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DECLARATION OF CONDOMINIUM,

RESTRICTIVE COVENANTS, AND EASEMENTS

SCANNED

FOR

THE POINTE AT BAY COVE, A CONDOMINIUM

THIS DECLARATION is made this 19th day of June, 2010, by **ASSET MANAGEMENT DIRECT, LLC**, a Mississippi limited liability company (the "Declarant").

1. **DECLARATION.** Declarant hereby declares that it is the sole owner in fee simple title of the land described in Section 3 hereof, together with all buildings and improvements thereon or to be constructed thereon, and all easements and rights appurtenant thereto (the "Condominium Property"), and that Declarant hereby submits the same to the condominium form of ownership as provided in this Declaration. All provisions hereof shall be deemed to run with the land and shall constitute benefits and burdens to the Declarant, its successors and assigns, and to all parties hereafter having any interest in the Condominium Property until this Declaration is terminated or abandoned in accordance with provisions herein elsewhere contained.

2. **NAME AND ADDRESS.** The name of the Condominium is **THE POINTE AT BAY COVE**, herein called the "Condominium". The street address is 1753 Brashier Road, Biloxi, MS 39531.

3. **THE LAND.** The land hereby submitted to this Declaration (the "Land") is situated in Biloxi, Second Judicial District of Harrison County, Mississippi, and is described on Exhibit "A" attached hereto. A Condominium Plat or Plan of the Land and improvements thereon submitted to this Declaration is attached hereto as a part of Exhibit "B", and has been filed of record in the Office of the Chancery Clerk of the Second Judicial District of Harrison County, Mississippi, in Plat Book 26 at Page 14.

4. **DESCRIPTION OF CONDOMINIUM PROPERTY.** The improvements to be constructed on the Condominium Property consist of fifty-six (56) Residential Units located in one (1), four (4) story building. Each "Residential Unit" is identified by a number designation or a combination of letters and numbers. A graphic description of the building in which the units are to be located is included in the Condominium Plat attached hereto as Exhibit "B". The Condominium Plat, consisting of the Land survey and a description and floor plans of the proposed improvements hereon, together with this Declaration, identify the "Common Elements", "Limited Common Elements", each "Residential Unit", and their relative locations and approximate dimensions. In addition to and as a part of the buildings situated thereon, the Condominium Property also includes Forty-six (46) covered parking spaces, a/k/a "Garage" as shown on Exhibit "B" attached hereto, as well as uncovered parking spaces located on the Condominium Property. The improvements are further described as:

4.1 **Residential Building.** One (1), four (4) story building containing fifty-six (56) Residential Units.

4.2 **Other Improvements.** In addition to and as a part of the building situated thereon, the Condominium Property also includes parking areas, walkways, drives,

landscaping, underground structures and other improvements which are part of and located within the residential building, such as elevators, wires, cables, drains, pipes, ducts, conduits, valves and fittings. The Condominium Property also includes one (1) swimming pool.

5. DEFINITION OF UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS. The Condominium consists of "Residential Units", "Common Elements" and "Limited Common Elements", as those terms are herein defined.

5.1 Residential Units. The term "Residential Units", as used herein, means the fifty-six (56) separate residential dwellings in the Condominium which are located and shown on the Condominium Plat, excluding, however: (1) all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and above the lowest horizontal plane of the upper structural element of each Unit; (2) all spaces and improvements lying beneath or within the undecorated and/or unfinished inner surface of all interior columns, bearing walls and/or bearing partitions; and (3) all pipes, ducts, vents, wires, conduits and other facilities, equipment and/or fixtures running through any interior wall or horizontal or vertical partition of a Unit, for the furnishing of utility services, heating and cooling and/or ventilation to Units, Common Elements and/or Limited Common Elements. All glass and other transparent or translucent material, insect screens and screening in windows and doors and the materials covering other openings in the exterior of Units shall be construed to be within the boundaries or limits of Units exclusively served by such windows, doors and other openings. The HVAC room and air conditioning units serving a particular Unit shall be construed to be within the boundaries or limits of the Unit served by such air conditioning unit. The Declarant reserves the right to combine two or more Units into one Unit by modifying or eliminating the walls between Units. However, any Units which have been combined shall continue to be treated as separate Units for purposes of allocating assessments and votes of Unit owners.

5.2 Units. The term "Units", as used herein, shall include Residential Units comprising the Condominium Property, together with a portion of the Common Elements relative to the square footage of the Unit as to the total square footage, and a parking space, if assigned, if applicable.

5.3 Common Elements. The term "Common Elements", as used herein, means all of the real property and improvements of the Condominium, except the Residential Units, as described below. Common Elements include, without limitation: (1) the land within the legal description of the Condominium Property; (2) the building exterior, foundation, roof, bearing walls and columns, the common areas and all parts of the building not included in the Units; (3) easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of utility services, heating and cooling and/or ventilation to Units and Common Elements; (4) easements of support in every portion of a Unit which contributes to the support of other Units and/or Common Elements; (5) installations for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing the installation; (6) the property and installations in connection therewith required for the furnishing of services to more than one Unit or to the Common Elements; (7) fixtures owned or held for the common use, benefit and enjoyment of all owners of Units in the Condominium; (8) those parking spaces located on the Condominium Property, that are not reserved and/or assigned by Declarant; (9) the riparian and/or littoral rights appertaining to the Land, if any; (10) the swimming pool; and (11) any other common facilities which are presently owned by the Declarant and which shall in the future be conveyed to the Homeowners' Association which are for the non-exclusive use and enjoyment of the Unit Owners.

5.4 **Limited Common Elements.** "Limited Common Elements", as the term is used herein, means those portions of the Common Elements which are reserved herein for the exclusive use of a certain Unit or Units to the exclusion of other Units, consisting of the following:

(1) To each Residential Unit the exclusive right to use any exterior private terrace, entry terrace, loggia, balcony or sun deck which is attached or contiguous to the Unit;

(2) To those certain Units that has negotiated in their contract for purchase of the Unit for a covered automobile parking space on the Condominium Property, one shall be hereby assigned to that Unit. The assigned parking spaces cannot be separated, sold, transferred or conveyed to another individual or entity without ownership of a Unit. There will be parking spaces outside the buildings that will be assigned to the Unit Owners. All other outside parking spaces that are not reserved for Unit Owners will be open to public on the first come first serve basis.

6. **COMMON OWNERSHIP; APPURTENANCES TO UNITS AND EASEMENTS.** There shall be appurtenant, and pass with title to each Residential Unit, the rights, shares, and interests which shall be deemed to include, without limitation, the following:

6.1 An undivided ownership share in the Common Elements and in the "Common Surplus" (as that term is elsewhere herein defined). The undivided ownership share in the Common Elements and the Common Surplus of the Condominium appurtenant to each Residential Unit based upon the square footage of each respective Residential Unit in uniform relationship to the aggregate square footage of all Residential Units in the Condominium, as set forth on Exhibit "C"; and

6.2 The right to use exclusively, or in common with certain other Units where so specified, those portions of the Common Elements designated and/or reserved herein and/or granted elsewhere to a certain Unit or Units as Limited Common Elements, and

6.3 A One-fourth (1/4) interest in the roadway being described on the plat as Bay Cove Drive and a duty to maintain said roadway in accordance with the Cross Easement and Maintenance Agreement executed by the Declarant and filed in the Office of the Chancery Clerk of Second Judicial District of Harrison County, Mississippi, and attached hereto as Exhibit "D"; and

6.4 An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time (as shown on the Condominium Plat) and as it may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is permanently vacated from time to time; and

6.5 Non-exclusive easements, to be used and enjoyed in common with the owners of all Units in the Condominium, for use of those Common Elements not designated elsewhere herein as easements for:

(1) The furnishing and maintenance of public utility services to all parts of the Condominium Property over, across, in and through the Land, buildings and other improvements, as the fixtures and equipment therefor now exist and/or may be modified or relocated; and

(2) Vehicular and pedestrian access over, across, upon, in and through the drives, entries, gates, walks, grounds, and other portions, if any, of the Common Elements as are intended and/or provided for pedestrian and vehicular traffic throughout the Condominium and over, across, upon, in and through such other lands not a part of the Condominium as are provided for such pedestrian and vehicular traffic.

