

**STATE OF ALABAMA )**

**COUNTY OF BALDWIN )**

**AMENDED DECLARATION OF CONDOMINIUM**

**OF**

**GULF HOUSE, A CONDOMINIUM**

This Declaration is made by GULF HOUSE ASSOCIATION, INC., hereinafter referred to as the "Declarant", for itself, and for its heirs, successors, grantees, and assigns, for the purpose of maintaining a condominium, and establishing certain easements, covenants, and restrictions to run with the land.

**RECITALS**

Declarant is the Association that represents the interests of the Unit Owners who own an undivided interest in that certain real estate described in Article 4 of this Amendment, which is physically located in the County of Baldwin, State of Alabama, hereinafter referred to as the "Parcel".

The Parcel, together with all buildings, structures, improvements, and other permanent fixtures thereon, and all rights and privileges belonging or in any way pertaining thereto, was, by instrument dated August 27, 1980, and recorded among the records in the Office of the Judge of Probate, Baldwin County, Alabama, in Misc. Book 37, pages 45 - 73, formerly submitted to the provisions of the *Alabama Condominium Ownership Act of 1973*, § 35-8-1, et. seq. *Code of Alabama, 1975*. The Condominium is known as GULF HOUSE, a Condominium.

**WHEREAS**, the owners of units of GULF HOUSE, a Condominium, wish to amend and revise the Declaration of Condominium of Gulf House to recognize and incorporate the provisions of the *Alabama Uniform Condominium*

*Act of 1991, presently codified as § 35-8A-101, et. seq., Code of Alabama, 1975;*  
and,

**WHEREAS**, notice of the subject matter of this proposed revision and amendment was included in a notice of a special meeting given to all Unit Owners and mortgagees to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007; and,

**WHEREAS**, a resolution was adopted and approved prior to that time by a majority of the Board of Directors proposing the revision and amendments; and,

**WHEREAS**, the proposed revision and amendments were approved by a vote of fifty-one percent (51%) of the Board of Directors and by a vote of fifty-one percent (51%) of the Unit Owners according to their proportional ownership, and by all mortgagees who are holders of mortgages which are liens on the Units of the approving Owners.

**NOW, THEREFORE**, the Amended Declaration of Condominium of Gulf House, a Condominium shall hereinafter provide as follows:

**PROPOSED**

**AMENDED DECLARATION OF CONDOMINIUM**

**OF**

**GULF HOUSE, A CONDOMINIUM**

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# PROPOSED



**ARTICLE I  
DEFINITIONS**

The terms used herein, in the Exhibits attached hereto, and in the By-Laws shall have the meaning specified in the Acts, and as follows, unless the context otherwise requires:

1.01 "ACTS" means the Alabama Uniform Condominium Act of 1991, Ala. Code Sections 35-8A-101 et. seq. and the Alabama Condominium Ownership Act of 1973, Ala. Code Sections 35-8-1 et. seg.

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

1.04 "ASSOCIATION" means Gulf House Association, Inc., an Alabama not for profit corporation, and its successors, the entity responsible for the administration and management of the Condominium, and is the corporation organized in accordance with the Acts.

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

1.06 "BUILDINGS" means all structures or structural improvements located on the Parcel and forming part of the Condominium.

1.07 "BY-LAWS" means the duly adopted By-Laws of the Association.

1.08 "COMMON ELEMENTS" means any part of the Condominium Property, as set forth and defined in Article 4 of this Declaration, in which all of the Unit Owners have an undivided interest.

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

including, but not necessarily limited to, expenses incurred in the maintenance, administration, improvement, and repair of the Common Elements, whether incurred or estimated by the Board, for which the Unit Owners are liable to the Association in accordance with the terms of the Condominium Documents.

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

1.11 "CONDOMINIUM" means GULF HOUSE, a Condominium, and consists of the Condominium Property as formerly submitted to the condominium form of ownership by the Declaration.

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

1.13 "DECLARATION" means this Declaration as it may be amended from time to time.

1.14 "ELIGIBLE MORTGAGE HOLDERS" are those holders of a first mortgage on a unit estate who have submitted a written request that the Association notify them in accordance with the By-Laws of the Association.

1.15 "MORTGAGEE" means any holder and/or owner of a mortgage or vendor's lien encumbering a Unit.

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

1.17 "PERSON" means a natural person, a corporation, a partnership, a limited partnership, an association, a trustee, a joint venture, or other legal entity capable of holding title to real property.

1.18 "PLANS" means the site plan, floor plans, and elevations of the Condominium prepared by an independent registered engineer or registered architect, which are identified as Exhibit "B", and expressly made a part hereof.

1.19 "REAL PROPERTY" or "PARCEL" means the real property as described in this Declaration which is herein submitted to the condominium form of ownership or shall be subsequently submitted in accordance with the terms of this Declaration and any subsequent amendment thereto.

1.20 "PRIVATE ELEMENTS" means the dwelling unit which 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 condominium unit. The vertical boundaries of each unit shall be the plane of the inside surfaces of the studs which are the component parts of exterior walls and of interior walls separating a unit from another unit and are as shown on the plats and plans of the condominium. Where the unit is bound by an exterior wall, the walls shall be considered to include the door, window or other closure therein in the closed position, the boundary shall be the plane of the inside surfaces of the studs which are the component parts of such walls to the effect that the private elements of the boundary walls shall include the surfacing materials. The upper horizontal boundary of each unit shall be the plane of the under surfaces of the ceiling slabs. The lower horizontal boundary of floors of the units shall be the upper surface of the floor slab. 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 exclusive use of the unit. An Owner, however shall be deemed to own and shall have the exclusive right and duty to repair, maintain, replace paint, repaint, tile, wax, paper or otherwise finish and decorate the surfacing materials on the interior of exterior walls and on the interior walls separating a unit from other units, and the surfacing material 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, HVAC, and TV, whether located in the boundaries of the unit or in the common areas, which are for the

exclusive use of the unit; and all ceilings and partition walls. An Owner shall have the exclusive right and duty to wash and keep clean the interior and exterior surfaces of windows and doors bounding his unit.

1.21 "UNIT" means the private elements of the condominium property together with the undivided interest in the common elements and limited common elements which are assigned thereto in this Declaration as it may be amended from time to time.

1.22 "UNIT OWNER" or "OWNER" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit and of the appurtenant undivided interest in the Common Elements as evidenced by a deed duly recorded in the Office of the Judge of Probate, Baldwin County, Alabama.

*When the context permits hereunder, 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.*

# PROPOSED

## **ARTICLE II SUBMISSION OF PROPERTY TO ACT**

By this Amended Declaration, the Declarant hereby resubmits the Real Property described in Article 4 to the Condominium form of ownership and provisions of the Acts.

## **ARTICLE III NAME AND ADDRESS**

The name of the condominium is GULF HOUSE, a Condominium. The Condominium is located in Gulf Shores, Baldwin County, Alabama.

