67.61	76.61
	1B3	18.12	27.66		3D11	38.24	47.33		6D11	67.61	76.61
	1C4	18.12	27.66		3E-R12	38.24	47.33		6E-R12	67.61	76.61
	1B5	18.12	27.66		3D-R13	38.24	47.33		6D-R13	67.61	76.61
	1C6	18.12	27.66	4TH FLOOR	4G1	48.12	57.06	7TH FLOOR	7G1	77.37	86.34
	1B7	18.12	27.66		4C2	48.12	57.06		7C2	77.37	86.34
	1C8	18.12	27.66		4B3	48.12	57.06		7B3	77.37	86.34
1B9	18.12	27.66	4C4		48.12	57.06	7C4		77.37	86.34	
1C10	18.12	27.66	4B5		48.12	57.06	7B5		77.37	86.34	
1D11	18.12	27.66	4C6		48.12	57.06	7C6		77.37	86.34	
1E-R12	18.12	27.66	4B7		48.12	57.06	7B7		77.37	86.34	
1D-R13	18.12	27.66	4C8		48.12	57.06	7C8		77.37	86.34	
2ND FLOOR	2G1	28.44	37.44		4B9	48.12	57.06		7B9	77.37	86.34
	2C2	28.44	37.44		4C10	48.12	57.06		7C10	77.37	86.34
	2B3	28.44	37.44		4D11	48.12	57.06		7D11	77.37	86.34
	2C4	28.44	37.44		4E-R12	48.12	57.06		7E-R12	77.37	86.34
	2B5	28.44	37.44		4D-R13	48.12	57.06		7D-R13	77.37	86.34
	2C6	28.44	37.44	5TH FLOOR	5G1	57.86	66.86	8TH FLOOR	8G1	87.12	96.13
	2B7	28.44	37.44		5C2	57.86	66.86		8C2	87.12	96.13
	2C8	28.44	37.44		5B3	57.86	66.86		8B3	87.12	96.13
	2B9	28.44	37.44		5C4	57.86	66.86		8C4	87.12	96.13
	2C10	28.44	37.44		5B5	57.86	66.86		8B5	87.12	96.13
	2D11	28.44	37.44		5C6	57.86	66.86		8C6	87.12	96.13
	2E-R12	28.44	37.44		5B7	57.86	66.86		8B7	87.12	96.13
	2D-R13	28.44	37.44		5C8	57.86	66.86		8C8	87.12	96.13
					5B9	57.86	66.86		8B9	87.12	96.13
			5C10		57.86	66.86	8C10		87.12	96.13	
			5D11		57.86	66.86	8D11		87.12	96.13	
			5E-R12		57.86	66.86	8E-R12		87.12	96.13	
			5D-R13		57.86	66.86	8D-R13		87.12	96.13	

I MIKELL D. SPEAKS, A REGISTERED LAND SURVEYOR IN THE STATE OF ALABAMA, HEREBY CERTIFY THAT THE FOLLOWING ELEVATIONS FOR THE UNITS IN PHOENIX ON THE BAY II ARE TRUE AND CORRECT.

*Mikell D. Speaks*  
 ALABAMA REGISTRATION NO. 9127  
 JANUARY 23, 2007



**PHOENIX ON THE BAY II  
PERCENTAGE OF OWNERSHIP AND VOTING  
CALCULATIONS BY SQUARE FOOTAGE  
EXCEPT AS NOTED**

F	U	B	Square Footage	% of Ownership
Unit A, Phase I				
1	G	1	1779	0.977%
1	C	2	1308	0.718%
1	B	3	1787	0.981%
1	C	4	1308	0.718%
1	B	5	1787	0.981%
1	C	6	1308	0.718%
1	B	7	1787	0.981%
1	C	8	1308	0.718%
1	B	9	1787	0.981%
1	C	10	1308	0.718%
1	D	11	2342	1.286%
1	ER	12	2032	1.116%
1	DR	13	2342	1.286%
2	G	1	1779	0.977%
2	C	2	1308	0.718%
2	B	3	1787	0.981%
2	C	4	1308	0.718%
2	B	5	1787	0.981%
2	C	6	1308	0.718%
2	B	7	1787	0.981%
2	C	8	1308	0.718%
2	B	9	1787	0.981%
2	C	10	1308	0.718%
2	D	11	2342	1.286%
2	ER	12	2032	1.116%
2	DR	13	2342	1.286%