6.6 A non-exclusive easement for the unintentional and non-negligent encroachment by any Residential Unit upon any other Residential Unit and/or Common Element, or for any reason not caused by or resulting from the willful or negligent act of Declarant or any Unit owner or owners, including without limitation, encroachments caused by or resulting from the original construction of improvements, which exclusive easement shall exist at all times curing the continuance of such encroachment, as an easement appurtenant to the encroaching Unit or other improvement, to the extent of such encroachment; and

6.7 The right of membership in the "Association" (elsewhere herein defined), upon the terms and conditions referenced herein.

6.8 Non-exclusive easement for ingress and easement through the lobby for purposes of accessing the Residential Units, subject to restriction, rules and regulations as may be imposed by the Declarant from time to time.

7. **COMMON EXPENSES AND COMMON SURPLUS.** The term "Common Expenses", as used herein, shall mean all expenses for which all the owners of Residential Units in the Condominium shall be liable to the Association. The term "Common Surplus", as used herein, shall mean the excess of all receipts of the Association, including, without limitation, assessments, rents, profits and revenues on account of the Common Elements, over the amount of the Common Expenses. Except as hereafter provided, all of the owners of Units shall share the Common Expenses and shall own the Common Surplus in the proportions or percentages set forth in the schedule annexed hereto and made a part hereof as Exhibit "C".

8. **VOTING RIGHTS OF UNIT OWNERS.** The owner or owners of each Residential Unit shall become a member of the Association automatically upon and simultaneously with delivery of a deed of conveyance of fee title thereto from Declarant or, in a conveyance by a grantee or a remote grantee of Declarant, a deed which otherwise complies with the terms and conditions of this Declaration, the Articles of Incorporation and Bylaws of the Association. There shall be appurtenant, and pass with title, to each Residential Unit one (1) vote as a member of the Association, which may be exercised by the owner(s), or the duly constituted proxy of the owner(s), from time to time, of each Residential Unit at all meetings of members and in connection with all matters upon which members of the Association are entitled to vote. No fractional votes may be cast by co-owners. Any dispute as to ownership shall be decided by the Association. The qualification of members of and manner of admission to membership in the Association, and the termination of such membership and voting by members shall be as provided for in the Articles of Incorporation, Bylaws, or both, of the Association.

9. **NAME OF ASSOCIATION.** The entity responsible for the operation of the Condominium shall be THE POINTE AT BAY COVE HOMEOWNERS' ASSOCIATION, INC., a Mississippi not for profit Corporation (the "Association"). A copy of the Articles of Incorporation for the Association is annexed hereto and made a part hereof as Exhibit "E". The Association shall administer and manage the Condominium Property; provided that, the Association may, by contract, partially or wholly delegate its maintenance, management and operational duties and obligations.

10. **BYLAWS OF ASSOCIATION.** The procedures for the internal administration and functioning of the Association are set forth in the Bylaws. A copy of the Bylaws of the Association is annexed hereto and made a part hereof as Exhibit "F".

11. **AMENDMENT OF DECLARATION.** Except for amendments which Declarant is authorized and/or obligated elsewhere herein to make, this Declaration may be amended only in the following manner:

11.1 **Notice.** Notice of the subject matter of any proposed amendment to this Declaration shall be included in the notice of any meeting at which such proposed amendment is to be considered.

11.2 **Proposal.** Amendments to this Declaration may be proposed by the Board of Directors (the "Board") of the Association by resolution adopted by a majority vote of the Directors present at any regular or special meeting of the Board at which a quorum is present or, in the alternative, by a written instrument signed by a majority of the Board, or by the owners of a majority of the Units, whether by vote of such owners as members of the Association at a special or regular meeting of the members or by written instrument signed by them.

11.3 **Adoption.** Any amendment to this Declaration so proposed by the Board or members of the Association shall be transmitted to the President of the Association, or, in the absence of the President, to a Vice President or other acting chief executive officer, who shall thereupon call a special meeting of the members of the Association to consider and vote upon such proposed amendment; provided, that a proposed amendment may be considered and voted upon at an annual meeting of the members of the Association if the next such meeting is to be held within the time hereafter limited and if notice of the proposed amendment shall be included in the notice of such meeting. The special or annual meeting, as the case may be, of the members shall be held not sooner than thirty (30) days nor later than sixty (60) days from the date of receipt by the Association of the proposed amendment. Notice of the meeting shall be in the form and shall be delivered and the meeting shall be called and held as provided for in the Bylaws of the Association; provided, that any member may, in writing signed by such member, waive notice of such meeting in the manner provided for in the Bylaws of the Association and such waiver, when delivered to the Secretary of the Association for filing in its records, whether before, during or after such meeting shall be construed to be the equivalent of giving notice to such member. The proposed amendment may be adopted, and shall become effective, by and upon the affirmative vote at such meeting of members owning two-thirds (2/3) of the Residential Units. Notwithstanding the foregoing, any amendment so proposed may be adopted, without a formal meeting of the members by an instrument executed and acknowledged with the formalities of a deed by members owning two-thirds (2/3) of the Residential Units.

11.4 **Proviso.** No amendment shall:

- (1) Change any Unit boundaries unless the record owner(s) thereof and all Registered Mortgagees, as hereinafter defined, thereon shall join in the execution and acknowledgment of the amendment, or
- (2) Discriminate against any Unit owner or against any Unit or building comprising part of the Condominium Property, unless the record owners of all affected Units and Registered Mortgagees thereon shall join in the execution and acknowledgment of the amendment, or

(3) Change the share of Common Elements appurtenant to any Unit or Units or the share of any Unit owner in the Common Surplus, unless the record owners of all Units and the Registered Mortgagees thereon shall join in the execution and acknowledgment of such amendment, or

(4) Increase the share of any Unit owner(s) in the Common Expenses, unless the record owners of all Units and the Registered Mortgagees thereon shall join in the execution and acknowledgment of such amendment, or

(5) Make any substantial change in Article 13 hereof, entitled "Insurance", nor in Article 14 hereof, entitled "Reconstruction or Repair After Casualty", unless the Registered Mortgagees encumbering Units shall join in the execution and acknowledgment of the amendment, or

(6) Amend the provisions of Article 20 or Article 21 hereof without Declarant's joinder and consent.

(7) No amendment shall be passed which shall in any way affect any of the rights, privileges, powers, or options of the Declarant without the prior consent of the Declarant.

11.5 **Secret Ballot.** Any vote to amend this Declaration relating to a change in percentage of ownership of the Common Elements or sharing of the Common Expense shall be conducted by secret ballot.

11.6 **Effective Date and Recording Evidence of Amendment.** Any amendment to this Declaration shall be effective at the time of filing the amendment or certificate of amendment in the Public Records of Second Judicial District of Harrison County, Mississippi. The President of the Association, or, in the absence of the President, a Vice President or other acting chief executive officer of the Association, shall cause to be filed in the Public Records of Second Judicial District of Harrison County, Mississippi, the original amendment to the Declaration, if it is in the form of an instrument executed and acknowledged by Unit owners and the Registered Mortgagees, or a certificate of amendment, if it is a certification by the proper officers of the Association that such amendment was adopted by the Association at a meeting of the members. A true and correct copy of each such amendment or certificate of amendment shall be delivered, forthwith after adoption thereof, to the record owners of all Units by the President, Vice President, or other acting chief executive officer of the Association, but delivery of such copies shall not be a condition precedent to the effectiveness or any such amendment.