## **ARTICLE IV DESCRIPTION OF PROPERTY**

4.01 Land. The following real property, together with all buildings, structures, improvements, and all other permanent fixtures thereon, and all

rights and privileges belonging or in anyway pertaining thereto, is hereby resubmitted to the condominium form of ownership:

### **DESCRIPTION**

*Lot 2, Block 1 of Romeo Skipper Subdivision of Gulf Shores, Alabama, according to the map or plat thereof recorded in the Office of the Judge of Probate, Baldwin County, Alabama, in Map Book 4, Page 67, and the riparian and/or littoral rights thereto appertaining, within the corporate limits of the Town of Gulf Shores, Alabama.*

*SUBJECT to, however, the following:*

*A private easement and right-of-way for the owners of property within the tract of land described in Page 1 of this Declaration, including the owners of townhouse and apartment units in said condominium, their families, tenants, agents, servants, employees, invitees, and guests, which said private easement and right-of-way is located as appears upon that certain drawing of said property appearing as Page 1 of Exhibit A hereto attached and by reference made a part hereof.*

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4.02 The Building. The Condominium includes access areas, parking areas, lawn areas, a swimming pool and all facilities located substantially as shown in the plans and plats heretofore recorded in the Office of the Judge of Probate, Baldwin County, Alabama.

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

A. Units Numbered. Each unit has been assigned a number which is indicated on the plans and plats heretofore recorded in the Office of the Judge of Probate, Baldwin County, Alabama.

B. Type A. Type A units are on the first, second, third, fourth, fifth and sixth floor levels, have three bedrooms, two baths and have 1086 square feet of space, including an entrance foyer, living room,

closets and kitchen. The kitchen is equipped with a dishwasher, garbage disposal, drop-in range, range hood and trash compactor; and the unit also contains a water heater and HVAC unit.

C. Type B. Type B units are on the first, second, third, fourth, fifth and sixth floor levels and front directly on the Gulf of Mexico, have two bedrooms, one bath and have 882 square feet of space, including an entrance foyer, living room, closets and kitchen. The kitchen is equipped with a dishwasher, garbage disposal, drop-in range, range hood and trash compactor; and the unit also contains a water heater and HVAC unit.

4.04 Common Elements. The common elements of the condominium include all parts of the condominium property not a part of the Private Elements as described above and include but are not limited to the following:

A. The land described in Section 4.01;

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

C. Vehicle parking spaces, whether or not assigned to the exclusive use of any unit;

D. All outdoor and exterior lights, excepting such as are placed on the balcony assigned to the exclusive use of a unit;

E. Balconies and decking, however, 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 serving the unit;

F. All attics, foundations, columns, girders, beams and supports of buildings, and such component parts of walls, roofs, floors and ceilings as are not located within the units;

G. Lawn areas, landscaping, trees, curbs and walkways;

H. Recreation areas and facilities, including but not limited to the swimming pool and sundeck;

I. Exterior steps, ramps, hand rails, stairs and stairwells;

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

**PROPOSED**

K. All retaining walls, sea walls, bulkheads and jetties, and all areas for refuse collection or disposal;

L. All other parts of the Condominium Property existing for the common use or necessary to the existence, maintenance and safety of the Condominium;

M. All other items listed as such in the Alabama Condominium Ownership Act of 1973 and the Alabama Uniform Condominium Act of 1991.

4.05 Limited Common Elements. The Condominium Property contains no limited common elements.

4.06 Agreement. The acceptance of a deed or conveyance, or acquiring an interest in or lien upon any Unit, or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the

provisions of this Declaration of Condominium, the By-Laws and the Rules and Regulations of the Association, the Alabama Condominium Ownership Act of 1973 and the Alabama Uniform Condominium Act of 1991, as they may be amended from time to time, are accepted and ratified by such owner, tenant and occupant or holder of an interest or lien, 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 security interest or lease thereof. In the event of a conflict in any of the provisions of any of the Condominium's Governing Documents, the documents shall govern or control in the following order of preference: (1) the Acts, (2) the Declaration, (3) the Articles of Incorporation, (4) the By-Laws and (5) the Rules and Regulations of the Association.

**ARTICLE V  
COMMON ELEMENTS**

5.01 *Ownership.* Each Unit Owner shall be entitled to the Fractional Ownership in the Common Elements allocated to the respective Unit as set forth in Exhibit "A". The ownership interests in the Common Elements shall be an undivided interest, and except as provided in the Acts and this Declaration, shall remain undivided. No Unit Owner shall bring any action for partition or division of the Common Elements. The ownership interest in the Common Elements shall not be conveyed, transferred, encumbered or otherwise affected separate from the ownership of the Unit, and any agreement to the contrary shall be void. 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.

5.02 *Use.* Each Unit Owner shall have the right to use the Common Elements (except any portions of the Property subject to leases made or assigned to the Board or restricted to the exclusive use of and as an appurtenance to another unit) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the respective Unit by such Unit Owner. The right to use the Common Elements shall be subject to, and governed by, the Provisions of the



Acts, Declaration, By-Laws, and the rules and regulations of the Association. In addition, the Association shall have the authority to lease, grant concessions, or grant easements with respect to parts of the Common Elements subject to the provisions of the Declaration and By-Laws.

5.03 Share of Expenses. Each Unit Owner shall be assess and liable for a proportionate share of the Common Expenses, and the Proportionate share of Common Expenses shall be the same ratio as his fractional ownership in the Common Elements. Payment of Common Expenses shall be in such amounts and at such times as determined in the By-Laws. No Unit Owner shall be exempt from payment of his proportionate share of the Common Expenses by waiver or non-use or non-enjoyment of the Common Elements or by abandonment of his Unit. Common Expenses shall include, but shall not necessarily be limited to, expenditures made or liabilities incurred by the Association, together with payments or obligations to reserve

5.04 Late Payment of Assessments. Assessments for Common Expenses and Limited Common Expenses, and installments thereon, paid on or before ten (10) days after the date when due shall bear no interest, but all sums not paid on or before ten (10) days after the date when due shall bear such late charges, penalties, interest and other costs and expenses, at a rate set by the Board of Directors, but not to exceed the maximum legal rate, together with all expenses, including Attorney's fees incurred by the Association in any undertaking to collect such unpaid Assessments and expenses. All payments upon the account shall be first applied to such late charges, penalties, interests and other costs and expenses, including Attorney's fees, and then to the Assessment payment due. The Association may, in the manner provided for in this Declaration and the By-Laws, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws and Rules and Regulations of the Association.

5.05 Liens for Assessments. The Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements and upon the goods, furniture and effects belonging to the Unit Owner and located in such Unit, which lien shall secure, and does secure, the moneys due for all Assessments now or hereafter levied or subject to being levied against

the Unit Owner which lien shall also secure such late charges, penalties and 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 reasonable attorney's fees, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant undivided interest in the Common Elements. The lien herein granted to the Association shall be effective from and after the time of recording of this Declaration in the Office of the Judge of Probate of Baldwin County, Alabama, and no further recordation of any claim of lien under this Section is required. The said lien for non-payment of assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except only (1) tax lien on the unit in favor of the State, County, municipality or any special district, and (2) all sums unpaid on a first mortgage of record.

