

STATE OF ALABAMA

COUNTY OF BALDWIN

DECLARATION OF CONDOMINIUM OF BAY GARDENS CONDOMINIUM

IN BALDWIN COUNTY, ALABAMA

THIS Declaration is made and entered into on this 28<sup>th</sup> day of April, 1987, by BON SECOUR DEVELOPMENT CORPORATION, a corporation. hereinafter referred to as "Declarant", for itself, and for its successors, grantees, and assigns, for the purpose of creating a condominium and establishing certain easements, covenants, and restrictions to run with the land.

RECITALS

The Declarant is the owner of Certain real estate described in Article IV below, and located in the County of Baldwin, State of Alabama, hereinafter referred to as the "Parcel".

The Declarant intends to and does hereby submit 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, to the provisions of the Condominium Ownership Act of Alabama.

The Declarant further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Parcel or any part thereof, a condominium form of ownership; and intends that

all future owners, occupants, mortgagees, and any other persons hereinafter acquiring an interest in the Parcel shall hold that interest subject to certain rights, easements, and privileges in the Parcel, and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct, and maintenance of the property, as hereinafter set forth.

NOW, THEREFORE, the Declarant, as the owner of the Parcel, and for the purposes above set forth, declares as follows:

## ARTICLE I

### DEFINITIONS

The terms used herein [and in the Exhibits attached hereto] shall have the meaning specified in the Act, and as follows, unless the context otherwise requires:

- (1) "Act" means the Condominium Ownership Act of Alabama.
- (2) "Articles" mean the Articles of Incorporation of the Association, attached hereto as Exhibit C and by this reference made a part hereof, as they may be amended from time to time, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama.
- (3) "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.
- (4) "Association" means BAY GARDENS CONDOMINIUM OWNERS ASSOCIATION, an Alabama nonprofit corporation, and its successors,

that is the entity responsible for the administration and management of the Condominium.

(5) "Board" means the Board of Directors of the Association.

(6) "Buildings" means all structures or structural improvements located on the Parcel and forming part of the Condominium.

(7) "Bylaws" means the duly adopted Bylaws of the Association for the government of the Association, attached hereto as Exhibit D and by this reference made a part hereof as they may be amended from time to time.

(8) "Common Elements" means any part of the Condominium Property except the Units as set forth and defined in Paragraph 4.04 of this Declaration in which all of the Unit Owners have an undivided interest.

(9) "Common Expenses" means the expenses arising out of the ownership Of the Common Elements, including 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;

(10) "Common Surplus" means the excess of all receipts of the Association over the amount of the Common Expenses;

(11) "Condominium" means the BAY GARDENS CONDOMINIUMS and consists of the Condominium Property submitted to the condominium form of ownership by this Declaration;

(12) "Condominium Documents" means the Declaration, Bylaws, Articles, and all exhibits attached thereto as the same may be amended from time to time;

(13) "Condominium Property" or "Property" means all property covered by the Declaration, and includes the Land and all improvements now existing or hereafter placed thereon, all easements, rights, interests and appurtenances thereto, and all personal property now or hereafter used in connection therewith;

(14) "Declaration" means this Declaration as it may be amended from time to time;

(15) "Developer" means BON SECOUR DEVELOPMENT CORPORATION, a Corporation, and its successors and assigns; and its successors and assigns;

(16) "Institutional Mortgagee" means a bank, a savings and loan association, an insurance company, a FHA approved mortgage lender, a pension fund, a credit union, a real -estate or mortgage investment trust, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Mortgage banker or any other lender generally recognized in the community as an institutional type of lender or its loan correspondent, or the Declarant holding a Mortgage on one or more individual Units.

(17) "Limited Common Elements" means the part or parts of the Condominium Property as set forth in Paragraph 4.05 of this Declaration, in which more than one, but not all of the Unit Owners have an undivided interest.

(18) "Member" means a member of the Association, membership in which is confined to persons holding fee ownership in a Unit.

(19) "Occupant" means a person or persons in possession of a Unit, regardless of whether that person is the Unit Owner.

(20) "Plans" means the site plan, prepared by PETESON RICHMOND ASSOCIATES, which depict the location, layout, identifying numbers, and dimensions of the Units and the Limited Common Areas and the Common Areas, identified as the BAY GARDENS CONDOMINIUMS, that are attached hereto as Exhibit A, and by this reference made a part hereof.

(21) "Special Assessments" means the costs and expenses, other than Common Expenses, for which the Unit Owners are liable to the Association.

(22) "Unit" means that part of the Property designated and intended for independent use by the owner thereof, and will be bounded on each side as shown in the plans annexed as Exhibit A. Each Unit shall include all improvements hereafter constructed on such area. All improvements shall be individual free-standing Units. Subject to the provisions of this Declaration, any Unit owner shall have

the right to construct and maintain one single family residence on each Unit. No pipes, wires, conduits, ducts, shafts and public utility lines situated within any Unit and forming a part of any system serving one or more other Units or the Common Elements shall be deemed a part of the Unit.

An Entire Unit may be combined with an Entire Adjacent Unit and occupied as one Unit.

When a Unit is conveyed, the following shall pass with it as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided by this Declaration and as may not be separately conveyed in accordance with this Declaration; and (c) other appurtenances as may be provided in this Declaration.

(23) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit and of the attached undivided interest in the Common Elements.

Whenever 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.

## ARTICLE II

### SUBMISSION OF PROPERTY TO ACT

By this Declaration, the Declarant hereby submits the Parcel and the Property to the provisions of the Act.

ARTICLE III

NAME AND ADDRESS

The name of the Condominium is BAY GARDENS CONDOMINIUMS. The Condominium is located on Fort Morgan Road, in the County of Baldwin, State of Alabama.

ARTICLE IV

DESCRIPTION OF PROPERTY

LAND

4.01 The following property is hereby submitted to the condominium form of ownership:

Commence at the Northeast corner of the Northwest Quarter of Section 19, Township 9 South, Range 3 East; run thence North 89 degrees 44 minutes 35 seconds West for 49.5 feet to the Point of Beginning; run thence South 89 degrees 44 minutes 35 seconds East for 49.5 feet; run thence South 00 degrees 32 minutes 04 seconds West for 50.06 feet; run thence South 89 degrees 55 minutes 26 seconds West for 108.67 feet; run thence South 00 degrees 37 minutes 11 seconds West for 308.44 feet to the North right-of-way of Dixie Graves Parkway; run thence South 85 degrees 19 minutes 00 seconds West along the North right-of-way of said Dixie Graves Parkway for 553.88 feet; run thence North 00 degrees 37 minutes 11 seconds East for 406.82 feet; run thence South 89 degrees 44 minutes 35 seconds East for 363.11 feet; run thence North 00 degrees 37 minutes 11 seconds East for 324 feet, more or less, to the South margin of Bon Secour Bay; run thence in an easterly direction along the meanders of said Bon Secour Bay to a point that is North 00 degrees 37 minutes 26 seconds East and 320 feet, more or less, from the point of beginning; run thence South 00 degrees 37 minutes 26 seconds West for 320 feet, more or less, to the Point of Beginning.

Parcel 2:

Commence at the Northeast corner of the Northwest Quarter of Section 19, Township 9 South, Range 3 East; run thence North 89 degrees 44 minutes 35 seconds West for 297 feet to the Point of Beginning; continue thence North 89 degrees 44 minutes 35 seconds West for 290.08 feet; run thence North 00 degrees 48 minutes 39 seconds East for 332.45 feet to a bulkhead on the South margin of Bon Secour Bay; run thence in an easterly direction along the meanders of the South margin of said Bon Secour Bay to a point that is North 00 degrees 37 minutes 11 seconds East and 324 feet, more or less, from the point of beginning; run thence South 00 degrees 37 minutes 11 seconds West for 324 feet, more or less, to the Point of Beginning.