11.7 **Amendment to Correct Omission or Error in Condominium Documents.** Notwithstanding any provision to the contrary set forth in this Article 11 or elsewhere in this Declaration or Articles or Bylaws of the Association, the affirmative vote of the owners of two-thirds (2/3) of the Residential Units shall be sufficient to adopt an amendment to this Declaration for the purpose of correcting a defect, error, or omission in or to this Declaration not materially or adversely affecting the rights of owners, lienors or mortgagees. Provided, however, nothing herein is intended to limit any statutory method of correcting an error or omission. Furthermore, the Declarant reserves the right at any time to amend this Declaration and any exhibits to it for the purpose of correcting any defect, error or omission herein or therein which prevents this Declaration from creating a valid condominium under Mississippi law or prevents the units from qualifying for financing from FHA, Fannie Mae, or other federally related

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lenders or other financing that condominiums typically qualify for or in order to increase sales of the Units.

11.8 Amendments by Declarant. Declarant reserves the right to amend this Declaration, and any exhibits hereto, for any one or more of the following purposes:

(1) To correct any errors or omissions not materially and adversely affecting the rights of Unit owners, lienors or mortgagees.

(2) To make reasonable changes to the Condominium Property or Units that do not materially and adversely affect the interest of the Registered Mortgagees, nor the Unit owners, nor the Unit owner's share of the Common Elements.

Any such amendment need be executed and acknowledged only by the Declarant and need not be approved by the Association, Unit owners or Registered Mortgagees, whether or not elsewhere required for amendments, provided however, that the Declarant's right to amend this Declaration shall cease and terminate five (5) years from the date of recording of this Declaration in the Land Records in the Office of the Chancery Clerk, Second Judicial District of Harrison County, Mississippi.

12. MAINTENANCE, REPAIRS AND REPLACEMENTS. Responsibility for maintenance, repairs and replacements of Condominium Property and property of Unit owners located or situated within the Condominium shall be as follows:

12.1 Units. Each Residential Unit and the fixtures, equipment and appliances comprising a part thereof, located therein, or exclusively serving the same (but not otherwise including Limited Common Elements except where expressly so indicated in Section 12.3), shall be maintained, kept in good repair and replaced by and at the expense of the owner(s) thereof. Any emergency maintenance, repairs and/or replacements for which Unit owners are responsible and are obligated to perform, which, if not performed or omitted, would affect other Units or Common Elements shall be performed promptly as the need arises, and if Unit owner(s) fail to promptly perform same, the Association shall have the right to perform same, and to specially assess the responsible Unit owner and Unit therefor. Notwithstanding the obligation of Unit owners for maintenance, repair or replacement of and in Units, the proceeds of all insurance awards or payments under insurance that may be carried by the Association for loss of, or damage to Units shall be applied against repairs and replacements to the extent that such award or payments exceed the deductible provisions of such insurance.

12.2 Common Elements. The Association shall be responsible for maintaining, repairing, replacing and keeping in clean and orderly condition, all of the Common Elements, and shall assess against and collect from the owners of all Units in the Condominium, the costs thereof. The Association shall, at the expense of the owners of all Units in the Condominium, repair any and all incidental damage to Units resulting from maintenance, repairs and/or replacements of or to Common Elements. Specifically, Bay Cove Drive is a roadway to be used as a Common Element of both The Pointe at Bay Cove and The Residence at Bay Cove. The landscaping and maintenance of Bay Cove Drive shall be a shared expense of the owners of both The Pointe at Bay Cove and The Residence at Bay Cove.

12.3 Limited Common Elements. The Association shall be responsible for, and shall assess against and collect against all Unit owners the cost of performing necessary maintenance, repairs and replacements, and keeping in clean and orderly condition the exterior of the balconies, terraces, sun decks and loggias, and the covered parking areas which are

designated as the Limited Common Elements. However, the responsibility for, and the cost of, repairing, maintaining and keeping in a clean and orderly condition, the inferior of those Limited Common Elements such as balconies, terraces, sun decks and loggias (including windows, doors, any storm shutters and screens enclosing same, and storage lockers), which are assigned or granted to, and exclusively serve a certain Unit or Units, shall be borne by the owner(s) of the Unit(s) to which the same are appurtenant.

12.4 Terraces/Balconies. In order to maintain and preserve the structural integrity of the terraces/balconies which are a part of the Limited Common Elements of the Condominium Property, and to hinder the deterioration of concrete by held or trapped water, Unit owners shall not place any floor covering whatsoever in the outdoor terrace/balcony which is appurtenant to the owner's Unit.

13. INSURANCE. Insurance shall be carried and kept in force at all times in accordance with the following provisions:

13.1 Duty and Authority to Obtain. The Association shall obtain and keep in force at all times the insurance coverage which it is required hereby to carry and may obtain and keep in force any or all of such other or additional insurance coverage as it is authorized hereby to carry. All insurance obtained by the Association shall be purchased for the benefit of the Association and the Unit owners. The owner(s) of each Unit may, at his own expense, obtain insurance coverage against damage to and loss of the contents of the Unit and comprehensive public liability. Any such policies of insurance purchased by a Unit owner shall, where such provision is available, contain a clause providing that the insurer waives its right to subrogation as to any claim or claims against other Unit owners, the Association, and their respective employees, agents, guests and invitees.

13.2 Required Coverage. The Association shall purchase and carry insurance coverage as follows (however, such coverage shall only insure the Condominium in the manner permitted by applicable law, if any), and according to the original plans and specifications and coverage for any alterations, improvements or modifications to Units made by Unit owner[s] shall be the responsibility of Unit owner[s]:

Casualty insurance covering the buildings and other improvements of the Condominium, including, without limitation, Units (i.e., all partitions, plumbing, fixtures and equipment, whether within a Unit or not, if serving or supporting the Unit) and Common Elements. For purposes of this provision, the Association shall be deemed to have an insurable interest in the foregoing. Such insurance shall be obtained in an amount equal to the maximum insurance replacement value of such improvements exclusive of excavation and foundation costs, as determined annually by the Board of Directors of the Association. Such insurance to afford protection against:

- (a) Loss or damage by fire or other hazards covered by the standard extended coverage or other perils endorsement; and
- (b) Such other risks of a similar or dissimilar nature as are required by law or as are customarily covered with respect to a building and other improvements similar, in construction, location and use, to the building or other improvements of the Condominium, including, without limitation, vandalism, malicious mischief, windstorm, or water damage (as distinguished from water intrusion damage); and

(c) Public liability insurance, in such amounts, with such coverage and in such forms as shall be required by the Board of Directors of the Association, to protect the Association and the owners of all Units, including non-owned automobiles, off-premises employee coverage, with Unit owners included as additional insureds as respects the Common Elements; and

(d) Worker's compensation insurance to meet the requirements of law; and

(e) Flood insurance, if the same shall be necessary under the laws of the United States for federally related mortgage lenders to make mortgage loans on Units; and

(f) Fidelity insurance, as required by law, covering all officers and employees of the Association and any managing agent who handles Association funds.

Notwithstanding the foregoing, to the extent that such coverages and coverage amounts required herein are not available at commercially reasonable rates, then the Association may purchase such coverages in amounts as are reasonable for comparable projects or developments on the Mississippi Gulf Coast.

13.3 Optional Coverage. The Association may purchase and carry such other insurance coverage, as the Board of Directors of the Association, in its sole discretion, may determine from time to time to be in the best interests of the Association and Unit owners.

13.4 Premiums. Premiums for all insurance obtained and purchased by the Association shall be paid by the Association. The cost of insurance premiums, and other incidental expenses incurred by the Association in administering and carrying out the provisions of this Article, shall be assessed against and collected from Unit owners as Common Expenses.

13.5 Insured. All policies of insurance obtained and purchased by the Association shall be for the benefit of the Association, the owners of Units, as their interests may appear, and shall provide that all proceeds covering casualty losses shall be paid to the Association as Trustee for the benefit of whomever is entitled to the proceeds or an independent "Insurance Trustee", if one has been appointed. The proceeds from insurance against any casualty loss shall be held for the use of the Association, Unit owners and their Registered Mortgagees, as their interests may appear, to be applied or distributed in the manner herein provided. The Association is hereby constituted and appointed agent for all Unit owners, with authority to negotiate and settle the value and extent of any and all losses covered under any policy of casualty insurance, and the Association is granted full right and authority to execute, in favor of any insurer, a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss of or damage to insured property.