5.06 Set-Off of Rents for Payment of Debt. Since the debt is subject to an automatic lien, it is due absolutely and without contingency and is therefore subject to set-off on behalf of the Association and, therefor, the Board of Directors, in its sole discretion, and, if it believes it is necessary to obtain satisfaction of the Unit Owner's debt, may attach any and all rental, lease and any other use of premises payments which are derived from the occupancy of the delinquent unit owner's unit by individuals or entities other than the unit owner. The Board shall serve notice on the Unit Owner at least five (5) days before the Board can attach said rental, lease or any other use of premises payments and make demand for said monies and direct payment to be made to the Association.

5.07 Priority of Lien. The Association shall have a lien for nonpayment of Common Expenses and Limited Common Expenses as is provided by the Act. In any suit for the foreclosure of a lien for Assessments, the Association shall be entitled to rental from the Unit Owner from the date on which the payment of any Assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said Unit, without notice to the Unit Owner. The rental required to be paid shall be equal to the rental charged on comparable type of dwelling Units in the area in which the Condominium is located. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by

the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at a rate set by the Board of the Association but in no case shall said interest exceed the maximum legal rate on any such advances made for such purposes. All Persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien granted to the Association. A lien for Common Expenses shall not be affected by any sale or transfer of a Unit, except as herein provided. A sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall extinguish a subordinate lien for Assessments which became payable prior to such sale or transfer; provided, however, a sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall not extinguish the lien of the Association to the extent of the Common Expense Assessments based on the periodic budget adopted by the Association pursuant to the Act which would have become due in the absence of acceleration during the six (6) months immediately preceding the institution of an action to enforce the lien. However, any such delinquent Assessments, which were extinguished pursuant to the foregoing provision, may be reallocated and assessed to all of the Units as a Common Expense. Any such sale or transfer pursuant to foreclosure does not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any Assessments made thereafter.

5.08 Disposition of Surplus. Each Unit shall carry with it a proportionate share of Common Surplus and the proportionate share of Common Surplus shall be the same ratio as that Unit Owner's percentage ownership of the Common Elements; or in the alternative, such surplus, or any portion thereof, may be added to a reserve fund for maintenance, repair and replacement of the Common Elements at the sole discretion of the Board of Directors.

5.09 Rental Pending Foreclosure. In any suit for the foreclosure of said lien, the Association shall be entitled to rental from the owner of any unit from the date on which the payment of any assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said unit without notice to the owner of such unit. The rental required to be

paid shall be equal to the rental charged on comparable types of dwelling units in Gulf Shores, Alabama. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of ten percent (10%) per annum on any such advances made for such purposes. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien granted to the Association.

## **ARTICLE VI THE ASSOCIATION**

6.01 *Name.* The name of the Association of the owners of the units of Gulf House, a Condominium is the GULF HOUSE ASSOCIATION, INC.

6.02 *Powers and Duties.* The operation and administration of the Condominium shall be by the Association, pursuant to the Acts. The Association shall be a not for profit corporation and shall be responsible for the maintenance, repair, replacement, administration, and operation of the Property. The Association shall have all the powers and duties set forth in the Acts, as well as all the powers and duties granted to or imposed on it under the By-Laws, this Declaration and other Condominium documents as they may be amended from time to time. The Association shall have the power to purchase a Unit of the Condominium. Without limiting the foregoing, the Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other person or persons. Also, without limiting any of the foregoing, the Association shall have a reasonable right of entry upon any Unit to make emergency repairs and to do other work reasonable necessary for the proper maintenance and operation of the project and further, shall have the right to grant permits, licenses, and easements over the common areas for utilities, proper maintenance or operation of the project. The Board of Directors shall have the authority and the duty to levy and enforce the collection of general and specific assessments

for common expenses, and is further authorized to provide adequate remedies for failure to pay such assessments.

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 exclusive authority and 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 improvement, and mechanical, electrical and plumbing elements serving an improvement or a building as distinguished from mechanical elements serving only a Unit; and with reference to any and all other matters in which all the Unit Owners of the Condominium have a common interest.

6.03 Membership. Each Unit Owner shall be a member of the Association so long as he is a Unit Owner. A Unit Owner's membership shall automatically terminate when he ceases to be a Unit Owner and by the delivery to the Association of a certified copy of the instrument establishing the change in ownership. The membership of a Unit Owner cannot be assigned or transferred in any manner except as an appurtenance to his Unit.

6.04 Voting Rights. Each unit shall be entitled to one (1) vote, the numerical value of which shall be the percentage assigned to the unit of which the member is the owner. The vote for a unit shall be cast by the owner thereof, or, in the case of a corporate owner, by the officer or employee thereof designated as the voting representative of such unit, or, in the case of a multiple owner, by the voting representative of such unit, all as provided in the By-Laws. Owners of more than one (1) unit shall be entitled to a vote for each unit owned. However, should the Association be a Unit Owner, it shall not have the voting right for that unit. The aggregate number of votes for all members of the Association shall be thirty-six (36).

6.05 Suspension of Member's Rights. No member may vote at any meeting of the General Membership nor may a Member be elected to or serve on the Board of Directors nor may any Member, their guests or renters, use the common area amenities, if payment by such Member of any financial obligation

to the Association is delinquent more than sixty (60) days and the amount necessary to bring the account current has not been paid at the time of such meeting or election or intention to use the common area amenities.

6.06 By-Laws. The Association and its members shall be governed by the By-Laws, as amended.

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

6.08 Board of Directors. The affairs of the Association shall be conducted by a Board of Directors which shall consist of such number not less than three (3) nor more than five (5) as shall from time to time be determined and fixed by a vote of a majority of the voting rights present at any annual meeting of the Members. The Directors shall be elected in accordance with the By-Laws, as amended. Each Director shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed, as provided for in the By-Laws, as amended. No Director shall serve, in any capacity, on the Board of Directors, use the common area amenities or vote at any meeting or election, if payment by such Director of any financial obligation to the Association is delinquent more than sixty (60) days.

6.09 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 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 in 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.

6.10 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 (e.g., hidden, concealed or dormant) condition of the Property to be maintained and repaired by the Association, nor for injury or damage caused by the elements, or other Owners or Persons.

6.11 Contracts. Any professional management contract entered into by the Association must contain provisions that the contract may be terminated without penalty for any or without any cause and upon not more than ninety (90) days notice to the other party by the Association at any time. This provision shall not apply to contracts for essential utility services.

6.12 Availability of Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act. The Association shall make reasonably available in the county where the Condominium is located for examination by Unit Owners, prospective purchasers, first Mortgagees and insurers of the first Mortgagees of any Unit, or their authorized agents, current copies of the Declaration, By-Laws, Rules and Regulations and other books, records, financial statements and the most recent annual financial statement of the Association, provided, however, that no individual Unit Owner's personal, financial or accounting records shall be examined without the written permission of the individual Owner. Reasonably available shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

6.13 Reserves for Replacements. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of the Common Elements. The fund shall be maintained out of regular Assessments for Common Expenses.

6.14 Assignment of Future Income. The Association may assign its right(s) to future income, including the right to receive common expense assessments.