Declarant's right, title and interest in and to that certain right of way described in Deeds recorded in Deed Book 250, Pages 204, 207, 210, 213 and 216.

#### IMPROVEMENTS

4.02 The Developer has not constructed any improvements on the property. Subject to the provisions of this Declaration, each Unit Owner shall have the right to construct and maintain one single family residence on each Unit.

#### UNITS

4.03 Each Unit is assigned a number or letter or a combination thereof, which is indicated on the Plans made Exhibit A hereto, so that no Unit bears the same designation as any other Unit. The legal description of each unit shall consist of the identifying number or letter as shown on the Plan, the name of the Condominium, the name of the county in which the Parcel is situated, the name of the office in which this Declaration is recorded, and the deed book and page number where the first page of this Declaration is recorded.

#### COMMON ELEMENTS



4.04. The Common Elements shall include the common areas and facilities located substantially as shown on the Plans. Such Common Elements will include the following, unless specifically included within a Unit:

- (1) The Land described in Paragraph 4.01, hereof.
- (2) The yard, streets, walkways, parking areas, recreational areas, and landscaping (except landscaping placed on a private unit).
- (3) All maintenance facilities, water storage tanks, pumps, outdoor lighting, and the like.
- (4) All easements, rights, or appurtenances affecting or relating to the use of the Condominium Property, unless specifically included in any Unit.

#### LIMITED COMMON ELEMENTS

4.05. The Limited Common Elements shall include the limited common areas located substantially as shown on the Plans. Such Limited Common Elements will include the following:

- (1) As of the filing of this Declaration, BAY GARDENS CONDOMINIUMS has no Limited Common Elements as that term is defined by the Alabama Condominium Ownership Act. This paragraph is hereby reserved for future use should Limited Common Elements of BAY GARDENS CONDOMINIUMS be later defined by Amendment to this Declaration.

#### ARTICLE V

## COMMON ELEMENTS

### OWNERSHIP OF COMMON ELEMENTS

5.01. Each Unit Owner shall be entitled to the percentage of Ownership in the Common Elements allocated to the respective Unit, as set forth in Exhibit B. The ownership interest in the Common Elements shall be an undivided interest, and except as provided in the act 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.

### USE OF COMMON ELEMENTS

5.02. Each Unit Owner shall have the right to use the Common Elements (except any portions of the Property subject to leases made by or assigned to the Board) 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 owned by such Unit Owner. The rights to use the Common Elements shall be subject to and governed by the provisions of the Act, Declaration, Bylaws, 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 Bylaws.

## SHARE OF COMMON EXPENSES

5.03. Each Unit Owner shall be liable for a proportionate share of the Common Expenses, and the proportionate share of Common Expenses shall be the same ratio as his percentage of ownership in the Common Elements. Payment of Common Expenses shall be in such amounts and at such times as determined in the bylaws. No Unit Owner shall be exempt from payment of his or her proportionate share of the Common Expenses by waiver or non-use or non-enjoyment of the Common Elements, or by abandonment of his or her Unit. Notwithstanding any provision to the contrary in this Declaration or any other provision of any of the Condominium documents. Declarant shall not be required to pay any portion of the Common Expenses until seven (7) years from the date of the original filing of the Declaration of Condominium or until four months after Declarant has completed and sold seventy-five (75%) percent of the Units of the Condominium, whichever occurs first. (DECLARATION AMENDMENT 1) (DECLARATION AMENDMENT 2)

## LIEN FOR EXPENSES

5.04 If any Unit Owner shall fail or refuse to make any payment of the Common Expenses or other assessments when due, the amount due, together with cost, reasonable attorney's fees, and interest thereon at a rate set by the Board of Directors but in no event greater than the maximum percentage rate as may then be permitted under the laws of the State of Alabama, from and after the date said Common Expenses and other assessments became due and payable in accordance

with applicable law, shall constitute a lien on the interest of the Unit Owner in the Property.

## DISPOSITION OF COMMON SURPLUS

5.05 The Common Surplus shall appertain to the Units in proportion to the liability for Common Expenses appertaining to each Unit; 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 Association.

## ARTICLE VI

### THE ASSOCIATION

#### POWERS AND DUTIES

6.01. The Association 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 Act, as well as all the powers and duties granted to or imposed on it under the Condominium Documents as they may be amended from time to time. 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.

#### MEMBERSHIP

6.02. 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. The membership of a Unit Owner cannot be assigned or transferred in any manner except as an appurtenance to his Unit.

## VOTING RIGHTS

6.03. Each Unit is entitled to one vote, which vote is not divisible. Where the Unit Owner is more than one person, if only one person is present at a meeting of the Association, that person shall be entitled to cast the vote pertaining to that Unit. If more than one such person is present at a meeting, the vote pertaining to that Unit shall be cast by their unanimous consent OR in accordance with the provisions set forth in the **bylaws**. The provisions of this paragraph are subject, however, to the right of Declarant to appoint and remove Directors as set forth in paragraph 5.03 of the By-Laws of Bay Gardens Condominium Owners' Association, as amended, which amendment is recorded simultaneously **with this instrument. (DECLARATION AMENDMENT 1)**

## ARTICLE VII

### OCCUPANCY, USE, AND LEASING RESTRICTIONS

#### RESIDENTIAL USE

7.01. No Owner, tenant or other occupant of the Properties herein described shall, without the prior written consent of the Board of Directors:

(a) Paint or otherwise change the appearance of any exterior wall, door, window, terrace, balcony, or any exterior surface; enclose any terrace or balcony with screen, glass or other material; erect any exterior lights or signs; place any signs in windows; erect or attach

any structures or fixtures to the Common Area; nor make any structural additions or alterations (except the erection or removal of nonsupport carrying interior partitions wholly within the unit) to any Unit or to the Common Area. Any Owner who wishes to accomplish any of the foregoing shall make such request in writing to the Board of Directors together with, if necessary, one (1) copy of the plans and specifications for the work proposed by the Owner. In the event the Board of Directors shall fail to approve or disapprove such request by an Owner within sixty (60) days from the submission of same to the Board of Directors or of its designated representative, such approval will not be required and this covenant shall be deemed to have been fully complied with; and, nothing herein contained shall prevent, or is intended to prevent, an Owner from maintaining or making repairs to his Unit so as to maintain his Unit in the condition existing at the time of purchase;

(b) Permit loud and objectional noises or obnoxious odors to emanate from the Unit or from vehicles which may cause a nuisance to the occupants of other Units;

(c) Make any use of a Unit which violates any laws, ordinances or regulation of any governmental body or governmental agency;

(d) Fail to conform to and abide by the By-Laws and the uniform rules and regulations in regard to the use of the Common Area which

may be adopted from time to time by the Board of Directors of the Association;

(e) Erect, construct or maintain any wire, radio, television or other type antennas, garbage or refuse receptacles, or other equipment or structures on the exterior of the building or on the Common Area, except with the written consent of the Board of Directors;

(f) Permit or suffer anything to be done or kept on the Properties which will increase insurance rates on any Unit;

(g) Commit or permit any nuisance, upon the Properties herein described;

(h) Divide or subdivide a Unit into a smaller Unit or Units as to create a Unit smaller in size than that shown by plat of the properties; provided, however, that an entire Unit may be combined with an entire adjacent Unit and occupied as one Unit;

(i) Obstruct the common way of ingress and egress to the other Units or to the Common Area;

(j) Place or allow anything to remain in or on the Common Area which would be unsightly or hazardous;

(k) Allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles provided therefor; and each Unit and the Common Area shall at all times be kept in a clean and sanitary condition. Garbage shall be placed in waterproof bags or similar containers before being placed in the appropriate receptacles;