F	U	B	Square Footage	% of Ownership
3	G	1	1779	0.977%
3	C	2	1308	0.718%
3	B	3	1787	0.981%
3	C	4	1308	0.718%
3	B	5	1787	0.981%
3	C	6	1308	0.718%
3	B	7	1787	0.981%
3	C	8	1308	0.718%
3	B	9	1787	0.981%
3	C	10	1308	0.718%
3	D	11	2342	1.286%
3	ER	12	2032	1.116%
3	DR	13	2342	1.286%
4	G	1	1779	0.977%
4	C	2	1308	0.718%
4	B	3	1787	0.981%
4	C	4	1308	0.718%
4	B	5	1787	0.981%
4	C	6	1308	0.718%
4	B	7	1787	0.981%
4	C	8	1308	0.718%
4	B	9	1787	0.981%
4	C	10	1308	0.718%
4	D	11	2342	1.286%
4	ER	12	2032	1.116%
4	DR	13	2342	1.286%

F	U	B	Square Footage	% of Ownership
5	G	1	1779	0.977%
5	C	2	1308	0.718%
5	B	3	1787	0.981%
5	C	4	1308	0.718%
5	B	5	1787	0.981%
5	C	6	1308	0.718%
5	B	7	1787	0.981%
5	C	8	1308	0.718%
5	B	9	1787	0.981%
5	C	10	1308	0.718%
5	D	11	2342	1.286%
5	ER	12	2032	1.116%
5	DR	13	2342	1.286%
6	G	1	1779	0.977%
6	C	2	1308	0.718%
6	B	3	1787	0.981%
6	C	4	1308	0.718%
6	B	5	1787	0.981%
6	C	6	1308	0.718%
6	B	7	1787	0.981%
6	C	8	1308	0.718%
6	B	9	1787	0.981%
6	C	10	1308	0.718%
6	D	11	2342	1.286%
6	ER	12	2032	1.116%
6	DR	13	2342	1.286%

F	U	B	Square Footage	% of Ownership
7	G	1	1779	0.977%
7	C	2	1308	0.718%
7	B	3	1787	0.981%
7	C	4	1308	0.718%
7	B	5	1787	0.981%
7	C	6	1308	0.718%
7	B	7	1787	0.981%
7	C	8	1308	0.718%
7	B	9	1787	0.981%
7	C	10	1308	0.718%
7	D	11	2342	1.286%
7	ER	12	2032	1.116%
7	DR	13	2342	1.286%
8	G	1	1779	0.977%
8	C	2	1308	0.718%
8	B	3	1787	0.981%
8	C	4	1308	0.718%
8	B	5	1787	0.981%
8	C	6	1308	0.718%
8	B	7	1787	0.981%
8	C	8	1308	0.718%
8	B	9	1787	0.981%
8	C	10	1308	0.718%
8	D	11	2342	1.286%
8	ER	12	2032	1.116%
8	DR	13	2342	1.286%
Check-In			1138	0.625%
Maintenance			1635	0.898%
Housekeeping			371	0.204%
Sales Office			181	0.099%
Bldg. Tots			<u>182097</u>	<u>100.000%</u>

Unit A of Phase One of Phoenix on the Bay II is a land condominium unit covering approximately .452 acres or 19,689.12 square feet. By development plan, it

has an ownership interest in the common elements and a voting interest equal to that of a C Type Unit. Consequently, the formula takes the total number of square footage in the improvements of Phase II, plus the additional square footage in the improvements of one C Type Unit, divided into the total number of square feet of any one Unit as shown on Exhibit "C," and the result determines the fractional ownership and voting interest of that Unit.