13.6 Insurer. All persons beneficially interested in the insurance coverage obtained, purchased and maintained by the Association shall be bound by the Association's selection of its insurer(s) and the amount of insurance coverage carried and kept in force by the Association.

13.7 Insurance Trustee. The Association shall be the Insurance Trustee unless a mortgagee on a Unit or the owners of one-third (1/3) of the Units make written demand to the Association requesting the appointment of an independent trustee. In such event, any proceeds will be paid to or any undisbursed proceeds in the control of the Association will be

paid over to the independent Insurance Trustee. All persons for whose benefit such insurance is held shall be bound by the Association's selection of the Insurance Trustee.

The independent Insurance Trustee shall be selected by the Board of Directors. It shall be a bank or other federally insured institution with trust powers doing business in the State of Mississippi. The Insurance Trustee shall not be liable for the payment of premiums, the renewal of any policy or policies of casualty insurance, the sufficiency of coverage, the form or content of policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds of casualty insurance as are paid and to hold the same in trust for the purposes herein stated, and for the benefit of the Association, Unit owners and their respective mortgagees, to be disbursed as herein provided. The Association shall pay a reasonable fee to the Insurance Trustee for services rendered hereunder and shall pay such costs and expenses as the Insurance Trustee may incur in the performance of its duties hereunder; such fees and costs to be assessed against and collected from Unit owners as a Common Expense. The Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then only for such money as may come into the possession of the Insurance Trustee. If and when the Insurance Trustee is required to distribute insurance proceeds to Unit owners and their mortgagees, as their respective interests may appear, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association executed under oath and provided to the Insurance Trustee upon request to the Association; such certificate to certify the name or names of the owners of each Unit, the mortgagee(s) thereof, as provided in Article 18, and the respective percentages of any distribution which is to be made to such owner(s) and mortgagee(s), as their respective interests may appear. If and when insurance proceeds are paid to the Insurance Trustee for any casualty loss, the holder(s) of any mortgage or mortgages encumbering a Unit shall have no right to determine or participate in the determination of repair or replacement of any loss or damage, and shall have no right to elect to apply insurance proceeds to the reduction of indebtedness secured by such mortgage(s), unless the insurance proceeds represent a distribution to the owner(s) of the Unit and the mortgagee(s) thereof, after such insurance proceeds have been first applied to the repair, replacement or reconstruction of any loss or damage, or unless such casualty insurance proceeds are authorized to be distributed to the owner(s) of the Unit and the mortgagee(s) thereof by reason of loss of or damage to personal property constituting a part of the Common Elements and as to which a determination is made not to repair, replace or restore such personal property.

13.8 Application of Insurance Proceeds. The proceeds of casualty insurance paid to the Association, or to an independently appointed Insurance Trustee, by an insurer for loss or damage to real and/or personal property upon which the Association carries insurance, shall be applied and paid as follows:

(1) **Common Elements Only.** The proceeds paid to the Insurance Trustee for loss of or damage to real property constituting Common Elements only shall be applied to the repair, replacement or reconstruction of such loss or damage. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Common Elements, the excess shall be paid by the Insurance Trustee to the owners of all Units, and their mortgagees, as their interests may appear, in shares or proportions equal to the undivided interest appurtenant to each Unit in the Common Elements. If the insurance proceeds shall be insufficient to pay the cost of the repair, replacement or reconstruction of such Common Elements, the Association shall deposit with the Insurance Trustee, from any Association Reserve Fund which may have been established, the difference between the total cost of repairing, replacing or reconstructing such loss or damage and the amount of the insurance proceeds. If no such Association Reserve Fund has been established, or if any such

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Association. Reserve Fund has been established and is insufficient to pay to the Insurance Trustee such difference, the Association shall assess the amount of the difference against, and collect it from, all Unit owners as a Common Expense.

(2) **Units.** The proceeds paid to the Association or independent Insurance Trustee for loss of or damage to a building containing Common Elements and one or more Units shall be first applied to the repair, replacement or reconstruction of Common Elements, then to the repair, replacement or reconstruction of any Unit or Units in such building which have been destroyed or damaged. If such insurance proceeds exceed the cost of the repair, replacement or reconstruction of such Common Elements and Units, the excess shall be paid by the Insurance Trustee to the owners of the damaged or destroyed Unit(s) and their mortgagees, as their interests may appear, in shares or proportions equal to the undivided interest appurtenant to each such Unit in the Common Elements. If the insurance proceeds shall be sufficient to pay for the repair, replacement or reconstruction of the Common Elements but shall be insufficient to pay the cost of the repair, replacement or reconstruction of the damaged or destroyed Unit or Units in such building, the Association shall assess the amount of the difference against, and collect the same from all owners as a Common Expense so long as the damage to the Units is of a nature as to which the Association is required to carry insurance. If it is not, then the affected Unit owner shall pay the cost. If the insurance proceeds shall be insufficient to pay the cost of the repairs, replacements, or reconstruction of the Common Elements (to which the Insurance Trustee is required first to apply such proceeds before applying any part thereof to the repair, replacement or reconstruction of Units), the difference between the total cost of repairing, replacing or reconstructing the Common Elements and the amount of the insurance proceeds shall be assessed by the Association against, and collected from, all Unit owners, as a Common Expense.

13.9 Deposits to Insurance Trustee After Damage. Within sixty (60) days after a loss of or damage to Condominium Property covered by casualty insurance, the Association shall obtain estimates of the cost of repairing, replacing or restoring the same, including the cost of professional fees and any construction bond which the Board of Directors may require. If, from such estimates, it shall appear that the insurance proceeds payable for such loss or damage will be insufficient to pay the cost of such repair, replacement or reconstruction, the additional money required to pay the total cost thereof, whether it is to be paid by one or more Unit owners, shall be deposited with the Association or the independent Insurance Trustee, as the case may be, not later than thirty (30) days from the day on which the Insurance Trustee receives the insurance proceeds.

14. RECONSTRUCTION OR REPAIR AFTER CASUALTY. Whether, and the manner in which, any or all of the Condominium Property which may be damaged or destroyed by casualty shall be repaired, reconstructed or replaced shall be determined as follows:

14.1 Residential Buildings. If any residential buildings are damaged or destroyed, repair or reconstruction thereof, or termination of the Condominium, shall be in accordance with the following:

(1) **Major Destruction of Buildings.** If any buildings are damaged or destroyed so that Units in the Condominium to which more than 50% of the Common Elements are appurtenant are not habitable, neither the building or buildings so damaged or destroyed, nor any of the improvements comprising Common Elements in said building or buildings, shall be reconstructed unless the owners of two-thirds (2/3) of the Residential Units agree in writing, within ninety (90) days after the date of such destruction, to reconstruct the same and unless the then applicable zoning and other regulatory laws and ordinances shall allow the same to be

reconstructed, or unless any policy or policies of casualty insurance covering the same shall require reconstruction thereof as a condition precedent to the payment of proceeds thereunder. If it is not so decided to reconstruct the building(s), then the Condominium shall be terminated as otherwise provided herein.

(2) **Other Damage to and/or Destruction of Buildings.** If any building is damaged, but Units in the Condominium to which at least 50% of the Common Elements are appurtenant are habitable, the damaged or destroyed Common Elements and/or Units shall be repaired or reconstructed, so that the buildings and/or Unit(s) shall be restored to substantially the same condition as existed prior to such damage or destruction, unless within ninety (90) days after the casualty it is determined by agreement in the manner elsewhere herein provided that the Condominium shall be terminated.

14.2 **Common Elements.** Damaged or destroyed improvements constituting part of the Common Elements shall be repaired, reconstructed and/or replaced unless, in the event of total destruction of all of the Units, or, by agreement after partial destruction, the Condominium shall be terminated.

14.3 **Certificate.** The Insurance Trustee may rely upon a certificate executed by the President and Secretary of the Association to determine whether or not damaged or destroyed Condominium Property shall be repaired or reconstructed.