(l) Allow any fire or health hazard to exist;

(m) Make use of the Common Area in such a manner as to abridge the equal rights of the other Owners to the use and enjoyment of same;

(n) Permit a boat or boat trailer to be kept or maintained on the parking spaces or permit said parking spaces to be used for the storage of campers, motor homes or any other vehicle, apparatus or equipment (excluding passenger vehicles) without the written approval of the Board of Directors;

(o) Use the Unit for anything other than for residential purposes; said Properties are hereby restricted to residential dwellings for residential use only;

(p) No Owner of a Unit shall repair any motor vehicle, boat or other vehicle upon any portion of any Unit except for emergency repairs thereto and then only to the extent necessary to enable movement thereof to a proper repair facility;

(q) Raise, breed, or keep animals, livestock or poultry of any kind on any Unit except that dogs, cats and other household pets may be kept, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose;

(r) Erect outbuildings or storage buildings of any kind upon the Properties;



(s) Cut or otherwise destroy any growing tree which is four (4) feet in height or more unless said growing tree becomes a hazard to person or property;

(t) No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

## ARTICLE VIII

### EASEMENTS

Each of the following easements is 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:

(1) Utilities. Each Unit shall have an easement as may be required for Utility Services needed to serve the Condominium adequately.

(2) 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 area. This easement shall be nonexclusive and shall include the right of ingress and egress.

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

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

## ARTICLE IX

### MAINTENANCE, ALTERATION, AND IMPROVEMENTS

#### MAINTENANCE BY THE ASSOCIATION

9.01. Common Areas. Except as provided in the next Section, the Association shall provide exterior maintenance upon each improvement located on the areas designated in the plat of the properties which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, walks, drives, parking areas, and other improvements. The Association shall also trim, cut, prune, fertilize, water, weed and otherwise maintain trees, shrubs, and grass, located in the Common Areas designated in the plat of the properties.

#### 9.02. Owner's Obligation to Repair and Restore.

(a) Except for those portions which the Association is required to maintain and repair hereunder, each Owner shall, at his sole cost and expense, maintain and repair his Unit keeping the same in good condition and making all structural repairs as they may be required.

(b) In the event an Owner of any Unit in the Properties shall fail to maintain the premises and the improvements situated thereon, as provided for herein and should any owner fail to maintain the premises and improvements situated thereon, the Association, after approval by two-thirds (2/3rds) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Unit and to repair, maintain and restore the Unit and the building and any other

improvements erected thereon. The cost of the same shall be added to and become part of the assessment to which such Unit is subject.

(c) All fixtures and equipment installed within a Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Unit shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Unit or impair any easement or hereditament nor any act nor allow any condition to exist which will adversely affect the other Units or their Owners.

### ARCHITECTURAL CONTROL

9.03. The essence of Bay Gardens Condominiums lies in its architectural concept which makes it unique and thereby enhances the value of each Unit and the condominium project as a whole. Therefore, no building, fence wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to the surrounding structures and topography by the Association's Board of Directors or its designee the Architectural Committee chaired by the Board of Directors' vice president. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. THIS (DECLARATION AMENDMENT 1) (DECLARATION AMENDMENT 3)

PROVISION CONCERNING ARCHITECTURAL CONTROL WILL BE STRINGENTLY ENFORCED AND NO UNIT OWNER SHOULD MAKE ANY ASSUMPTION THAT THE PLANS AND SPECIFICATIONS FOR IMPROVEMENTS TO BE LOCATED ON ANY UNIT WILL BE AUTOMATICALLY APPROVED.

## ARTICLE X

### INSURANCE

#### INDIVIDUAL UNITS

10.01. Each Unit Owner shall be responsible for insuring the improvements located on the individual Units against fire, wind, flood, and other hazards.

#### COMMON ELEMENTS

10.02 The Association shall insure all improvements located on the Common Elements against fire, wind, flood and other hazards. The amount of such insurance shall be determined by the Board. The cost of such insurance shall be assessed as a common expense as herein provided.

#### PUBLIC LIABILITY INSURANCE

10.03 The Board shall secure and maintain in effect Comprehensive General Liability insurance covering loss or damage resulting from an occurrence on the Common Elements of the property in such amounts as maybe required by the Board covering all claims for bodily injury or property damage or both arising out of a single occurrence. The cost of such insurance shall be assessed as a common expense as herein provided.

## PERSONNEL COVERAGES

10.04 Should the Association employ personnel, all coverages required by law, including Workers' Compensation shall be obtained so as to meet the requirements of the law.

## FIDELITY BONDS

10.05 The Board shall secure and maintain in effect adequate Fidelity coverage to protect against loss of money through dishonest acts on the part of officers, directors, employees and others who handle or are responsible for handling the funds of the Association, including but not limited to, employees or professional managers. Such Fidelity Bonds shall meet the following requirements:

(1) Fidelity Bonds shall name the Association as an insured or obligee.

(2) The Bonds shall be written in an amount equal to at least 150% of the estimated annual common expenses, including reserves, unless a greater amount is required by a Federal governmental agency insuring or purchasing mortgages encumbering Units.

(3) The bonds shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(4) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Mortgage Holder.

## ASSOCIATION AS AGENT

10.06 Association as Agent. All insurance policies purchased by the Association shall provide that all proceeds covering property losses shall be paid to the Association. The Association shall have the power to adjust all claims arising under insurance policies purchased by the Association; to bring suit thereon in its name or in the name of other insureds to deliver releases on payments of claims, to compromise and settle such claims; and otherwise exercise all rights, powers and privileges of the Association.

## SHARES OF PROCEEDS

10.07 The Association shall receive such insurance proceeds as are paid to it and shall hold the same in trust for the benefit of the Unit Owners and their mortgages in proportion to the share of Common Elements appurtenant to the respective Units as set forth in Exhibit B. The Board shall determine the appropriate use of such proceeds to reconstruct facility insured by the Association or to distribute to the Unit Owner in proportion to the Unit Owners' ownership of the Common Elements as set forth in Exhibit B.

## ARTICLE XI

### CONDEMNATION

11.01 Individual Units. Any proceeds payable as a result of the exercise of eminent domain by proper governmental authority pertaining to any individual Units shall be paid to the individual Unit Owner and the mortgagee of such Unit, if any.

11.02. Common Elements. Any condemnation proceeds payable as a result of the exercise of eminent domain by proper governmental authority of the Common Elements shall be payable to the Association and held in trust in the same manner as insurance proceeds as specified herein.

## ARTICLE XII

### RULES AND REGULATIONS

#### COMPLIANCE

12.01. 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. Failure of the Unit Owner to comply therewith shall entitle the Association or other Unit Owners to the following relief in addition to other remedies provided in the Condominium Documents and the Condominium Act.

#### ENFORCEMENT

12.02. 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 from time to time as set forth in the Bylaws. 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 thereof 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.

#### NEGLIGENCE

12.03 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 of the Common Elements or of the Limited 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.

#### NO WAIVER OF RIGHTS

12.04 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 do so.

#### ARTICLE XIII

#### AMENDMENT OF THE DECLARATION

#### NOTICE

13.01 Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Association or the Board of Directors at which a proposed amendment is considered.



## RESOLUTION

13.02 An amendment may be proposed by either a majority of the Board of Directors or by members holding 10% of the votes of the Association. A resolution adopting a proposed amendment must be adopted by an affirmative vote of not less than a majority of the Board of Directors and by Members holding not less than 75 percent of the votes of the Association.

## AGREEMENT

13.03 In the alternative, an amendment may be made by an agreement signed and acknowledged by the record owners of all Units in the manner required for the execution of a deed.