## PHOENIX ON THE BAY II, A CONDOMINIUM

The formula established by the Developer for determining the percentage of each condominium's share of the common expenses is as follows:

Type "A" Unit:  $.00718 \times \text{monthly budget (less insurance)} = \text{the product}$ . This product rounded up to the nearest even dollar is \$300.00.

Type "B" Unit:  $.00981 \times \text{monthly budget} = \text{the product}$ . This product rounded up to the nearest even dollar is \$601.00.

Type "C" Unit:  $.000718 \times \text{monthly budget} = \text{the product}$ . This product rounded up to the nearest even dollar is \$440.00.

Type "D" Unit:  $.01286 \times \text{monthly budget} = \text{the product}$ . This product rounded up to the nearest even dollar is \$788.00.

Type "DR" Unit:  $.01286 \times \text{monthly budget} = \text{the product}$ . This product rounded up to the nearest even dollar is \$788.00.

Type "ER" Unit:  $.01116 \times \text{monthly budget} = \text{the product}$ . This product rounded up to the nearest even dollar is \$684.00.

Type "G" Unit:  $.00976 \times \text{monthly budget} = \text{the product}$ . This product rounded up to the nearest even dollar is \$599.00.

Type Check-in:  $.00625 \times \text{monthly budget} = \text{the product}$ . This product rounded up to the nearest even dollar is \$383.00.

Type Maintenance:  $.00898 \times \text{monthly budget} = \text{the product}$ . This product rounded up to the nearest even dollar is \$550.00.

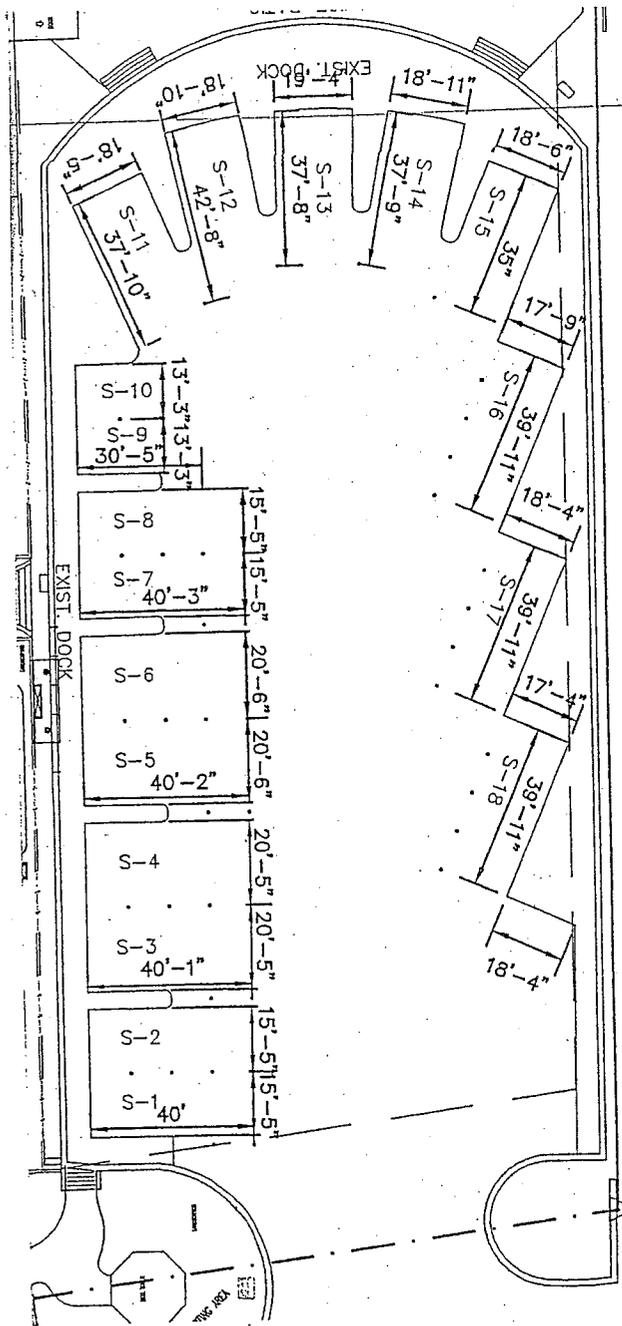
Type Housekeeping:  $.00204 \times \text{monthly budget} = \text{the product}$ . This product rounded up to the nearest even dollar is \$125.00.