14.4 **Plans and Specifications.** Repair or reconstruction of Condominium Property shall be substantially in accordance with the plans and specifications pursuant to which the same was originally constructed; provided that the Board of Directors of the Association may authorize reasonable variations from the original plans and specifications as may appear to them to be necessary or desirable. Any variations from the original plans and specifications submitted for approval shall be prepared by an architect registered to practice in Mississippi.

14.5 **Responsibility.** If the damage or destruction shall be limited only to one or more Units for which the responsibility of maintenance and repair is that of the affected Unit owners, then such Unit owners shall be responsible for carrying out the repair or reconstruction thereof. In all other instances of damage or destruction, the Association shall be responsible for carrying out the repair and reconstruction thereof.

14.6 **Construction Funds.** All funds for the payment of repair and reconstruction costs, consisting of insurance proceeds and/or funds collected by the Association from Unit owners, shall be disbursed toward payment of such costs in the following manner:

(1) **Association.** If the total funds assessed against and collected from Unit owners by the Association for payment of repair and reconstruction costs is more than Ten Thousand Dollars (\$10,000.00), then all such sums shall be deposited by the Association with and disbursed by the Insurance Trustee, if one is appointed as aforesaid. In all other cases the Association shall hold such sums so assessed and collected and shall disburse the same in payment of the costs of reconstruction and repair.

(2) **Insurance Trustee.** The proceeds of insurance collected on account of a casualty, and the sums assessed against and collected from Unit owners by the Association and deposited with the Insurance Trustee shall constitute a construction fund which shall be disbursed in payment of the costs of repair and reconstruction in the following manner:

(a) **Unit Owner.** The portion of insurance proceeds representing damage for which the responsibility of repair and reconstruction is upon one or more, but less than all, Unit owners, shall be paid by the Insurance Trustee to the affected Unit owners and, if any of such Units are mortgaged, to the affected Unit owners and their mortgagees jointly, or, at the direction of the Board of Directors, to the general contractor charged with performing the remedial work.

(b) **Association - Lesser Damage.** If the amount of the estimated costs for reconstruction and repair which is the responsibility of the Association is less than Ten Thousand Dollars (\$10,000.00), then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request by a mortgagee which is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

(c) **Association - Major Damage.** If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than Ten Thousand Dollars (\$10,000.00), then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect registered to practice in Mississippi and employed by the Association to supervise the work.

(d) **Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in the construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere herein stated; except, however, that the amount of any surplus which is less than the portion of the construction fund in excess of available insurance proceeds shall not be made payable to any mortgagee.

(e) **Certificate.** Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid, nor to determine whether surplus funds to be distributed are less than the assessments paid by owners. Instead, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as payee; and further provided that when the Association, or a mortgagee which is the beneficiary of an insurance policy the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association.

15. **USE RESTRICTIONS.** Use of the Condominium Property shall be in accordance with the following provisions so long as the Condominium exists:

15.1 **Residential Units.** Each of the Residential Units shall be occupied only for residential purposes and by servants and guests, or tenants under lease, as a place of residence (temporary or permanent) and for no other purpose. Three-bedroom Residential

Units may be occupied by no more than eight (8) persons. No Unit may be sub-divided or converted to a "time share".

15.2 Common Elements. The Common Elements and Limited Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities incidental to the enjoyment of the Units.

15.3 Nuisances. No nuisances shall be allowed upon the Condominium Property, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Condominium Property by 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 shall any fire hazard be allowed to exist. No use shall be made of any Unit or of the Common Elements or Limited Common Elements which would increase the cost of insurance upon the Condominium Property.

15.4 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or 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 pertaining to maintenance, replacement, modification or repair of the Condominium Property shall be as is elsewhere herein specified.

15.5 Pets. Unit owners shall be permitted to keep small pets, including birds, such as canaries or parakeets; fish, such as gold fish and tropical varieties; cats; and small dogs not exceeding fifteen inches (15") in height at the shoulder or fifteen (15) pounds in weight at maturity. No guest, lessee or invitee shall bring any animal whatsoever upon the Condominium Property. No pets shall be raised for commercial purposes, and no more than one dog per Unit may be kept on the premises; a second dog may be kept but only with the written approval of the Association. Pets shall never be allowed to run freely upon any of the Condominium Property, except within a Unit, and when outside of a Unit shall be leashed and in the company of an individual willing and able to fully control it. Each owner shall be responsible for the actions of each pet kept within his Unit, and for cleaning up after such pet when outside of the Unit. Any Unit owner maintaining a pet upon the Condominium Property, or whose guests, lessee or invitee bring any animal upon the Condominium Property, shall be fully responsible for, and shall bear the expense of, any damage to persons or property resulting therefrom. Any such damage shall be determined by the Board of Directors of the Association and collected by the Association. All pet owners shall identify and register their pet with the Association. In the event that any pet kept on the premises should constitute a nuisance in the opinion of a majority of the Board of Directors, then the owner, when so notified in writing, shall be required to immediately remove said pet from the Condominium Property. The Association may promulgate rules restricting the areas within the Condominium Property where pets can be walked. Notwithstanding the foregoing, the size and weight limitations provided herein shall not apply to any Unit owner or guest requiring a dog for medical assistance purposes and approved by the Board of Directors.

15.6 Terraces/Balconies. Private terraces, entry terraces, balconies and lanais within a Unit or which are Limited Common Elements appurtenant thereto may be used only for recreational purposes and may not be improved except as permitted or required hereby. Such areas may not be used for hanging laundry and may not be enclosed, painted or the color or appearance otherwise altered by the owner except with the prior written consent of the Board

of Directors of the Association, and except for approved hurricane/storm shutter installations in accordance with Section 19.3 herein.

15.7 Floor Coverings. The floor area of all Units located on the third floor and above of the building shall be covered with carpeting over sound-absorbing padding, or ceramic tile, hardwood, or other hard surface flooring which shall be placed over a padding or a resilient sound absorbing underlayment of material acceptable to the Association, which shall be of sufficient quality and quantity to buffer "normal usage" noises heard on the floor beneath such Unit.

15.8 Children. Children may occupy Units provided, however, that children shall be closely supervised at all times by an adult to ensure that they do not become a nuisance to other residents of the Condominium.

15.9 Rental and For Sale Signs. No signs advertising the rental or sale of Units or other signs of any nature may be posted on the Condominium Property, including exteriors or doors and windows of the Units, without the prior written approval of the Association's Board of Directors. No "lock boxes" shall be permitted on doors to Units. The foregoing provisions shall not apply to Declarant during development and sale of the Units.

15.10 Exterior Improvements. No Unit owner shall cause anything to be applied or attached to, hung, displayed or placed on the exterior walls, terraces, doors or windows of any building (including, but not limited to, awnings, antennae, signs, screens, fixtures and equipment) without the prior written consent of the Board of Directors of the Association.

15.11 Barbecue Grills. Gas or electric barbecue grills will be permitted only in areas designated by the Association. All other barbecue grills are prohibited.

15.12 Hurricane Shutters. Unit owners may install approved hurricane/storm shutters protecting the terrace/balcony/lanai, and similar areas which are a part of their Unit or limited Common Elements appurtenant to their Unit pursuant to Section 19.3 herein.

15.13 Leasing. Owners of Residential Units may rent or lease their Units for residential purposes, but shall not lease their unit for any less than a thirty (30) day period. Unit owners must follow all local zoning rules and regulations.

15.14 Regulations. Reasonable regulations concerning the use of the Condominium Property may be made and amended from time to time by the Board; provided, however, that all such regulations and amendments thereto may be nullified by the vote of not less than two-thirds (2/3) of the Residential Unit owners. Copies of such regulations and amendments thereto shall be furnished by the Association to all Unit owners and residents of the Condominium upon request.