## AMENDMENT BY DECLARANT

13.04 (l) In addition to the procedures described above in this Article, as long as the Declarant shall hold fee simple title to any Unit, this Declaration may be amended by the Declarant if such amendment does not violate the terms of the Condominium Act or this Declaration. The subject matter of any such amendment may include, without limitation, the combining of two or more Units or the subdividing of one or more Units owned by the Declarant (without, however, changing the aggregate percentage of Common Elements appurtenant to such units) or any matter required by a governmental agency or an Institutional Mortgagee willing to make or purchase a permanent mortgage loan secured by a Unit. Any amendment by the Declarant pursuant to this subsection shall be effective without the joinder of any record owner of any Unit, or the joinder of any owner of any lien thereon; provided, however, that no such amendment shall adversely affect the lien or priority of any previously recorded Institutional Mortgage as it affects a Condominium Parcel, or change the size or dimensions of any Unit not owned by, the Declarant without the written consent of the Owner of

such Unit and the holder of any Institutional Mortgage encumbering such Unit. If such an amendment makes any changes in the size or dimension of any Unit, such changes shall be reflected by an amendment to this Declaration with a survey attached, and said amendment need only be executed and acknowledged by the Declarant and any holders of Institutional Mortgages encumbering any such Unit. Such a survey shall be certified in the manner required by the Condominium Act. If more than one Unit is changed, the Declarant shall apportion among the Units the shares in the Common Elements, Common Expenses; Common Surplus, and voting: rights of the Units concerned, and such shares of the Common Elements, Common Expenses, Common Surplus, and voting rights shall be set forth in the amendment to this Declaration.

(2) As long as the Declarant is the Owner of any Unit, no amendment to this Declaration may be made unless the Declarant shall join in the execution of such amendment, nor shall any amendment make any change that would in any way affect the rights, privileges, or powers of the Declarant unless the Declarant shall join in the execution thereof.

#### PROVISO

13.05 Any provision in this section to the contrary notwithstanding, however. no amendment shall discriminate against any Unit Owner or against any Unit or class or group of Unit Owners or Units unless the Unit Owners so affected and the holders of Institutional Mortgages on such Units shall unanimously consent thereto; no amendment shall change any Unit or change the percentage of its share in the Common Elements appurtenant thereto or any other of its appurtenances, or increase the percentage of any Unit Owner's share of the Common Expenses. unless the Owners of the Units that would be changed or the percentage of whose shares would be changed and all

holders of Institutional Mortgages on such Units shall join in the execution of the amendment; and except for amendments adopted pursuant to Paragraph 16.04 hereof, no amendment shall restrict the terms of any Unit Owner's occupancy of his Unit Or his right to convey or lease his Unit. unless Unit Owners owning not less than 75% Units shall join in the execution of the amendment.

#### EXECUTION AND RECORDING

13.06 A copy of each amendment shall be attached to a certificate which shall include the recording data identifying this Declaration, certifying that the amendment was duly adopted, which certificate shall be executed by the President and Secretary of the Association with formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the Public Records of Baldwin County.

#### ARTICLE XIV

#### MISCELLANEOUS

#### INTENT

14.01 It is the intent of the Declarant to create a condominium pursuant to the Act. In the event that the condominium created by this Declaration shall fail in any respect to comply with the Act, 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 Bylaws, the Articles, and all other instruments and exhibits attached to or made a part of this Declaration.

## COVENANTS, CONDITIONS AND RESTRICTIONS

14.02 All provisions of the Condominium Documents shall, to the extent applicable and unless otherwise expressly therein provided 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.

## SEVERABILITY

14.03 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 Bylaws, any rules and regulations of the Association promulgated pursuant thereto, and any exhibits attached hereto, as the same may be amended from time to time, or the Act, 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.

## TAXATION OF CONDOMINIUM PARCELS

14.04 For the purpose of ad valorem taxation, the interest of a Unit Owner in his Unit and in the. Common Elements shall be inseparable. In any year in which either or both of such interests are to be taxed separately to a Unit Owner, the total value of said interests shall be equal to the product obtained by multiplying the entire value

of the Condominium Property for purposes of ad valorem taxation by the decimal equivalent of the share of the Common Elements appurtenant to such Unit. No provision in this Declaration shall be construed as giving any Unit Owner the right or contribution or any right of adjustment against any other Unit Owner on account of any deviation by the taxing authorities from the valuation herein prescribed; each Unit Owner being required to pay ad valorem taxes and special assessments as are separately assessed by governmental authorities against his Condominium Parcel.

#### NOTICE

14.05 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 29261 Ono Boulevard, Orange Beach, Alabama, 36561, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically to the contrary in the Act, 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 him 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.

(DECLARATION AMENDMENT 1)

## GOVERNING LAW

14.06 Should any dispute or litigation arise 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.

## WAIVER

14.07 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.

## RATIFICATION

14.08 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.

## PREPARATION OF DECLARATION

14.09 This declaration was prepared by JULIAN B. BRACKIN, BRACKIN AND CHANDLER, 201 North Alston Street, Foley, Alabama, 36535, who is an attorney authorized to practice law in the State of Alabama.

## CAPTIONS

14.10 The captions used in the Condominium Documents are inserted solely as a matter of convenience and reference and shall not be relief on and/or used on construing the effect or meaning of any of the text of the Condominium Documents.

## ASSIGNMENT

14.11 All rights in favor of the Declarant reserved in this Declaration are freely assignable in whole or in part by the Declarant and may be exercised by any nominee of the Declarant and/or exercised by the successors in interest of Declarant.

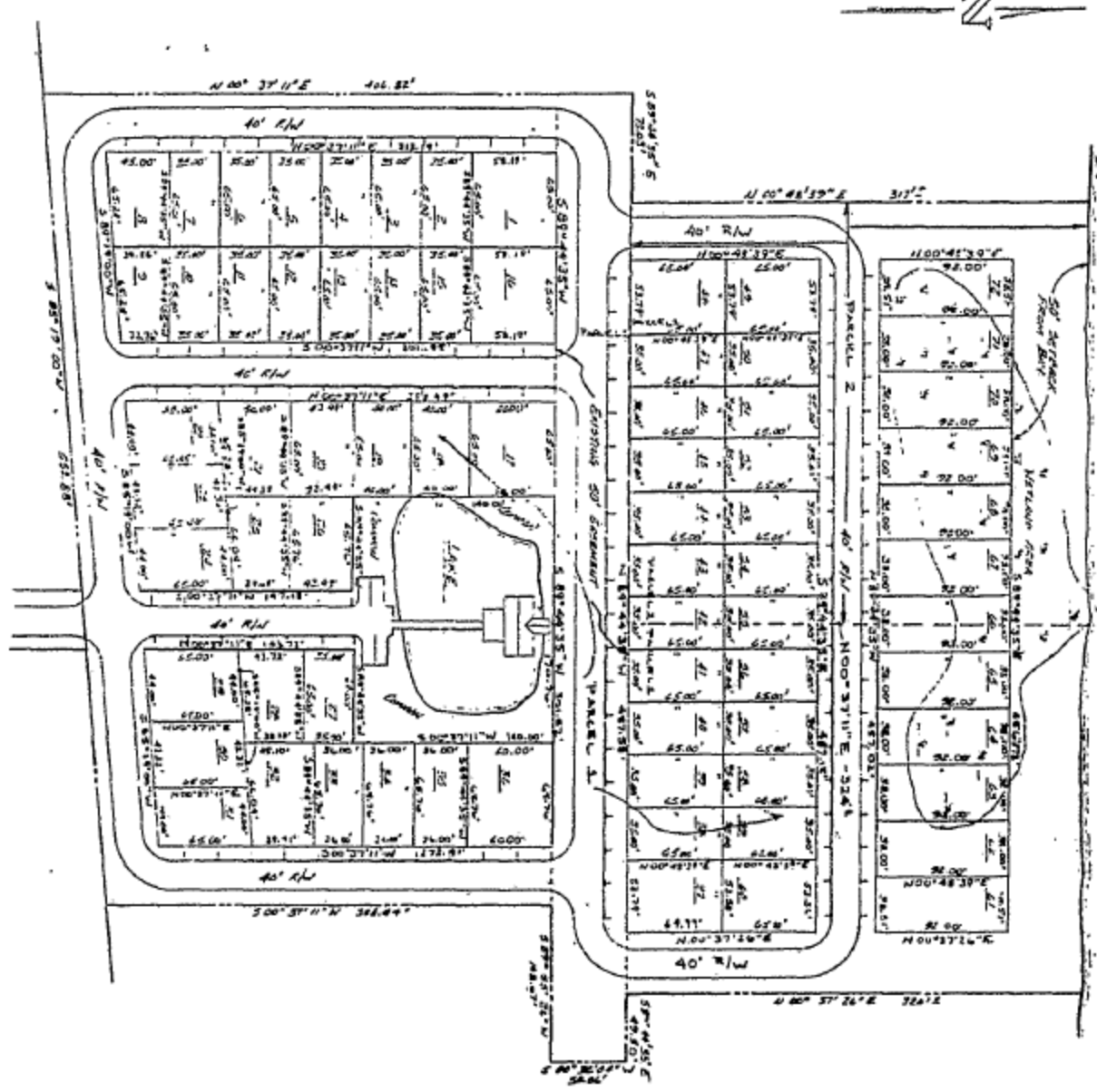
**THIS DOCUMENT IS REPLACED FROM THE ORIGINAL RECORDED DOCUMENT (MISC. BOOK 59, PAGES 1631 – 1664) BY DECLARANT EXECUTED ON 28<sup>TH</sup> DAY OF APRIL, 1987. ANY CONFLICTS WITH THIS REPLACATION, THE ORIGINAL RECORDED DOCUMENT TAKES PRECEDENCE.**