Type Sales Office:  $.00099 \times \text{monthly budget} = \text{the product}$ . This product rounded up to the nearest even dollar is \$61.00.

### Explanation of Formula:

These are load factors as determined by the developer based on: i) square footage of interior; ii) maintenance requirement for exterior wall space, exterior windows and balconies; and iii) in

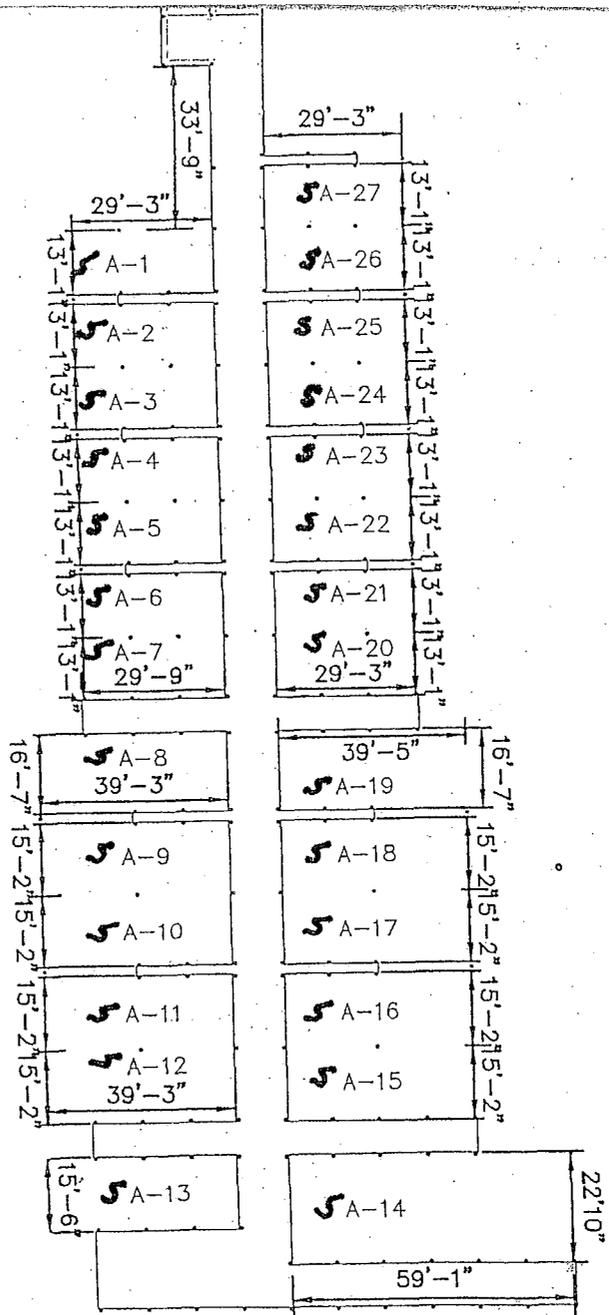
general, the expenses that will be incurred by the Association considered separately for each type of condominium unit. The assessment on Unit A of Phase One may not be adjusted upwards by an amount greater than the percentage increase in the assessments placed on the C type units. Consequently, over time these load factors may be slightly adjusted by the Association, but the differentials established here shall not be altered.