15.15 Development. Until Declarant has completed and conveyed all of the Residential Units, neither Unit owners nor the Association shall interfere with the completion of the proposed improvements and the sale of the Units. Declarant may make such use of the unsold Units and Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales/development office, model apartments, the showing of the Condominium Property and the display of signs showing Units for sale or for rent.

15.17 **Lobby and Management Office.** The Association shall manage the Condominium Property so that the same shall be a Visitor Accommodation as defined by the Zoning Ordinance of the City of Biloxi at the time of the recordation of this Declaration. To that end, the Association shall provide for on-site management (a) that handles the rental of individual Units whose owners desire to have their Units rented through such management and (b) that offers maid service, whether included in the management fee or as a separate fee. Such management shall have the use of the lobby, which shall include the office and reception desk, and the use of the housekeeping and other Common Elements as shall be necessary for the discharge of its duties. Initially and for as long as Declarant or its affiliate desires, Declarant or such affiliate shall have use of the lobby and office space, consistent with Article 21.

16. **COMPLIANCE AND DEFAULT.** Each Unit owner and any member of the Unit owner's family or their guests, employees, agents, lessees or other invitee, shall be governed by and shall comply with the terms of this Declaration of Condominium, the Articles of Incorporation and Bylaws of the Association, and any and all regulations adopted pursuant thereto, as they may be amended from time to time. Failure of the Unit owner to comply therewith shall entitle the Association or other Unit owners to the following relief in addition to the remedies provided by the Bylaws:

16.1 **Negligence.** A Unit owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the Unit owner's act, neglect or carelessness or by that of any member of the Unit owner's family or their guests, employees, agents, lessees or other invitee, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such expense may be specially assessed against the Unit owner and his Unit and secured by the lien described in Section 17 herein.

16.2 **Costs and Attorneys' Fees.** If any legal proceeding arises because of an alleged failure of a Unit owner to comply with the terms of the Declarations, the Articles of Incorporation and Bylaws of the Associations, as provided above, and any and all regulations adopted pursuant thereto, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees, costs of litigation, expert witness fees and other costs and expenses as may be awarded by the court.

16.3 **No Waiver of Rights.** The failure of the Association or any Unit owner to enforce any covenant, restriction or other provision of this Declaration, the Articles of Incorporation and Bylaws of the Association, or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

17. **ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT.** To provide the funds necessary for proper maintenance, operation and management of the Condominium, the Association is hereby granted the right to make, levy and collect assessments against the owners of all Units and against said Units. The following provisions shall govern the making, levying and collecting of such assessments and the payment of the costs and expenses of maintaining, operating and managing the Condominium by the Association.

17.1 **Determination of Assessments.** Assessments by the Association against each owner of a Unit and his or her Unit shall be in proportion to the area each Unit bears to the area of all Units. Should the Association become the owner of any Unit(s), the assessment which would otherwise be due and payable to the Association by the owner(s) of such Unit(s), reduced by an amount of income which may be derived from the leasing of such Unit(s) by the Association, shall be a Common Expense of the Association apportioned and the assessment therefor levied ratably among the owners of all Units which are not owned by the

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Association, based upon their proportionate interests in the Common Elements exclusive of the interests therein appurtenant to any Unit or Units owned by the Association.

17.2 Time for Payment. The assessment levied against the owner of each Unit and his or her Unit shall be assessed on an annual basis and may be payable in quarterly, monthly, or such other installments and at such times as shall from time to time be fixed by the Board in accordance with provisions of applicable law.

17.3 Annual Budget. The initial 2010 Monthly Expenses for the Association is attached as Exhibit "G". Subsequent to the first year, the Board shall, in accordance with the Bylaws of the Association, establish an Annual Budget in advance for each calendar year, including estimates for all expenses for the forthcoming year required for the proper operation, management and maintenance of the Condominium, including, unless deemed unnecessary by the Board, a reasonable allowance for contingencies and general operating reserves. Upon adoption of each annual budget by the Board, copies thereof shall be delivered to each Unit owner, and the assessment for the year shall be based upon such Budget. Failure to deliver a copy of the Budget to a Unit owner shall, however, not affect the liability of such owner for such assessment. Should the Board at any time and from time to time determine, in the sole discretion of the Board, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board shall have the authority to levy such additional assessment or assessments as it shall deem to be necessary.

17.4 Capital Expense Reserve Fund. The Board, in establishing each annual budget shall, unless otherwise waived by the Unit owners as provided by applicable law, include therein a sum to be collected and maintained as reserve funds for the replacement of Common Elements and personal property held for the common use and benefit of the owners of all Units.

17.5 General Operating Reserve. The Board, when establishing each annual budget, when deemed necessary or desirable, or if required by law, shall include therein a sum to be collected and maintained as a general operating reserve to provide a measure of financial ability during periods of financial stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by owners of Units, as a result of emergencies, or for other reasons placing financial stress upon the Association.

17.6 Use of Association Funds. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of maintaining, operating and managing the Condominium, and to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles, and Bylaws. As the monies for annual assessments are paid to the Association by any Unit owner, the same may be commingled with monies paid to the Association by the other owners of Units. Capital Expense Reserve and General Operating Reserve funds of the Association shall not be commingled, but may be invested in a common investment, as long as separate accounts are maintained for each fund. All funds and other assets of the Association, and any increments thereto or profits derived therefrom, or from the leasing or use of Common Elements, including, without limitation, Common Surplus, shall be held for the benefit of the members of the Association; however, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Unit.

17.7 Delinquency or Default. The payment of any assessment or installment thereof due to the Association shall be in default if not paid to the Association on or before the due date thereof. When in default, the delinquent assessments or installments thereof shall bear interest at the rate of eighteen (18%) percent per annum, not to exceed the highest rate allowed by law until the same, and all interest due thereon, has been paid in full. If the assessment is not paid when due, and if the Association thereafter files a claim of lien in respect to it, then all assessments due in respect to the Unit for the remainder of the year in which the claim of lien is filed shall be accelerated and will stand due and payable in full and be secured by such claim of lien.

17.8 Personal Liability of Unit Owner. The owner(s) of each Unit shall be personally liable, jointly and severally, as the case may be, to the Association for the payment of all assessments, regular or special, interest on such delinquent assessments or installments thereof as above provided, and for all costs of collecting the assessments and interest thereon, including a reasonable attorney's fees, costs of litigation, expert witness fees and other costs and expenses, whether suit be brought or not, levied or otherwise coming due while such person(s) or entity own(s) a Unit.

17.9 Liability Not Subject to Waiver. No owner of a Unit may exempt himself or herself from liability for any assessment levied against such owner and his or her Unit by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of the Unit, or in any other manner.

17.10 Lien for Assessment. The Association is hereby granted a lien upon each Unit and its appurtenances, which lien shall and does secure the monies due for all: (i) assessments levied against the Unit and the owner(s) thereof, (ii) interest, if any, which may become due on delinquent assessments owing to the Association, and (iii) costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing its lien upon the Unit and its appurtenances. The lien granted to the Association shall be established and may be foreclosed in the appropriate court in and for Second Judicial District of Harrison County, Mississippi as provided by the laws of the State of Mississippi.

17.11 Recording and Priority of Lien: The lien of the Association shall be effective from and after recording, in the Public Records of Second Judicial District of Harrison County, Mississippi, a claim of lien stating the description of the Unit encumbered thereby, the name and address of the Association, the name of the record owner, the amount and the date when due, and shall continue in effect, or until all sums secured thereby shall have been fully paid. Such claims of lien shall secure all unpaid assessments, interests, costs and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien of the Association (regardless of when a claim therefor is recorded or the period of time for which the assessment is due) shall be a lien on the Unit encumbered superior in priority to all mortgages or other liens regardless of when recorded, but shall be subordinate to the lien of any first mortgage which is recorded prior to the time of recording the Association's claim of lien. Provided, however, the lien of the Association for tax or special assessment advances made by the Association where any taxing authority having jurisdiction levies any tax or special assessment against the Condominium as an entirety instead of levying the same against each Unit and its appurtenant undivided interest in Common Elements, shall be prior in lien, right and dignity to the lien of all mortgages, liens and encumbrances, whether or not recorded prior to the Association's claim of lien therefor, and the

Association's claim of lien for collection of such portion of any tax or special assessment shall specifically designate that the same secures an assessment levied pursuant to this provision.