**THE ORIGINAL RECORDED DOCUMENT HAS BEEN AMENDED BY “AMENDMENT 1” TO THE DECLARATIONS AND RECORDED IN MISC. BOOK 65, PAGES 0784-0787 DATED 25<sup>TH</sup> OF AUGUST, 1989. AMENDED ITEMS ARE DENOTED WITH A CHANGE BAR AT LEFT OF AFFECTED PARAGRAPHS.**

**THE ORIGINAL RECORDED DOCUMENT HAS BEEN AMENDED BY “AMENDMENT 2” TO THE DECLARATIONS AND RECORDED IN MISC. BOOK 69, PAGES 1644-1646 DATED 21<sup>ST</sup> OF NOVEMBER, 1991. AMENDED ITEMS ARE DENOTED WITH A CHANGE BAR AT LEFT OF AFFECTED PARAGRAPHS.**

**THE ORIGINAL RECORDED DOCUMENT HAS BEEN AMENDED BY “AMENDMENT 3” TO THE DECLARATIONS AND RECORDED AS DOCUMENT NUMBER 1151986 DATED 25<sup>TH</sup> OF NOVEMBER, 2008. AMENDED ITEMS ARE DENOTED WITH A CHANGE BAR AT LEFT OF AFFECTED PARAGRAPHS.**

EXHIBIT A



AL. STATE HWY NO. 150 330' R/W

REAR SITE LAYOUT PLAN

MISC. 59 AGE 1665



EXHIBIT B

Percentage of Ownership in Common Elements Allocated to Condominium Units

<u>Unit Nos.</u>	<u>Percentage Ownership in Common Elements</u>
1	1.3888
2	1.3888
3	1.3888
4	1.3888
5	1.3888
6	1.3888
7	1.3888
8	1.3888
9	1.3888
10	1.3888
11	1.3888
12	1.3888
13	1.3888
14	1.3888
15	1.3888
16	1.3888
17	1.3888
18	1.3888
19	1.3888
20	1.3888
21	1.3888
22	1.3888
23	1.3888
24	1.3888
25	1.3888
26	1.3888
27	1.3888
28	1.3888
29	1.3888
30	1.3888
31	1.3888
32	1.3888
33	1.3888
34	1.3888
35	1.3888
36	1.3888
37	1.3888
38	1.3888
39	1.3888

MSC. 59-AGE 1666

EXHIBIT B (Continued)

<u>Unit Nos.</u>	<u>Percentage Ownership of Common Elements</u>
40	1.3888
41	1.3888
42	1.3888
43	1.3888
44	1.3888
45	1.3888
46	1.3888
47	1.3888
48	1.3888
49	1.3888
50	1.3888
51	1.3888
52	1.3888
53	1.3888
54	1.3888
55	1.3888
56	1.3888
57	1.3888
58	1.3888
59	1.3888
60	1.3888
61	1.3888
62	1.3888
63	1.3888
64	1.3888
65	1.3888
66	1.3888
67	1.3888
68	1.3888
69	1.3888
70	1.3888
71	1.3888
72	1.3888

MSC. 59-AGE 1667

EXHIBIT C  
**ARTICLES OF INCORPORATION  
OF  
BAY GARDENS  
CONDOMINIUM OWNERS ASSOCIATION, INC.  
(an Alabama non-profit corporation)**

By these Articles, the undersigned natural person, over the age of nineteen (19), acting as the incorporator for the purpose of forming a not for profit corporation under the Alabama Nonprofit Corporation Act, §10-3-1 et seq., Code of Alabama (1975) and the Alabama Condominium Ownership Act of 1973, §35-8-1 et seq., Code of Alabama (1975), verifies as follows:

**ARTICLE I.  
NAME AND DEFINITIONS**

The name of the corporation shall be BAY GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. The corporation is herein referred to as the "Association", and the terms used herein shall have the meaning for each stated in the Alabama Nonprofit Corporation Act, §10-3-1 et seq., Code of Alabama (1975) and the Alabama Condominium Ownership Act of 1973, §35-8-1 et seq., Code of Alabama (1975) (hereinafter referred to as the "Acts") and the Declaration of Condominium of BAY GARDENS CONDOMINIUM, a Condominium as recorded in the Public Records of Baldwin County, Alabama, unless the context otherwise requires.

**ARTICLE II.  
PURPOSE**

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

1. To maintain, operate and manage the condominium known as BAY GARDENS CONDOMINIUM, a Condominium located in Baldwin County, Alabama, and to do all things incident, necessary, convenient, expedient, ancillary, or in aid of the accomplishment of the foregoing.

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

### **ARTICLE III.**

#### **POWERS**

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

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

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

2. To establish a budget for the operations of the Condominium; to designate those expenses which shall constitute the Common Expenses of the Condominium; to make, levy, and collect assessments against Unit Owners of the Condominium to provide the funds to pay for Common Expenses of the Condominium as provided for in the Condominium documents and in the Act; and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association;

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

4. To have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any Common Elements or Limited Common Elements therein or accessible therefrom, or, to have

immediate access at any time as may be necessary for making emergency repairs necessary to prevent damage to any other Unit or Units;

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

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

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

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

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

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

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

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

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

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

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

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

17. Borrow money, and with the assent of two-thirds (2/3rds) of each class of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

18. Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3rds) of each class of members.

#### **IV.**

### **ASSOCIATION FUNDS AND PROPERTY**

The Association shall pay no dividend, and shall distribute no part of its income to its Members, Directors, or Officers. Nevertheless, the Association may pay compensation in an reasonable amount to its Members, Directors, and Officers for services rendered, and it may confer benefits on its Members in conformity with the Declaration of Condominium and the purposes of the Association. On termination, the Association may make distributions to its Members as permitted by law, and no such payment, benefit, or distribution shall be deemed to be a dividend or distribution of income. All funds and property acquired by the Association and all proceeds therefrom shall be held and used for the benefit of the Members of the Association in accordance with the provisions of the Declaration, these Articles and the By-Laws.