*Phoenix on The Bay II Phase Two*

*Page 3 of 6*

EXHIBIT C-1



Phoenix on the Bay II Phase Two  
 PAGE 4 of 6

EXHIBIT C-1

# PHOENIX ON THE BAY II INSIDE MARINA

	<u>SIZE</u>	<u>FEE</u>
S1	14'9" X 40'	\$32
S2	15' X 40'	\$32
S3	20' X 40'	\$42
S4	19'10" X 40'	\$42
S5	19'8" X 40'	\$42
S6	19'9" X 40'	\$42
S7	15' X 40'	\$32
S8	14'9" X 35'	\$27
S9	13' X 25'	\$17
S10	12'7" X 16'	\$11
S11	18'5" X 37'6"	\$37
S12	18'10" X 37'6"	\$37
S13	19'3" X 37'6"	\$37
S14	18'10" X 37'6"	\$37
S15	18'4" X 37'6"	\$37
S16	17'9" X 39'11"	\$37
S17	18'4" X 39'11"	\$37
S18	17'4" X 39'11"	\$37

*Page 5 of 6*

EXHIBIT "C-1"

# PHOENIX ON THE BAY II OUTSIDE MARINA

	<u>SIZE</u>	<u>FEE</u>
SA-1	12' - 10' X 30' - 0"	\$13
SA-2	12' - 10' X 30' - 0"	\$13
SA-3	12' - 10' X 30' - 0"	\$13
SA-4	12' - 10' X 30' - 0"	\$13
SA-5	12' - 10' X 30' - 0'	\$13
SA-6	12' - 10' X 30' - 0"	\$13
SA-7	12' - 10' X 30' - 0"	\$13
SA-8	15' - 0" X 40' - 0"	\$21
SA-9	15' - 0" X 40' - 0"	\$21
SA-10	15' - 0" X 40' - 0"	\$21
SA-11	15' - 0" X 40' - 0"	\$21
SA-12	15' - 0" X 40' - 0"	\$21
SA-13	28' - 8" X 60' - 0"	\$58
SA-14	28' - 8" X 60' - 0"	\$58
SA-15	15' - 0" X 40' - 0"	\$21
SA-16	15' - 0" X 40' - 0"	\$21
SA-17	15' - 0" X 40' - 0"	\$21
SA-18	15' - 0" X 40' - 0"	\$21
SA-19	15' - 0" X 40' - 0"	\$21
SA-20	12' - 10" X 30' - 0"	\$13
SA-21	12' - 10" X 30' - 0"	\$13
SA-22	12' - 10" X 30' - 0"	\$13
SA-23	12' - 10" X 30' - 0"	\$13
SA-24	12' - 10" X 30' - 0"	\$13
SA-25	12' - 10" X 30' - 0"	\$13
SA-26	12' - 10" X 30' - 0"	\$13
SA-27	12' - 10" X 30' - 0"	\$13

*Page 6 of 6*

EXHIBIT "C-1"

*Exhibit "D"*

BY-LAWS

OF

PHOENIX ON THE BAY II OWNERS ASSOCIATION, INC.

1. IDENTITY.

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

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

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

2. MEMBERS' MEETINGS.

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

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

2.03. Change of Date. The time of holding the annual meeting of members may be changed at any time prior to fifteen (15) days before the regular day for holding such meeting by a resolution duly adopted by the Board of Directors or by the members, provided that such notice of change be mailed to each member of record at such address as appears upon the records of the Association not less than ten (10) days before the holding of such meeting; and further provided that each annual meeting of members shall be held within one (1) month of the date on which it should regularly have been held but for such change.

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

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

*Exhibit "D"*

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

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

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

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

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

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

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

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

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

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

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

### 3. **BOARD OF DIRECTORS.**

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

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

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

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

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

(d) Provided, however, that until the Developer of the condominium has completed and sold all of the units of the condominium or until December 31, 2007, or until the Developer elects to terminate its control of the condominium, whichever shall first occur, there shall be no meeting of the members of the Association unless a meeting is called by the Board of Directors; and provided, further, that until the Developer of the condominium has completed and sold seventy-five percent (75%) of the aggregate of all of the units of the

condominium or until two (2) years after the date of the filing of a certificate by the Developer or until Developer elects to terminate its control over the condominium, whichever shall first occur, there shall be no meeting of members of the Association unless a meeting is called by the Board of Directors.

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

3.04. The organization meeting of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of organization meeting shall be necessary, provided a quorum shall be present.