17.12 Effect of Foreclosure or Judicial Sale. In the event that any person, firm or corporation shall acquire title to any Unit and its appurtenant undivided interest in Common Elements by virtue of any foreclosure, judicial sale, or deed in lieu of foreclosure, of a first mortgage, such person, firm or corporation so acquiring title shall be liable and obligated for assessments as shall accrue and become due and payable for the Unit and its appurtenant undivided interest in Common Elements subsequent to the date of acquisition of such title, and shall be jointly and severally liable with the previous owner for the payment of any assessments which were in default and delinquent at the time it acquired such title, except that such person, firm or corporation shall acquire such title subject to the lien of any assessment by the Association representing an apportionment of taxes or special assessment levied by tax authorities against the Condominium in its entirety which survives the foreclosure. The grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor for the grantor's share of the Common Expenses up to the time of transfer of title, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee.

In the event of the acquisition of title to a Unit by the first mortgagee or its successor or assign by foreclosure, judicial sale, or deed in lieu of foreclosure, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all owners of all Units as a part of the Common Expense, although nothing herein contained shall be construed as releasing the party personally liable for such delinquent assessment from the payment thereof or the enforcement or collection of such payment by means other than foreclosure.

17.13 Effect of Voluntary Transfer. When the owner of any Unit proposes to lease, sell or mortgage the same in compliance with other provisions of this Declaration, the Association, upon written request of the owner of such Unit, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the owner of such Unit. Such statement shall be executed by any officer of the Association and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

In the event that a Unit is to be leased, sold or mortgaged at the time when payment of any assessment against the owner of the Unit and Unit due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association) then the rent, proceeds of such sale or mortgage proceeds, as the case may be, shall be applied by the lessee, purchaser or mortgagee first to payment of any then delinquent assessment or installment thereof due to the Association before payment of the balance of such rent, proceeds of sale or mortgage to the owner of the Unit responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by

foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sum then remaining owing to it.

18. REGISTRY OF OWNERS AND MORTGAGEES. The Association shall at all times maintain a Register of the names and addresses of the owners and mortgagees of all Units. Upon the transfer of title to any Unit, the transferee shall notify the Association in writing of his or her interest in such Unit together with recording information identifying the instrument by which such transferee acquired his interest in the Unit ("Registered Owners"). The owner of each Unit encumbered by a mortgage shall notify the Association of the name and address of the mortgagee, the amount of such mortgage, or mortgages, and the recording information identifying the same ("Registered Mortgagees"). The holder of any mortgage encumbering a Unit may notify the Association of any such mortgage(s), and upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same.

19. ALTERATIONS OF AND IMPROVEMENTS TO UNITS AND COMMON ELEMENTS. Neither a Unit owner nor the Association shall make any alterations, improvements or additions to Units or Common Elements, except in compliance with the following:

19.1 By Unit Owner. Unless the Unit owner(s) shall first submit plans for such work to the Board, and the Board, by resolution adopted by the affirmative vote of a majority of all members thereof, shall approve and consent thereto, no alteration of or improvement or addition to a Unit, or to any Limited Common Element to which the owner has an exclusive right of use, shall be made, constructed, erected or installed which shall: (1) remove, in whole or in part, replace, reroute, or otherwise affect any column, bearing wall or partition, pipe, duct, wire or conduit, or obstruct any easement herein provided for, or (2) remove, or change the style, pattern, material, texture or outside color of any door, window, screen, fixture, equipment or appliance in or on an exterior Unit or building wall, or (3) cover, from the inside or outside, the glass or other transparent and/or translucent material in any exterior door or window with, or apply or affix thereto, any material or substance which shall render the same opaque or change the exterior color thereof, except interior draperies, curtains, shades or shutters which are lined, backed, covered or painted on the side visible from the exterior with a neutral color material, or (4) affix to or over any exterior door or window, or otherwise install on the exterior, of any Unit or building, any storm or hurricane shutter or awning or any protective or decorative panel, paneling, trim, enclosure, fixture, or appliance, excepting hurricane/storm shutters for terraces/balconies/lanais in accordance with Section 19.3 below, or (5) enclose any balcony, terrace or lanai adjoining a Unit or forming a part of a Unit (except as permitted in this Declaration, or (6) otherwise change, modify or alter the exterior of any Unit or building so that it thereby differs in appearance from any other Units.

A Unit owner making or causing to be made any such additions, alterations, or improvements agrees, and shall be deemed to have agreed, for such Unit owner and his heirs, personal representatives, successors, and assigns, as appropriate, to hold the Association, and any manager of the Condominium, together with all their officers, directors, partners, and all other Unit owners, harmless from any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after the date of installation or construction thereof, as may be required by the Condominium Association.

19.2 By Association. There shall be no material alterations or substantial improvements or additions to the Common Elements except in the following manner: subject to

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the foregoing restrictions against changing the exterior appearance of Units and/or buildings, the Association shall have the right to make or cause to be made alterations, improvements and/or additions to the Common Elements, except the acquisition of additional real property, which improvements, together with the costs thereof, have been approved by the owners of two-thirds (2/3) of the Residential Units. The cost of such alterations, improvements and/or additions shall be assessed against and collected from the owners of all Units as Common Expenses.

19.3 Hurricane/Storm Shutters. Unit owners may install hurricane/storm shutters protecting the terrace/balcony/lanai, and similar areas which are a part of their Unit or limited Common Elements appurtenant to their Unit as provided herein. For purposes of uniformity and exterior appearance of the Condominium Units and building, the Board of Directors of the Association shall adopt and approve a model, style and color of storm shutter as a standard storm shutter for use in the Condominium, which may be installed on the exterior of the terraces in compliance with applicable building codes. No storm shutter except of the models, colors and styles adopted by the Board of Directors shall be used in or upon the Condominium Property.

20. TERMINATION. The Condominium may be terminated in the following manner:

20.1 Destruction. In the event it is determined in the manner elsewhere herein provided that the improvements shall not be reconstructed because of total destruction or major damage, the Condominium plan of ownership will be thereby terminated without agreement under Article 20.2.

20.2 Agreement. The Condominium may be terminated at any time by the approval in writing of all of the owners of Units in the Condominium, and by the Registered Mortgagees. If the proposed termination is submitted to a meeting of the members of the Association, the notice of which meeting gives notice of the proposed termination, and if the approval of the owners of Units to which not less than seventy-five percent (75%) of the Common Elements are appurtenant, and of the Registered Mortgagees, are obtained not later than thirty (30) days after the date of such meeting, then the approving owners shall have an option to buy all of the Units of the other owners during a period ending on the sixtieth (60th) day from the date of such meeting. Such option shall be upon the following terms:

(1) **Exercise of Option.** The option shall be exercised by delivery or mailing by certified mail to each of the record owners of the Units to be purchased of an agreement to purchase signed by the record owners of Units who will participate in the purchase. Such agreement shall indicate which Units will be purchased by each participating owner and shall agree to purchase all of the Units owned by owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.

(2) **Price.** The sale price for each Unit shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific Performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

- (3) **Payment.** The purchase price shall be paid in cash.
- (4) **Closing.** The sale shall be closed within ten (10) days following the determination of the sale price.

20.3 Certificate. The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Second Judicial District of Harrison County, Mississippi.

20.4 Shares of Owners After Termination. 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, and their respective mortgagees and lienors shall have mortgages and liens upon the respective undivided shares of the Unit owners. Such undivided shares of the Unit owners shall be the same as the undivided shares in the Common Elements appurtenant to the owners' Units prior to the termination as set forth in Exhibit "C" hereto.

20.5 Amendment. This Article 20 shall not be amended without consent of all Unit owners and of all Registered Mortgagees.