6.15 Emergency Borrowing. The Board of Directors may, from time to time, borrow at their discretion and upon a two-thirds (2/3) vote of the Directors and without the approval of the unit owners, any sum, not to exceed the total amount of the deductible limits of the Association's property loss insurance coverage, necessary and required in order to meet the financial needs of the Association during times of emergency and to assess the unit owners without the approval of the unit owners for the repayment of said borrowed funds. In the event that two-thirds (2/3) of the Directors fail to approve said borrowing, said borrowing may be approved by the written approval of the unit owners representing at least a majority vote of the total votes which are allocated in the Association. For the purposes of this subsection, "times of emergency" shall be defined as any casualty caused by any named storm as designated by the National Hurricane Center (NOAA)/World Meteorological Organization and/or any other insurable event including, but not limited to, any casualty caused by fire.

**PROPOSED**

**ARTICLE VII  
OCCUPANCY, USE, AND LEASING RESTRICTIONS**

7.01 Residential Use. Each Unit or any two or more adjoining Units used together shall be used only as a residence and shall be occupied only by the resident and his family and their guests as a residence and for no other purpose. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit an Occupant from (1) maintaining his personal professional library, (2) keeping his personal business or professional records or accounts, or (3) handling telephone calls or correspondence relating to his personal business or profession. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions. No unit may be divided or subdivided into a smaller unit without first amending this Declaration to allow therefor.



7.02 Use of Common Elements. 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 approval of the Board of Directors.

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

7.04 Lawful Use. No 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 that require maintenance, modification, or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the Condominium Property concerned. The Condominium Property shall not be used for any commercial purposes other than leasing purposes as set forth in Section 7.05.

7.05 Leases. Units may be leased by the Unit Owners, provided, however; (1) that such lease and the rights of any tenant thereunder is hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Units and to enforce the same directly against such tenant or other occupant by the exercise of such

remedies as the Board deems appropriate, including eviction; and (2) only entire units may be rented and occupied only by the proposed tenants consisting of not more than two (2) persons per bedroom. The Unit Owner shall furnish to the leasing or renting party copies of the Rules and Regulations of the Association. It is expressly understood that the Owner or Owners shall at all times remain primarily liable to the Association for all common expenses and all assessments or other charges made against the leased or rented unit and the liability of the Unit Owner under this Declaration shall continue.

Units may be leased or rented by the Owners thereof without approval of the Board of Directors for any period up to one (1) year; provided, however, there shall be no extensions or renewals of any such lease to the same lessee beyond the one (1) year period without compliance by the owners with the provisions of this section; and provided further, that both the owners and other parties to the lease or rental agreement shall at all times be subject to and bound by all of the provisions of this Declaration, the By-Laws and the Rules and Regulations of the Association, copies of which shall be furnished to the leasing or renting parties by the Owners.

Unit owners intending to make a bona fide lease of their units for a term of more than one (1) year, shall give to the Board of Directors notice of such intention together with the names and addresses of the intended lessees and such other information concerning the intended lessees as the Board may reasonably require, and an executed copy of the proposed lease. Within 30 days after receipt of such notice and information, the Board must either approve or disapprove the proposed transaction. If approved, the approval shall be made in writing by the president or secretary and shall be delivered to the owners with a copy for the lessees. If not approved, the owners shall be advised of the disapproval in writing and the lease shall not be made.

The above shall in no way restrict the leasing of units owned by a lender who acquired such unit by virtue of a default in a first mortgage, a foreclosing proceeding or any deed or other arrangement in lieu of foreclosure.

Each Unit Owner who has or who shall hereafter lease his unit hereby irrevocably empowers and authorizes the Association and/or its managing

agent to enforce the rules and regulations of the Condominium Association, and to terminate the lease of and evict any tenant who fails to comply with said rules or who provides other sufficient cause for termination of the lease and eviction in accordance with the laws of the State of Alabama, this Declaration, the By-Laws, Rules and Regulations of the Association, or any contract for lease. The Association, the Board of Directors or its managing agent shall not become liable to any unit owner, sub-lessor or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this Article.

7.06 Right to First Refusal. The right of a Unit Owner to sell, transfer, or otherwise convey his Unit shall not be subject to any right of first refusal or similar refusal.

7.07 Restrictions on Mortgaging Units. Anything construed in any of the condominium documents notwithstanding, there shall be no restrictions of a Unit Owner's right to mortgage his unit.

**PROPOSED**

7.08 Miscellaneous Restrictions.

- A. No waste shall be committed in or on the Common Elements.
- B. Except as expressly provided in this Declaration, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.
- C. No parking space, driveway or other area shall be used for the storage of any boat, boat trailer, house trailer, camper, RV, or any other sort of towed vehicle, commercial trailer or object. No gas or charcoal barbecue grills are permitted for use on or under any porch or walkway nor can these items be stored inside any areas of the building structure.
- D. 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.

E. Nothing shall be done or kept in any Unit or in the Common Element which will increase the rate of insurance for the property without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in or on the Common Elements which will result in the cancellation of insurance of any Unit or any part of the Common Elements or which will be in violation of any law.

F. No structure of a temporary nature, such as but not necessarily limited to a trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Property at any time temporarily or permanently; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the Buildings or any portion thereof.

G. Outdoor drying of clothes, bedding, or similar items is not permitted.

H. Parking spaces shall be allocated on the basis of one (1) reserved parking space per Unit. The reservation shall be indicated by painted numerals on the reserved space designating the Unit for which space is reserved. All un-designated space shall be for the common parking of any Unit Owner and their guests. Parking space may be reallocated by the Board of Directors, from time to time, in the manner provided for in the amending of the By-Laws. No such allocation shall vest ownership interest in any Unit Owner.

I. Motorcycles, motor bikes, motor scooters, or other similar vehicles shall not be operated within the Property except for the purpose of transportation, it being intended that said vehicles shall not be operated within the Property so as to annoy or disturb persons or endanger persons or property.

J. Except within individual Units, no planting, transplanting, or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the property, except as approved by the Board.

K. Animals or pets of any kind shall not be kept in any Unit or on or in any area of the Condominium Property.

L. The storage areas on the Property, except those inside the Units, shall be part of the Common Elements and are subject to such Rules and Regulations as the Board of Directors may prescribe.

M. 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 Condominium Property concerned.

N. Neither the Board or the Association shall take or permit to be taken any action that unlawfully discriminates against one or more Unit Owners.

# PROPOSED

**ARTICLE VIII  
EASEMENTS**

Each of the following easements are reserved to the Association for the benefit of its Members, their guests, and lessees, is a covenant running with the land, may not be amended or revoked, and shall survive the termination of the Condominium:

8.01 Utilities. Utility easements are reserved throughout the Condominium Property as may be required for utility services in order to adequately serve the condominium, provided, however, such easement to a unit shall only be in accordance with the recorded plans and specifications for the buildings. 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 of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other units and located

in such unit. The Board of Directors shall have a right of access to each unit to inspect same, to remove violations therefrom, and to maintain, repair or replace the common elements contained therein or elsewhere in any building and the Association shall retain a key to each unit to accomplish the aforesaid.