#### **V.**

### **MEMBERS**

5.01. Qualification. The Members of the Association shall consist of all of the Unit Owners of record in BAY GARDENS CONDOMINIUMS.

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

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

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

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

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

## VI.

### DIRECTORS

6.01. Number. The property, business, and affairs of the Association shall be managed by a Board of Directors which shall consist of not less than three Directors nor more than **seven** Directors 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. Except as may otherwise be provided in the By-Laws, each Director shall be a person entitled to cast a vote in the Association. **(ARTICLES OF INCORPORATION AMENDMENT 1)**

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

6.03. Authority. All of the duties and powers of the Association existing under the Condominium Ownership Act, the Declaration of Condominium, these Articles, and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors,

or employees, subject only to approval by Unit Owners when such approval is specifically required by the Condominium Ownership Act, the Declaration of Condominium, these Articles, or the By-Laws.

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

<b>NAME</b>	<b>ADDRESS</b>
David Blackwell	6121 Bayshore Drive, Harrison, TN 37341
Mark Lammon	19124 North Trent Jones, Baton Rouge, LA 70810
Pat Richards	12475 Highway 180, No. 13, Gulf Shores, AL 36542

## **VII. OFFICERS**

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

<b>NAME</b>	<b>OFFICE</b>	<b>ADDRESS</b>
David Blackwell	President	6121 Bayshore Drive, Harrison, TN 37341
Mark Lammon	Vice President	19124 North Trent Jones, Baton Rouge, LA 70810
Pat Richards	Secretary/Treasurer	12475 Highway 180, No. 13, Gulf Shores, AL 36542



**VIII.**

**DURATION**

The duration of the Association shall be perpetual unless and until hereafter legally dissolved; provided, however, that the Association shall be terminated by the termination of the Condominium in accordance with the terms of the Declaration of Condominium.

**IX.**

**REGISTERED OFFICE AND AGENT**

The initial registered office of the Association is 12475 Highway 180, No. 13, Gulf Shores, AL 36542, and the name of the initial agent at that address is Pat Richards.

**X.**

**INCORPORATOR**

The name and address of the Incorporator of the Association is:

<b>NAME</b>	<b>ADDRESS</b>
Pat Richards	12475 Highway 180, No. 13, Gulf Shores, AL 36542

**THIS DOCUMENT IS REPLACATED FROM THE ORIGINAL DOCUMENT (RECORDED AS INSTRUMENT NUMBER 1026592) AND EXECUTED ON 18<sup>TH</sup> DAY OF JANUARY, 2007. ANY CONFLICTS WITH THIS REPLACATION, THE ORIGINAL DOCUMENT TAKES PRECEDENCE.**

**THE ORIGINAL RECORDED DOCUMENT HAS BEEN AMENDED BY "AMENDMENT 1" TO THE ARTICLES OF INCORPORATION AND RECORDED AS INSTRUMENT NUMBER 1151985 DATED 25<sup>TH</sup> OF NOVEMBER, 2008. AMENDED ITEMS ARE DENOTED WITH A CHANGE BAR AT LEFT OF AFFECTED PARAGRAPHS.**

EXHIBIT D  
BY-LAWS  
OF  
BAY GARDENS CONDOMINIUM OWNERS ASSOCIATION

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EXHIBIT D  
BY-LAWS  
OF  
BAY GARDENS CONDOMINIUM OWNERS ASSOCIATION  
GENERAL

1.01. Purpose. These are the By-Laws of the BAY GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC., a non-profit Alabama corporation (hereinafter referred to as the "Association") organized pursuant to the provisions of the Code of Alabama, 1975, Section 10-3A-1, et seq., (herein referred to as the "Act") for the purpose of administering BAY GARDENS CONDOMINIUMS, hereinafter referred to as the "the Condominium" which is located in Baldwin County, Alabama.

1.02. Applicability of By-Laws. The provisions of these By-Laws are applicable to the property of BAY GARDENS CONDOMINIUMS and to the use and occupancy thereof. All present and future owners, mortgagees, lessees, and occupants of Units and their employees, and any other persons who may use the facilities of the property in any manner are subject to these By-Laws, the Declaration of Condominium of BAY GARDENS CONDOMINIUMS and the Rules and Regulations made in accordance therewith. The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these By-Laws, the Rules and Regulations made in accordance therewith and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

1.03. Principal Office. The principal office of the Association shall be located at 29261 Ono Boulevard, Orange Beach, Alabama, 36561, or at such other place as may be designated subsequently by the Board of Directors or as the business of the Association may require. All books and records of the Association shall be kept at its principal office. (BYLAWS AMENDMENT 1)

1.04. Terms Defined. "Declaration" shall mean that certain Declaration of Condominiums of BAY GARDENS CONDOMINIUMS filed in the office of the Judge of Probate of Baldwin County, Alabama, as the same may be amended from time to time in accordance with the terms thereof. All other terms used herein shall have the meaning given to them in the Declaration and are hereby incorporated by reference and made a part hereof.

## MEMBERSHIP

2.01 Qualification. The qualification for membership shall be ownership of a Unit in the Condominium. No membership may be separated from the Lot to which it is appurtenant.

2.02 No Additional Qualifications. No initiation fees, costs, or dues shall be assessed against any person as a condition of the exercise of the rights of membership except such assessments, levies, and charges as are specifically authorized by the Declaration.

2.03 Succession. The membership of each Unit Owner shall automatically terminate on the conveyance, transfer or other disposition of a Unit Owner's interest in the Unit. The Unit Owner's membership shall automatically be transferred to the new Unit Owner succeeding to such ownership interest. On the conveyance, transfer or other disposition of a portion of a Unit Owner's interest in a Unit, the transferring Unit Owner and the transferee shall each be members of the Association in accordance with the ownership interest of each following such conveyance or transfer.

2.04 Non-Profit Corporation. The Association is a non-profit corporation organized under the laws of the State of Alabama pursuant to the Alabama Non-Profit Corporation Act, Code of Alabama, 1975, Section 10-3A-1, et seq. The Association shall issue no shares of stock of any kind or nature whatsoever.

#### MEETINGS OF MEMBERS

3.01 Annual Meeting. The annual meeting of members shall be held at the office of the Association at 10:00 am. o'clock, local time. on the 1<sup>st</sup> day of March of each year for the purpose of electing Directors and transacting any other business authorized to be transacted by the members; provided, however. if that day is a legal holiday, the meeting shall be held at the same hour on the next day following that is not a legal holiday. (BYLAWS AMENDMENT 1)

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

3.03 Special Meeting. Special meetings of the members may be called at any time by a majority of the Board, and must be called by the officers of the Association upon receipt of a written request from members entitled to cast twenty-five (25%) percent of the votes in the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

3.04 Notice of Meeting. Notice of all meetings of members stating the time and place and the objects for which the meeting is called shall be given by the President or Vice. President or Secretary unless waived in writing. Such notice shall be in writing to each member and to each first mortgagee who has given the Association a written request to receive notice at the address as it appears on the books of the Association and shall be mailed not less than ten (10) days nor more than fifty (50) days prior to the date of the meeting. A copy of the notice of any meeting of members shall also be posted in a conspicuous place on the Condominium property at least ten (10) days prior to the meeting. Proof of such notice shall be given by the affidavit of the person giving the notice.



3.05 Waiver of Notice. Any member or first mortgagee may waive the right to receive notice of any meeting by sending a written waiver to the Board of Directors. Notice of any meeting may be waived before or after the meeting, orally or in writing. Attendance by a member at any meeting, either in person or by proxy, shall constitute waiver of notice of such meeting.