21. ADDITIONAL RIGHTS OF DECLARANT.

21.1 Models and Sales Offices. So long as Declarant, or any mortgagees succeeding Declarant in title, shall own any Unit, it shall have the right to use any such Unit as a model and/or office, to lease or sell any such Unit to any person, firm or corporation, upon any terms and conditions as it shall deem to be in its own best interests. Declarant additionally reserves the right to add additional recreational facilities or to expand the existing facilities without the necessity of obtaining the consent of the Unit owners or the Association; provided, however, that the Declarant is under no obligation to add any such facilities.

21.2 Telecommunication Equipment. The Declarant reserves unto itself, the power and authority, but not the obligation, to contract for, construct or install over, through, under, across and under any portion of the Condominium Property for the use of the Unit owners and the Declarant, its successors and assigns, one or more telephone, cable and/or telecommunications receiving and distributions systems, electronics surveillance systems, emergency, medical or surveillance monitoring or alarm systems, and all associated equipment, lines, antennae, satellites or other telecommunication equipment presently existing or hereafter created (hereinafter the "Equipment Systems"), together with the perpetual; non-exclusive easement right and privilege of (1) unlimited ingress and egress to and upon, and use of, the Condominium Property, including Units, for installing, constructing, inspecting, repairing, maintaining, altering, moving, improving and replacing the Equipment Systems, and (2) distribution of signals and transmissions of whatever type. The Equipment Systems may be owned and exclusively controlled by the Declarant, its successors and assigns. The Declarant, its successor and assigns shall have a perpetual non-exclusive easement right and privilege to use portions of the Condominium Property for the Equipment Systems as well as for the services to be provided thereby, in its sole discretion, so long as such use does not unreasonably interfere with the intended use of the Condominium Property by the Unit owners.

21.3 Amendment. This Article 21 shall not be amended without the consent of the Declarant.

22. **MORTGAGEE PROTECTION CLAUSE.** The following provisions are for the benefit of Registered Mortgagees and to the extent these provisions conflict with any other provisions of this Declaration, these provisions shall control:

22.1 All such mortgagees who have registered their names with the Association shall be given (i) thirty (30) days written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association and prior to the effective date of any termination of any agreement for professional management of the Common Elements following a decision of the Unit owners to assume self-management of the Common Elements; (ii) immediate notice following any damage to the Common Elements whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00), and as soon as the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Common Elements; (iii) thirty (30) days notice after delinquency of more than sixty (60) days in payment of assessments by the owner of the Unit on which it holds a registered mortgage; (iv) thirty (30) days written notice prior to lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (v) thirty (30) days written notice prior to any proposed action which requires the consent of any percentage of Registered Mortgagees.

22.2 Unless at least sixty percent (60%) of Registered Mortgagees (based upon one vote for each Mortgage owned), and sixty percent (60%) of the Unit owners (other than Declarant) have given their prior written approval, and the approval of Declarant has been obtained if Declarant holds any Units for sale in the ordinary course of business, neither the Association, nor the Unit owners shall:

- (1) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Unit;
- (2) Except as otherwise provided by reservation to Declarant herein, amend this Declaration or the Articles of Incorporation or Bylaws of the Association in such a manner that the rights of any mortgagee will be directly and adversely affected.

23. **LIABILITY – GENERALLY.**

23.1 **General Provisions.** Notwithstanding anything contained in this Declaration, the Articles, Bylaws or rules and regulations of the Association, or any other document governing or binding the Association (“Property Documents”), neither the Declarant nor Association, will be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Unit owner, occupant or user of any portion of the Property, including without limitation, residents, their families, guests, invitees, licensees, agents, servants, contractors or subcontractors, nor for any property of such persons. [Discuss w/ Ms Counsel]

23.2 **Specific Provisions.** Without limiting the generality of the foregoing:

- (1) It is the express intent of the Property Documents that the various Provisions of the documents which are enforceable by the Association and which govern or regulate the use of Condominium Property have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the Condominium Property and the value thereof.

(2) Neither the Declarant nor the Association, are empowered to enforce or insure compliance with the laws of the United States, the State of Mississippi, the County, or any other jurisdiction, or to prevent tortious activities by Unit owners or third parties.

(3) The provisions of the documents setting forth the uses of Association which relate to health, safety or welfare will be interpreted and applied only as limitations on the uses of such funds and not as creating a duty of the Association, or the Declarant to protect or further the safety or welfare of the persons, even if such funds are used for such purposes.

23.3 Owner Covenant. Each Unit owner, his heirs, for himself and his successors and assigns (by virtue of his acceptance of title to his Unit) and each other person or entity having an interest or lien upon or making use of any portion of the Condominium Property (by virtue of accepting such interest or lien or by making use thereof), will be bound by this Section 23 and will be deemed to have automatically waived any and all rights, claims, demands or causes of action against the Association, and the Declarant arising from or connected with any manner for which the liability of the Association, and the Declarant have been disclaimed in this Section. It is further agreed that each Unit owner agrees to defend, indemnify and hold harmless the Declarant, Association and their agents, officers, employees and insurers against any loss, cost, claim or damage including but not limited to attorney's fees, expert fees and all other costs and expenses of litigation, arbitration, mediation or consultation with counsel, arising out of personal injury, illness, death, property damage or other damage or loss of any kind or nature of any person or entity caused in whole or in part by any act, inaction or occurrence (i) by the Unit owner, or their guest, invitee, or agent wherever the same may occur; and (ii) within the Unit owned by owner.

24. MISCELLANEOUS.

24.1 Severability. The invalidity in whole or in part of any covenant or restriction, or any Article, sub-article, sentence, clause, phrase or word, or other provision of this Declaration of Condominium and the Articles of Incorporation, Bylaws and regulations of the Association shall not affect the validity of the remaining portions thereof.

24.2 Applicability of Declaration of Condominium. All present or future owners, tenants, or any other person who might use the facilities of the Condominium in any manner, are subject to the provisions of this Declaration, and the mere acquisition or rental of any Unit, or the mere act of occupancy of any Unit, shall signify that the provisions of this Declaration of Condominium are accepted and ratified in all respects.

24.3 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership.

24.4 Parties Bound. The restrictions and burdens imposed by this Declaration of Condominium are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit and its appurtenant undivided interest in Common Elements and this Declaration shall be binding upon Declarant, its successors and assigns, and upon all parties who may subsequently become owners of Units in the Condominium, and their respective heirs, legal representatives, successors and assigns.

24.5 Declarant's Rights. Any rights vested in the Declarant shall pass to the Association when the Declarant has sold all Residential Units in the Condominium, with the exception of the lease described in Section 21.3.

IN WITNESS WHEREOF, Declarant has caused the foregoing Declaration of Condominium to be executed, and its corporate seal to be affixed, by its undersigned, duly authorized officer on the date first set forth above.

ASSET MANAGEMENT DIRECT, LLC

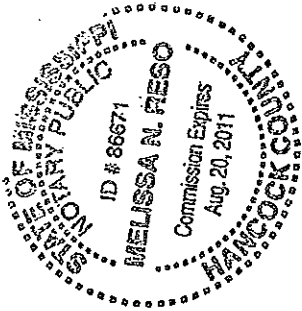
By: [Signature]
GREG STEWART
Its: Sole Member

STATE OF MISSISSIPPI
COUNTY OF HARRISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this 10th day of June, 2010, within my jurisdiction, the within named GREG STEWART, who acknowledged to me that he is the sole member of ASSET MANAGEMENT DIRECT, LLC, a Mississippi company, and as the act and deed of said limited liability company in the capacity set forth above, he executed the above and foregoing instrument, after first having been duly authorized by said company so to do.

(Seal)

[Signature]
Notary Public
My Commission Expires: _____



EXHIBITS

- A. Legal Description
- B. Site Plan, Exterior Elevations, and Floor Plans
- C. Percentage of Ownership Interest in Common Elements
- D. Cross Access Easement and Maintenance Agreement
- E. Articles of Incorporation for Association
- F. Bylaws for Association
- G. Initial 2010 Monthly Expenses for Homeowners' Association