8.02 Ingress and Egress. Each Unit shall have an easement for pedestrian traffic over, through, and across sidewalks, paths, walks, lobbies, elevators, stairways, walkways and lanes, and like passageways, as the same may from time to time exist on the Common Elements: and for vehicular traffic over, through, and across such portions of the Common Elements as from time to time may be paved and intended for such purposes, but the same shall not give or create in any person the right to park on any portion of the Condominium Property not designated as a parking areas. This easement shall be nonexclusive and shall include the right of ingress and egress to a public street or highway upon and over Common Elements providing such access and as shown on the Plans. Parking on the grassy areas of the Condominium Property is strictly prohibited.

8.03 Drainage. Each Unit shall have an easement as may be required to drain the Condominium Property adequately.

8.04 Support. Each Unit shall have an easement of support and necessity and shall be subject to an easement of support and of necessity, and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

8.05 Encroachment. If any portion of the Common Elements encroaches upon any Unit, or if any Unit 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 shall exist so long as such building stands. In any event any building, any Unit, any adjoining Unit, or any adjoining Common Elements, 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 another Unit or upon any portion of this 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.

**ARTICLE IX  
MAINTENANCE, ALTERATION, AND IMPROVEMENTS**

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

9.01 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, repair, replace, clean and sanitize the common elements.

iv. To maintain and replace all balconies and balcony railings.

v. To repair all incidental damage caused to a unit in the performance of any of the foregoing work.

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

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

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

iii. To maintain the surfacing materials within the unit. All windows forming part of a perimeter wall of a Unit shall be cleaned and washed at the expense of the Unit Owner.

iv. To maintain, repair and replace all 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 the unit, whether or not located within the boundaries of the unit.

v. To maintain, repair and replace the interior appurtenances of the unit, including but not limited to the floor coverings, wall coverings, window shades and screens, draperies, furniture, furnishings, light fixtures, and all appliances and private elements 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 or the Association shall make any alterations in the portions of a unit or building which are not to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do any work which would jeopardize the safety or soundness of the building, or impair any easement, without first obtaining approval in writing of the owners of all other units in the building concerned and the approval of the Board of Directors of the Association.

9.02 Common Elements.

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

**PROPOSED**

B. Alteration of Project. Construction of any additional building or structural alterations or additions to any structure, different in any material respect from the original plats and plans, and different from the maintenance, repair or reconstruction after casualty of any common element, shall be undertaken by the Association only pursuant to an amendment to this Declaration, duly executed by or pursuant to the vote of not less than seventy-five percent (75%) of the Unit Owners and accompanied by the written consent of the record owners of liens affected thereby, and in accordance with completed 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 the plans of the condominium, as so altered, certified "as built" by a licensed or registered engineer or architect.

## **ARTICLE X INSURANCE**

10.01 Obligation to Purchase. The Association shall maintain insurance upon the Condominium Property, to the extent reasonably available, as provided for in the Act and as follows. If the insurance which is required to be maintained is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

10.02 Specified Insurance. Insurance, other than title insurance, that shall be carried on the Property and the property of the Unit Owners shall be governed by the provisions of this Article. Insurance coverage maintained by the Association pursuant to these provisions is hereafter referred to as "Specified Insurance." Anything to the contrary notwithstanding, all insurance coverages shall be consistent with local, state and federal insurance laws.

10.03 Location of Policies. The Association shall retain the original of all insurance policies for Specified Insurance in a place of safekeeping and shall provide copies of such policies to Institutional Mortgagees requesting such copies.

10.04 Notice of Change in Insurance Coverage. No cancellation or substantial change in the Specified Insurance provisions, including changes in the amount of coverage, the risks covered, the ratio to value of coverage, or endorsements or other changes in the coverage provisions, may be effected by the Association without at least ten (10) days written notice to the Association or insurance trustee and each Mortgage Holder named in the mortgage clause, and each holder of a first mortgage on an individual unit.

10.05 Qualification of Insurance Company. Each company issuing Specified Insurance must be specifically authorized by the laws of the State of Alabama to transact such business as is necessary to provide the Specified Insurance.

10.06 *Provisions.* Insurance coverage as specified and required under this Article, shall, in substance and effect:

A. Provide that the policy will be primary, even if unit owner has other insurance that covers the same loss, and further provided that the liability of the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of any insurance obtained by or for any Unit 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 of warranty or condition or any other act or neglect by the Association or any Unit Owner or any other persons under either of them.

C. Provide that such policy may not be canceled or substantially modified (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, each holder of a first mortgage on an individual unit, and every other person in interest who shall have requested such notice of the insurer.

D. Provide that each Unit Owner is an insured person under the policy with respect to the liability arising out of his interest in the common elements or membership in the Association.

E. Provide that no act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

F. Contain a waiver by the insurer of any right of subrogation to any right of the Association, or either against the Unit Owner or member of his household or lessee of any Unit; and

G. 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 provisions invalidating such mortgagee clause by reason of the failure of the mortgagee to notify that insurer of any hazardous use of vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

H. Any insurance trust agreement will be recognized.

10.07 Named Insured. The named insured on all policies of Specified Insurance shall be the Association, for the use and benefit of the individual owners in the percentages established by the Declaration. Any "loss payable" clause shall show the Association or other insurance trustee as a trustee for each Unit Owner and the holder of each Unit's mortgage.

10.08 Property Damage Insurance. The Association shall maintain forms of insurance coverage which are for the benefit of the Unit Owners; however, said insurance coverage need not be an "All-In-One" policy described in Section 35-8A-313 of the Alabama Uniform Condominium Act of 1991 and/or any provision of the Alabama Condominium Ownership Act of 1973. The premium for such insurance shall be assessed to the Owners of Gulf House, a Condominium on a pro rata basis and shall constitute a part of each Unit Owner's liability for common expense. The Association shall advise each Unit Owner of the type and amount of insurance coverage maintained by the Association. An insurance committee or trustee may be appointed by the Association and charged with responsibility of the proceeds of any such insurance. No Unit Owner or other person or entity having an insurable risk in Gulf House, a Condominium shall be precluded from maintaining additional insurance, individually, at his or its own expense and for his or its own

exclusive benefit, against any risk, whether or not covered by insurance maintained by the Association. Insurance maintained by the Association shall include but shall not be limited to coverage of the entire Condominium property against loss by fire, wind storm, rain storm, flood and other such hazards as to which the Association may desire insurance coverage, and liability insurance against any risk, such as death, personal injury, or damage to property, faced by Unit Owners or by the Association by virtue of their individual common ownership in or control over the Condominium property, including but not limited to the acts and omissions of the Association, its agents, servants and employees.

10.09 Public Liability Insurance. The Board of Directors of the Association shall secure Public Liability insurance in such amounts and with such coverage as shall be required by it.

10.10 Flood Insurance. If any part of the project shall be deemed to be in a Special Flood Hazard Area, as defined by the Federal Emergency Management Agency, the Association shall maintain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a Common Expense. The policy shall cover the buildings and any other property within the designated hazard area. The amount of insurance should be at least equal to the lesser of: (1) 100% of the current replacement cost of all buildings and other insurable property located in the flood hazard area; or (2) the maximum coverage available for the property under the National Flood Insurance Program. The policy shall be in a form which meets the criterion set forth in the most current guidelines issued on the subject by the Federal Government.