3.06 Quorum. A quorum of members for any meeting shall be deemed present throughout such meeting if members, represented in person or by proxy, holding more than fifty-one (51%) percent of the votes entitled to be cast at such meeting are present at the beginning of such meeting, except as otherwise provided by law, by the Articles, by the Declaration, by these By-Laws.

3.07 Adjournment for Lack of Quorum. In the absence of a quorum at any meeting of members, a majority of those members entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting, from time to time, without notice other than announcement at the meeting, until the requisite number of members, present in person or by proxy, shall be present. At such adjourned meeting at which the requisite number of votes shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed.

3.08 Action Without Meeting. Any action which may be taken at a meeting of the members may also be taken without a meeting, if a consent in writing setting forth the action so taken, is signed by the number of members required to take such action at a meeting, and is filed with the Secretary of the Association.

3.09 Minutes of Meeting. The minutes of all meetings of members shall be kept in a book available for inspection by Unit Owners or authorized representatives.

3.10 Proviso. Provided, however, that until four (4) months after the DECLARANT of the Condominium has completed and sold seventy-five (75%) percent of the Units of the Condominium. or until seven (7) years from the date of the conveyance of the first Unit, or until Declarant elects to terminate its control of the Condominium, whichever shall first occur, there shall be no meeting of members of the Association, unless a meeting is called by the Board of Directors.  
(BYLAWS AMENDMENT 1) (BYLAWS AMENDMENT 2)

#### VOTING RIGHTS

4.01 Votes. There shall be one (1) vote assigned to each Unit. (Each Unit Owner has equal interest in the Common Elements of the Condominium.)

4.02 Designation of Voting Representative. In the event a Unit is owned by one (1) person, his right to vote shall be established by the record title to his Unit. If a Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record Owners of the Unit and filed with the Secretary of the Association. If a Unit is owned by a corporation, partnership or limited partnership. the officer, employee or individual entitled to cast the vote for the Unit shall be designated by a certificate of appointment signed by the president or vice president and attested by the secretary .01' assistant secretary of the corporation (in the case of a corporation) or by the general partner or partners if more than one (in the case of a partnership or limited partnership), which certificate shall be filed with the Secretary of the Association. If such a certificate is not on file with the Secretary of

the Association for a Unit owned by more than one (1) person or by a corporation, partnership or limited partnership, the membership or vote of the Unit concerned shall not be considered in determining the requirement for a quorum nor for any purpose requiring the approval of the person entitled to cast the vote for the Unit. Such certificate shall be valid until revoked, or until suspended by a subsequent certificate or until a change in the ownership of the Unit concerned is effected. A certificate designating the person entitled to cast the vote of a Unit may be revoked by any Owner thereof.

4.03 Votes Required to Transact Business. When a quorum is present at any meeting, the holders of a majority of the voting rights present in person or represented by written proxy shall decide any questions brought before the meeting; unless the question is one upon which, by express provision of the Act, the Condominium Documents, or the By-Laws, a different number is required, in which case the express provision shall govern and control the decision in question.

4.04 Voting by Proxy. Votes may be cast in person or by proxy. All proxies must be in writing, dated, signed by the member generating the proxy, and filed with the Secretary of the Association before the appointed time of the meeting to which it applies. A member may revoke a proxy at any time by delivering a written notice of revocation to the Association.

4.05 Voting by Mortgagee. The execution and delivery of a mortgage on a Unit by its Owner shall be construed as conferring upon the mortgagee a conditional proxy to cast the vote or votes attributable to such Unit at any regular or special meeting of the Association. The condition of such proxy shall be noticed by such mortgagee to the Association, in writing, of its intent to exercise the conditional proxy rights granted to it, as mortgagee, by the terms of this subparagraph.

In the absence of such written notice, the Association shall be entitled to recognize the Unit Owner of the mortgage Units as fully entitled to cast the vote or votee attributable. However, once such written notice is received by the Association, the mortgagee IS right to cast the vote or votes attributable to that Unit shall be recognized by the Association until the mortgagee withdraws its intent to cast such votes in writing, or until the mortgage is paid in full and satisfied of record, whichever first occurs.

4.06 Order of Business. The order of business at annual meetings of members and, as far as practical, at all other meetings of members, shall be:

- Call to Order
- Calling of the roll and certifying of proxies
- Proof of notice of meeting or waiver of notice
- Reading and disposal of any unapproved minutes
- Reports of Officers
- Reports of Committees
- Election of Directors
- Unfinished Business
- New Business
- Adjournment

#### BOARD OF DIRECTORS

5.01 Number. The property, business, and affairs of the Association shall be managed by a Board of Directors which shall consist of not less than three Directors nor more than seven Directors as shall, from time to time, be determined and fixed by a majority of the voting rights present at any annual meeting of the Members. Except as may otherwise be provided in these By-Laws, each Director shall be a person entitled to cast a vote in the Association. (BYLAWS AMENDMENT 3)

5.02 Qualification. Except for Directors appointed by the DECLARANT, each Director shall be a Unit Owner. If a Unit Owner is a Trust, then the Beneficiary of the Trust may be a Director; and if a Unit Owner is a corporation or partnership, then an officer, partner, or employee of such Unit Owner may be a Director. If a Director shall cease to meet such qualifications during his term, he shall cease to be a Director and his place on the Board shall be vacant.

5.03 Appointment by Declarant. The initial Board of Directors, as well as successive Directors shall be appointed by the Declarant, and may be removed by the Declarant at any time. The Declarant shall have the right to appoint and remove Directors until such right is voluntarily relinquished by the Declarant, or until **seven (7)** years from the date of the Declaration or until four (4) months after the Declarant has completed and sold seventy-five (75%) percent of the Units of the Condominium, whichever occurs first. The Directors appointed by the Declarant need not be Unit Owners. **(BYLAWS AMENDMENT 1) (BYLAWS AMENDMENT 2)**

5.04 Nomination for Election. Nomination for election to the Board of Directors shall be made from the floor at the annual meeting of members or at any other meeting of members called for the purpose of electing Directors. Nominations shall also be made by a nominating committee appointed by the Board prior to the annual meeting of the members or prior to any other meeting of members called for the purpose of electing directors.

5.05 Initial Election of Directors. Within ninety (90) days after the Unit Owners are entitled to elect one (1) or more Directors, the Association shall call a meeting of the members to elect the Director. The Association shall give not less than ten (10) days nor more than fifty (50) days' notice of the meeting to each member. The meeting may be called and the notice may be given by any Unit Owner if the Association fails to do so. The election shall be conducted in the manner specified herein.

5.06 Election of Directors. Directors shall be elected at the annual meeting of members or at a special meeting called for that purpose. The election shall be by secret ballot (unless dispensed with by unanimous consent) and each member shall be entitled to vote for each vacancy. There shall be no cumulative voting. Those candidates receiving the greatest number of votes cast either in person or by proxy shall be elected. At the initial election, the candidate receiving the most votes shall serve a two (2) year term, and the next two candidates receiving the most votes shall serve one (1) year terms. At subsequent annual elections, the two (2) vacancies shall be filled as follows: Two Directors -shall be elected 'with the candidate receiving the most votes to serve a two (2) year term and the remaining candidate to serve a one (1) year term.

5.07 Term. Each Director elected by the members shall hold office until the next annual meeting of members, and until his successor shall be elected and qualified, or until he resigns or is removed in any manner provided elsewhere herein. Each Director appointed by the DECLARANT shall hold office until he resigns, is removed by the DECLARANT, or his term expires as provided for herein.

5.08 Vacancies. Any vacancy in the position of a Director elected by the members of the Association shall be filled by a majority vote of the remaining Directors, and -any Director so elected shall hold office for a term equal to the unexpired term of the Director whom he succeeds. Any vacancy in the position of a Director appointed by the DECLARANT shall be filled by the DECLARANT.