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

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

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

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

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

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

4. **POWERS AND DUTIES OF THE BOARD OF DIRECTORS.**

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

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

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

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

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

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

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

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

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

including, but not limited to, the duties listed in this Section, and any such duties so conferred upon the managing agent or manager by the Board of Directors may at any moment be revoked, modified or amplified by the majority of the votes in a duly constituted meeting.

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

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

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

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

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

## 5. OFFICERS.

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

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

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

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

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

## 6. FISCAL MANAGEMENT.

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

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

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

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

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

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

6.04. Assessments for Emergencies. Assessments for common expenses for emergencies which cannot be paid from the assessments for recurring expenses shall be made only after notice of the need therefor to the unit owners concerned. After such notice and upon approval in writing of more than one-half (1/2) of such unit owners concerned, the assessment shall become effective, and it shall be due after thirty (30) days notice thereof in such manner as the Board of Directors may require.

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

6.06. Default.

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

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

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

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

## 7. OBLIGATIONS OF THE OWNERS.

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

### 7.02. Maintenance and Repair.

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

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

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

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

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

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

7.06. Mortgages.

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

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

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

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

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

8. **AGENT TO RECEIVE SERVICE OF PROCESS.**

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

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

9. **PARLIAMENTARY RULES.**

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

10. **AMENDMENTS.**

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

The foregoing were adopted as the By-Laws of Phoenix on the Bay II Owners Association, Inc., at the first meeting of the Board of Directors on \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
SECRETARY

APPROVED:

\_\_\_\_\_  
PRESIDENT

**RULES AND REGULATIONS CONCERNING USE**  
**OF**  
**PHOENIX ON THE BAY II, PHASE II, A CONDOMINIUM**

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

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

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

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

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

of the Association without first obtaining the approval required by the Declaration of Condominium. No Owner may install any plumbing, wiring or air conditioning equipment without the prior written approval of the Board.

4. The sidewalks, entrances, passages, public halls, 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, public halls, elevators, corridors, stairways or fire towers of the Building.

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

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

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

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

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

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

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

13. All radio, television or other electrical equipment (of any kind or nature) installed or used in each Unit shall fully comply with all rules, regulations, requirements of recommendations of the local fire department and the public authorities having jurisdiction, and the Unit Owner alone shall be liable for any damage or injury caused by any radio, television or other 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. An Owner may identify his Unit 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 displaced except as approved by the Association. This restriction shall not apply to the Developer until after all Units are sold.

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

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

18. Water-closets 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-closets or other 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 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 the Unit Owner is not personally present to open and permit an entry to his Unit at any time when an entry therein is necessary or permissible under these Rules and Regulations or under the By-Laws and has not furnished a key to the Board, then the Board or its agents (but, except in an emergency, only when specifically authorized by an officer of the Condominium) may forcibly enter such Unit without liability for damages or trespass by reason thereof (if during such entry reasonable care is given to such Unit Owner's property).

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

22. Unless otherwise authorized by the Association, the parking areas may not be used for any purpose other than parking automobiles. No buses, trucks, 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 Condominium with conspicuous "For Sale" signs attached.

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 Condominium shall be made in writing to the Board.

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

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

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

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

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

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

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

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

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

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

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

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

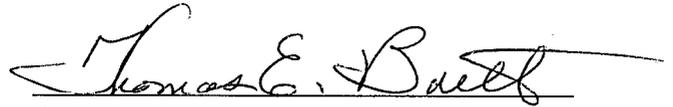
36. The Association regulates the presence of pets on the condominium property. Owner's pets are permitted under such restrictions and conditions as the Board shall impose from time to time. Persons other than Unit Owners may not bring pets upon the condominium property.

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

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

39. Owners of ~~Boat~~<sup>Boat</sup> Slips shall not erect any structures on the dockage. Boat lifts shall be installed only with the prior approval of the Association and subject to its regulation.

I certify that the above set out Rules and Regulations were adopted by the Phoenix On The Bay II Owners Association, Inc., acting through its Board of Directors, at its regular meeting held on the 13<sup>th</sup> day of February, 2007

  
Secretary