10.11 Personnel Coverages. Should the Association employ personnel, all coverages required by law, including worker's compensation, shall be obtained so as to meet the requirements of the law.

10.12 Fidelity Bonds. The Board shall secure and maintain fidelity bonds as it may deem necessary. Such fidelity bonds shall have their premiums paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall also be covered by its own fidelity bond

which is equal or exceeds the coverage of that bond obtained by the Association.

10.13 Other Coverages. The Association shall obtain all other insurance required by the Act. The Board shall secure other boiler and machinery insurance, directors' and officers' liability insurance, and plate glass insurance as it deems necessary and shall also have authority to obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable. The premiums for such insurance shall be a Common Expense.

10.14 Unit Owner's Individual Responsibilities. A Unit Owner shall be liable for any claim, damage, or judgement entered as a result of the use or operation of his Unit caused by his own conduct. Each Unit Owner shall be responsible for obtaining his own insurance on the contents of his own Unit as well as additions and improvements thereto, decorations, furnishings, and personal property therein, and personal property stored elsewhere on the property.

10.15 Premiums. Premiums for insurance maintained by the Association shall be paid by the Association as a Common Expense.

10.16 Association as Agent. All insurance policies purchased by the Association shall provide that all proceeds covering property losses shall be paid to the Association, for the benefit of the Association and the Unit Owners and their Mortgagees as their interest may appear and as contemplated herein. The Association is hereby irrevocably appointed agent with full power of substitution, for each Unit Owner and for each owner of any other insured interest in the Property. The Association shall have power to adjust all claims arising under insurance policies purchased by the Association; to bring suit thereon in its name and/or in the name of other insured; to deliver releases on payment of claims; to compromise and settle such claims; and otherwise to exercise all of the rights, powers and privileges of the Association and each Unit Owner or any other holder of an insured interest in the Property under such insurance policies.

10.17 Share of Proceeds. The Association shall receive such insurance proceeds as are paid to it and shall hold the same in trust for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

A. Common Elements. An undivided share of the proceeds on account of damage to Common Elements shall be held for each Unit Owner, with such shares' portion of the total proceeds being the same percentage as the share of the Common Elements appurtenant to his Unit as set forth in Exhibit "A".

B. Units. Except as provided elsewhere in this Declaration, proceeds on account of damage to Units shall be held in the following undivided shares:

i. When the Condominium Property is to be restored, the proceeds shall be held for the Unit Owners of damaged Units with the share in the total proceeds being in the proportion that the cost of repairing the damage suffered by such Unit Owners bears to the total cost of repair, which costs shall be determined by the Board.

ii. When the Condominium Property is not to be restored, the proceeds shall be held for the Unit Owners in undivided shares that are the same as their respective shares of the Common Elements as set forth in Exhibit "A".

C. Mortgagees. In the event a mortgagee endorsement has been issued with respect to a Unit, the share of the Owner of that Unit shall be held in trust for the mortgagee and the Unit Owner as their interest may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination whether or not any damaged property shall be reconstructed or repaired except as may be specifically provided to the contrary elsewhere in this Declaration.

10.18 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners in the following manner:

A. Reconstruction or Repair. First, if the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs, if in excess of \$3,000.00, shall be distributed to the beneficial owners, with remittances to Unit Owners and mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by any such mortgagee.

B. Failure to Reconstruct or Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds, if in excess of \$3,000.00 per unit, shall be distributed to the beneficial owners, with remittances to Unit Owners and their mortgagee being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by any such mortgagee.

**PROPOSED**

10.19 Individual Insurance. Nothing contained herein shall be construed to prevent a Unit Owner from obtaining insurance for his own benefit.

## **ARTICLE XI RECONSTRUCTION AND REPAIR**

11.01 Determination to Reconstruct or Repair. Any portion of the Condominium for which insurance is required under this Declaration for which it is damaged or destroyed must be repaired or replaced promptly by the Association unless:

A. The Condominium is terminated in accordance with the Acts;

B. Repair or replacement would be illegal under any state or local statute or ordinance covering health or safety; or



C. More than two-thirds (2/3) of the total number of units are substantially damaged or destroyed by fire or other casualty and members entitled to cast at least seventy-five (75%) percent of the votes in the Association do not within 60 days from the date of such casualty make request in writing to the Board of Directors to proceed with repair or reconstruction, then and in that event, upon the vote of fifty-one (51%) percent of the unit owners in favor of removal, the property shall be subject to an action for removal from the condominium form of ownership and for partition at the suit of the of the owner of any unit, in which event the net proceeds of any insurance paid to the Insurance Trustee shall be considered as one fund and shall be distributed among the owners of all the units, each owner's share in said fund being determined in the manner set forth in Exhibit "A". Any distribution to the owner of a unit upon which there is a mortgage constituting a first lien shall be made to such owner and his mortgagee jointly.

11.02 Plans. Any reconstruction or repair must be substantially in accordance with the Act and in accordance with the Plans for the original improvements or as the Condominium Property was last constructed; or if not, then according to Plans approved by the Board of Directors of the Association which approval shall not be unreasonably withheld.

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

11.04 Estimate of Cost. Immediately after a casualty causing damage to the Condominium 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.

11.05 Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair of the Unit 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 any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the Unit Owners who own the damaged Unit, and against all Unit Owners in the case of damage to common areas and facilities in sufficient amounts to provide funds for the payment of such costs. Such Assessments against Unit Owners for reconstruction and/or repair of damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such Assessments for reconstruction and/or repair of damage to common areas and facilities shall be in proportion to the Owner's share in the Common Elements. Assessments for reconstruction and repair may be collected, and the collection enforced, in the same manner as provided for Assessments elsewhere herein.

11.06 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 Association as Insurance Trustee and funds collected by the Association from Assessment against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the following manner and order:

A. Disbursement. The construction fund shall be disbursed in payment of such costs on the order and in the manner provided by the Board of the Association.

B. Unit Owner. If there is a balance of insurance proceeds after the payment of the cost of reconstruction and repair that are the responsibility of the Association, this balance shall be distributed to Unit Owners of damaged Units who are responsible for the reconstruction and repair of the damaged portions of their Units. The distribution to each Unit Owner shall be made in the proportion that the estimated costs of reconstruction and repair of such damage to his Unit bears to the total of such estimated costs in all damaged Units. However, no Unit Owner shall be paid an amount in excess of such estimated cost for his Unit. If

there is a first Mortgagee, the distribution shall be paid to the Unit Owner and to the first Mortgagee jointly.

C. Surplus. It shall be presumed that the first moneys distributed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be retained by the Association and shall be solely utilized for the payment of the common expenses of the Association.

## **ARTICLE XII TERMINATION**

The termination of the Condominium may be effected in accordance with the provisions of the Acts and by the agreement of Unit Owners of units to which eighty percent (80%) of the votes in the Association are allocated and, in the case of termination for reasons other than substantial destruction or condemnation of the property, by eligible mortgage holders (as defined in By-Laws and this Declaration) that represent at least fifty one percent (51%) of the votes of the mortgaged units. The agreement shall be evidenced by a written instrument executed in the manner required for conveyance of land, and recorded in the public records of Baldwin County, Alabama. After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares equal to the fractional undivided interest in the common elements assigned to each Unit.

## **ARTICLE XIII EMINENT DOMAIN/CONDEMNATION**

13.01 Determination Whether to Continue Condominium. The taking of a portion of a Unit or of the Common elements by eminent domain shall be deemed to be a casualty and the determination as to whether the Condominium will be reconstructed or repaired or continued after condemnation will be determined in the manner provided for in the Act and

under the provisions of this Declaration pertaining to reconstruction and repair after casualty losses.

13.02 Proceeds. The proceeds and awards for such taking shall be deemed proceeds from insurance on account of the casualty and shall be deposited with the Association as Insurance Trustee. Even though the awards may be payable to a Unit Owner, the Unit Owner shall deposit the awards with the Association as Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, an Assessment shall be made against a defaulting Unit Owner in the amount of his award, or the amount of such award shall be set off against the sums hereafter made payable to such Unit Owner.

13.03 Disbursement of Funds. If the condominium is terminated after condemnation, the proceeds of the condemnation awards will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in this Declaration for the distribution of insurance proceeds if the Condominium is terminated after damage to the Common Elements. If the Condominium is not terminated after condemnation, the size of the Building will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of said awards shall be disbursed in the manner provided for disbursements of funds by the Association after damage to the Common Elements.

13.04 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

A. Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award and if the Owner of the Unit does not within a reasonable period of time provide the additional funds required for restoration, such additional funds may, in the discretion of the Board of Directors, be expended for restoration by the foreclosure of the Association's lien for delinquent Assessments, Special Assessments, or both where the bid of the Association does not

exceed the amount found due the Association, or to be acquired by the Association in lieu of foreclosure of such lien if the consideration therefor does not exceed the cancellation of such lien. In any event, the Board of Directors or a designee thereof, acting on behalf of the Association, may only purchase a Condominium Parcel in accordance with this Article, or as the result of a sale pursuant to the foreclosure of (i) a lien on the condominium Parcel for unpaid taxes; (ii) the lien of a mortgage; (iii) the lien for unpaid Assessments, Special Assessments or both; or (iv) any other judgment lien or lien attaching to such Condominium Parcel by operation of law.

#### **ARTICLE XIV NOTICE OF LIEN OR SUIT**

14.01 Notice of Lien. A Unit Owner shall give notice in writing to the Secretary of the Association of every lien on his unit, other than liens for Mortgages, taxes, and special assessments, within five (5) days after the Unit Owner's receipt of notice thereof.

14.02 Notice of Suit. A Unit Owner shall give notice in writing to the Secretary of the Association of every suit or other proceeding that may affect the title to his unit, with such notice to be given within five (5) days after the Unit Owner obtains knowledge thereof.

14.03 Failure to Comply. Failure to comply with this section will not affect the validity of any judicial proceeding.

#### **ARTICLE XV RULES AND REGULATIONS**

15.01 Compliance. Each Unit Owner and the Association shall be governed by and shall comply with the terms of the Condominium documents and the rules and regulations applicable to the Condominium Property. Ownership of a Unit subjects the Unit Owner to compliance with provisions of the Declaration, the Articles, the By-Laws, the Rules and Regulations of the Association, and any contract with the Association as a party, as well as to any

amendments to any of the foregoing. Failure of the Unit Owner to comply therewith shall entitle the Association or other Unit Owners to an action for damages or injunctive relief, or both, in addition to other remedies provided in the Condominium Documents and the Acts.

15.02 Enforcement. The Association, through the Board of Directors, is hereby empowered to enforce the Condominium Documents and all rules and regulations of the Association by such means as are provided by the laws of the State of Alabama, including the imposition of reasonable fines (after reasonable notice and opportunity to be heard) from time to time as set forth in the By-Laws. In the event a Unit Owner fails to maintain his Unit in the manner required in the Condominium documents and any rules and regulations of the Association, the Association, through the Board of Directors, shall have the right to assess the Unit Owner and the Unit for the sums necessary to do the work required to effect compliance and to collect, and enforce the collection of a Special Assessment therefore as provided in this Declaration. In addition, the Association shall have the right, for itself and its employees and agents, to enter such Owner's Unit and perform the necessary work to effect compliance.

15.03 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or by that of any member of his family, his lessees, or his or their guests, invitees, employees, or agents, 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 and casualty insurance rates occasioned by the use, misuse, occupancy or abandonment of a Unit or the Common Elements. The liability for such increases in insurance rates shall equal five times the first resulting increase in the annual premium rate for such insurance.

15.04 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction, or other provision of the Condominium Act, the Condominium documents, or any rules and regulations adopted pursuant thereto shall not constitute a waiver of the right to thereafter do so.

**ARTICLE XVI**  
**GENERAL PROVISIONS PERTAINING TO MORTGAGES**

16.01 *Lender's Notices*. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

- A. Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage.
- B. Any 60-day delinquency in the payment of Assessments or charges owned by the Owner of any Unit on which it holds the mortgage.
- C. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

Additionally, the Association agrees to provide to any holder of a first mortgage on a unit in the Condominium upon request the following rights:

- A. the right to inspect the books and records of the Association during normal business hours; and
- B. the right to receive a copy of an annual audited financial statement (if performed) of the Association within 10 days following the receipt of such statement for the prior year.

16.02 *Blanket Mortgages*. The entire Condominium Property, or some or all of the Units included therein, may be subjected to a single or blanket mortgage constituting a first lien thereon created by a recordable instrument executed by all of the Owners of the Property or Units covered thereby. Any Unit included under the lien of such mortgage may be sold or otherwise conveyed or transferred subject thereto. Any such mortgage shall provide a method whereby any Unit Owner may obtain a release of his Unit from the lien of such mortgage and a satisfaction and discharge in recordable form upon payment to the holder of the mortgage of a sum equal to the reasonable

proportionate share attributable to his Unit of the then outstanding balance of unpaid principal and accrued interest, and any other charges then due and unpaid. The proportionate share of the mortgage required to be paid for release shall be determined by provisions pertaining thereto stated in the mortgage, or, if the mortgage contains no such provisions, then according to the proportionate share of the common elements of the Condominium attributable to such Unit or Units.

**ARTICLE XVII  
COVENANT AGAINST PARTITION**

There shall be no judicial or other partition of the Condominium Property or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any such partition unless the Property has been removed from the provisions of the Acts.

**ARTICLE XVIII  
AMENDMENT OF THE DECLARATION**

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

18.02 Adoption. 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 twenty percent (20%) 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 of such bodies, it must then be approved by the other to become effective. Directors and members not present at the meeting considering the amendment may express their approval or disapproval in writing provided such approval or disapproval is delivered to the Secretary at or prior to the meeting. Such approvals must not be by less than a majority of the Directors and by the affirmative vote of the unit owners of units to which at least two-thirds (2/3) of the votes in the Association have been allocated.

18.03 Eligible Mortgagee's Implied Consent. Implied consent and approval may be assumed when an eligible mortgagee fails to submit a



response to any written proposal for an amendment with thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, return receipt requested.

18.04 *Prohibited Amendments*. No amendment that is in conflict with the Acts shall be adopted. No amendment may change, alter or eliminate any private individual unit or effect any change in the percentage of the ownership of the common elements attributable to that unit, unless all of the owners and record mortgage holders of such unit shall agreed, in writing, to such amendment.

18.05 *Recording*. Any amendment shall become effective when recorded in the Office of the Judge of Probate, Baldwin County, Alabama, in accordance with the Acts.

**ARTICLE XIX  
MISCELLANEOUS**

19.01 *Intent*. In the event that this Declaration shall fail in any respect to comply with the Acts, then the common law as the same exists on the filing date of this Declaration shall control, and the condominium hereby created shall be governed in accordance with the several laws of the State of Alabama, the By-Laws, the Articles, and all other instruments and exhibits attached to or made a part of this Declaration.

19.02 *Covenants, Conditions and Restrictions*. All provisions of the Condominium Documents shall, to the extent applicable and unless otherwise expressly therein provide to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein; and all of the provisions of the Condominium Documents shall be binding on and inure to the benefit of any owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, successors, and assigns, but said provisions are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All Unit Owners and Occupants shall be subject to and shall

comply with the provisions of the Condominium documents and any rules and regulations promulgated thereunder.

19.03 Severability. The invalidity in whole or in part of any covenant or restriction or any paragraph, subparagraph, sentence, clause, phrase, word, or other provision of this Declaration, the Articles, the By-Laws, any rules and regulations of the Association promulgated pursuant thereto, and any exhibit attached hereto, as the same may be amended from time to time, or the Acts, or the invalidity in whole or in part of the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase word, or other provision shall not affect the remaining portions thereof.

19.04 Taxation of Condominium Parcels. The assessment and taxation of the Condominium Property shall be governed by the Acts.

19.05 Notice. The following provisions shall govern the construction of the Condominium documents, except as may be specifically provided to the contrary herein. All notices required or desired under the Condominium Documents to be sent to the Association shall be sent certified mail, return receipt requested, to the Secretary of the Association, at such other address as the Association may designate from time to time by notice in writing to all Unit Owners. Except as provided specifically to the contrary in the Acts, all notices to any Unit Owner shall be delivered in person or sent by first-class mail to the address of such Unit Owner at the Condominium, or to such other address as he may have designated from time to time, in a writing duly receipted for, to the Association. Proof of such mailing or personal delivery to a Unit Owner by the Association may be provided by the affidavit of the person personally delivering said notice or by a post office certificate of mailing. All notices to the Association or a Unit Owner shall be deemed to have been given when delivered to the addressee in person in accordance with the provisions of this Declaration or when mailed in a postage-paid, sealed envelope, except notices of address changes, which shall be deemed to have been given when received.

19.06 Governing Law. Should any dispute or litigation between any of the parties whose rights or duties are affected or determined by the condominium documents or any rules and regulations adopted pursuant to

such documents, such dispute or litigation shall be governed by the laws of the State of Alabama.

19.07 Waiver. No provisions contained in the Condominium Documents shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

19.08 Ratification. Each Unit Owner, by reason of having acquired ownership of his Condominium parcel, whether by purchase, gift, operation of law, or otherwise, shall be deemed to have acknowledged and agreed that all the provisions of the Condominium documents and any rules and regulations promulgated thereunder are fair and reasonable in all material respects.

19.09 Captions and Construction. The captions used in the Condominium documents are inserted solely as a matter of convenience and reference and shall not be relied on and/or used in construing the effect or meaning of any of the text of the Condominium documents.

19.10 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 proceedings and such reasonable attorney's fees as may be awarded by the Court.

19.11 Rights of Action. The Association and any aggrieved unit owner shall have the right of action against unit owners who fail to comply with the provisions of the Declaration, By-Laws, Rules and Regulations, the Acts, and other condominium documentation. Unit estate owners shall have the right of action against the Association for its failure to comply with the provisions of the Declaration, By-Laws, Rules and Regulations, the Acts, and other condominium documentation. In the event that the Condominium documents give the Association the right to use summary abatement or similar means to enforce restrictions against the unit property or its use, a judicial proceeding shall be instituted before any items of construction can be altered or demolished.

19.12 *Applicability*. Each unit estate owner shall be subject to all rights and duties assigned to owners under the terms of the Condominium documents.

IN WITNESS WHEREOF, the Declarant has caused this amended Declaration of Condominium to be executed on this the \_\_\_\_ day of \_\_\_\_\_, 2007.

GULF HOUSE ASSOCIATION, INC.

BY: \_\_\_\_\_, Its President

ATTESTED:

BY: \_\_\_\_\_, Its Secretary  
STATE OF ALABAMA )  
COUNTY OF BALDWIN )

I, a Notary Public, in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as President, respectively, of GULF HOUSE ASSOCIATION, INC., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said non-profit corporation on the day the same bears date.

Given under my hand and seal on this the \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA )

COUNTY OF BALDWIN )

I, a Notary Public, in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as Secretary, respectively, of GULF HOUSE ASSOCIATION, INC., 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/she, as such officer and with full authority, executed the same voluntarily for and as the act of said non-profit corporation on the day the same bears date.

Given under my hand and seal on this the \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_\_

*This Instrument Prepared By:*  
*Daniel H. Craven, P.C.*  
*Post Office Drawer 4489*  
*Gulf Shores, Alabama 36547*  
*Voice: 251-968-8170*  
*Fax: 251-968-4837*

**PROPOSED**

**EXHIBIT A**

**PERCENTAGE OF OWNERSHIP OF COMMON ELEMENTS**

Type A			Type B		
<u>Unit Number</u>	<u>Square Feet</u>	<u>Percentage Interest</u>	<u>Unit Number</u>	<u>Square Feet</u>	<u>Percentage Interest</u>
101	1086	3.175439	103	882	2.578947
201	1086	3.175439	104	882	2.578947
301	1086	3.175439	105	882	2.578947
401	1086	3.175439	106	882	2.578947
501	1086	3.175439	203	882	2.578947
601	1086	3.175439	204	882	2.578947
102	1086	3.175439	205	882	2.578947
202	1086	3.175439	206	882	2.578947
302	1086	3.175439	303	882	2.578947
402	1086	3.175439	304	882	2.578947
502	1086	3.175439	305	882	2.578947
602	1086	3.175439	306	882	2.578947
			403	882	2.578947
			404	882	2.578947
			405	882	2.578947
			406	882	2.578947
			503	882	2.578947
			504	882	2.578947
			505	882	2.578947
			506	882	2.578947
			603	882	2.578947
			604	882	2.578947
			605	882	2.578947
			606	882	2.578947

**PROPOSED**

**EXHIBIT B**

To the extent that this Exhibit B does not conflict with the Amended Declaration of Condominium of GULF HOUSE, a Condominium, this Exhibit B adopts all previously recorded filings, exhibits and amendments, including, but not limited to, all drawings, plats and plans of the condominium development as recorded in the records of the Office of the Judge of Probate, Baldwin County, Alabama.

**PROPOSED**

**EXHIBIT C**

Amended By-Laws of  
GULF HOUSE ASSOCIATION, INC.

**PROPOSED**