5.09 Removal. Any Director may be removed for cause by the concurrence of two-thirds (2/3rds) of the votes of the Association at a meeting of members called for that purpose. The vacancy in the Board of Directors so created shall be filled by the members at the same meeting.

5.10 Compensation. Director shall not receive any compensation for any services he may render to the Association as a Director; provided, however, that any Director may be reimbursed for actual out-of-pocket expenses incurred by him in his performance of his duties.

5.11 Proviso. Provided, however, that until four (4) months after the DECLARANT of the Condominium has completed and sold seventy-five (75%) percent of the Units of the Condominium, or until **seven (7)** years from the date of the Declaration. or until the DECLARANT elects to terminate its control of the Condominium. whichever shall first occur, there shall be no meeting of members of the Association unless a meeting is called by the Board of Directors. **(BYLAWS AMENDMENT 1) (BYLAWS AMENDMENT 2)**

## MEETING OF DIRECTORS

6.01 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, at least ten (10) days prior to the day named for such meeting.

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

6.03 Open Meetings. All meetings of the Board of Directors shall be open to all members of the Association, and notice of such meetings shall be posted conspicuously on the Condominium property at least forty-eight (48) hours prior to the meeting, except in the event of an emergency.

6.04 Waiver of Notice. Any Director may waive notice of a meeting either before or after the meeting, or may consent to the holding of a meeting without notice. Attendance by any Director at a meeting shall constitute waiver of notice of the meeting, except when attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business on the grounds that the meeting was not lawfully called.



6.05 Quorum. A quorum shall consist of the number of Directors entitled to cast a majority of the votes of the entire Board of Directors. The acts of the Directors approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such a Director for the purpose of determining a quorum.

6.06 Action without Meeting. Any action permitted or required to be taken at a meeting of the Directors may be taken without a meeting if written consent setting forth the action so taken shall be signed by all the Directors, and filed with the minutes of the proceedings of the Board.

6.07 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a minute book available for inspection by Unit Owners, or their authorized representatives, or any Directors at any reasonable time.

6.08 Presiding Officer. The presiding officer of Directors' meetings shall be the President. In the absence of the President, the Directors present shall designate one of their number to preside.

#### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

7.01 Powers Defined. The Board of Directors shall have the power to exercise all powers, duties, and authority vested in the Association by the Act, the Declaration, the Articles of Incorporation, or these By-Laws, except for such powers and duties reserved thereby to the members or the DECLARANT.

7.02 Committees. The Board of Directors may, by resolution, appoint such committees as deemed appropriate in carrying out its purpose, and such committees shall have the powers of the Board of Directors for the management of the affairs and business of the Association to the extent provided in the resolution designating such a committee. Any such committee shall keep regular minutes of its proceedings and shall report the same to the Board of Directors

7.03 Managing Agent. The Board of Directors shall be authorized to employ the services of a manager or managing agent. Who may either be a Director, officer, or employee of the Association, or an independent person or firm qualified to manage the property and affairs of the Condominium under the supervision of the Board. The compensation paid to any such manager or managing agent shall be in the amount established from time to time by the Board.

7.04 Order of Business. The order of business at Directors' meetings shall be:

Call of Roll

Proof of due notice of meeting

Reading and disposal of any unapproved minutes

Reports of Officers and Committees

Election of Officers

Unfinished Business

New Business

Adjournment

## OFFICERS

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

8.02 Term. Each officer shall hold office for the term of one (1) year and until his successor shall have been appointed or elected and qualified, provided that any officer may succeed himself.

8.03 Resignation and Removal. Any officer may be removed from office either with or without cause by the vote of a majority of the Directors present at any meeting. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of receipt of said resignation or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.04 Vacancies. A vacancy in any office shall be filled by a majority vote of the Directors at any meeting. An officer elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds.

8.05 Compensation. An officer shall not receive any compensation for any service he may- render to the Association .as an officer; provided, however, that any officer may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties.

8.06 President. The President. who shall be a Director, is the chief executive officer of the Association, and shall have all the powers and duties that are usually vested in the office of President of a Condominium Association, including but not limited to the following powers:

- (1) To preside over all meetings of the members and of the Board.
- (2) To sign as President all deeds, contracts, and other instruments that have been duly approved by the Board.
- (3) To call meetings of the Board whenever he deems it necessary in accordance with the rules.
- (4) To have the general supervision, direction and control of the affairs of the Association.

8.07 Vice President. The Vice President, who shall be a Director, shall have all the powers and duties that are usually vested in the office of the Vice-President of a Condominium Association. The Vice President shall, in the absence of or disability of the President. exercise such other powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors. **Additionally, the Vice President shall be a member of and the Chairperson of the Architectural Committee and shall be responsible for the operations and reporting of the Architectural Committee. (BYLAWS AMENDMENT 3)**

8.08 Secretary. The Secretary; who shall be a Director, shall have all the powers and duties that are usually vested in the Secretary of a Condominium Association. The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall sign as Secretary all deeds, contracts and all other instruments which have been duly approved by the Board, if said instrument requires the signature or attestation of the Secretary. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the Secretary of an Association as may be required by the Directors of the President.

8.09 Treasurer. The Treasurer, who shall be a Director, shall be the financial officer of the Association; and shall have all the powers and duties that are usually vested in the Treasurer of a Planned Unit Development Association. The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the financial records and books of account of the Association in accordance with good accounting practices; shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred; and he shall perform all other duties incident to the office of the Treasurer. The records, books of account, and the vouchers authorizing payments, shall be available for examination by a member of the Association at convenient hours of week days. Notwithstanding any provision to the contrary herein contained, the Treasurer shall not be required to keep records without the assistance of an independent certified public

accountant or accounting firm and it is mandatory that the Board of Directors of the Corporation retain the services of an independent certified public accountant or accounting firm to aid and assist in the keeping of the books of the corporation and the preparation of its annual budget.

### FISCAL MANAGEMENT

9.01 The Fiscal Year. The fiscal year of the Association shall be such as shall from time to time be established by the Association.

9.02 Budget. The Board of Directors shall adopt a budget for each calendar year which shall include estimated common expenses, including a reasonable allowance for contingencies and reserves less the unneeded fund balances on hand. The budget shall also include reserve accounts for capital expenditures, deferred maintenance, reserves and contingencies. The amount reserved shall be computed by means of a formula, that is based on the estimated life and estimated replacement cost of each reserve item. The budget shall also set forth each Unit Owner's proposed assessment for common expenses. Copies of the budget and proposed assessments shall be transmitted to each member on or before thirty (30) days prior to the new fiscal year. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member concerned.

9.03 Adoption of the Annual Budget. The Board of Directors shall prepare or cause to be prepared a proposed annual budget for each fiscal year of the Association. Each Unit Owner shall receive a copy of the proposed annual budget at least seven (7) days prior to the meeting of the Board at which the budget will be considered, and the meeting shall be open to all Unit Owners. The final annual budget shall be adopted by the Board at a duly noticed meeting, and the Board

shall furnish copies of the final annual budget to each Unit Owner within thirty (30) days after the adoption.

**9.04 Assessments.** Assessments shall be collected by the Association or a monthly or annual basis as may be determined by the Board of Directors. If the Board of Directors elects to collect on a monthly basis, said assessments will be collected as follows: (BYLAWS AMENDMENT 1)

On or before the first day of each month of the fiscal year for which the assessments are made, each Unit Owner shall pay one-twelfth (1/12) of his share of the Common Expenses for such year as shown by the annual budget. The assessments of the Common Expenses shall be set forth in the Declaration. but the yearly assessment for each Unit Owner shall be in proportion to his respective ownership interest in the Common Elements. The Board of Directors may cause to be sent to each Unit Owner, on or before the first day of each month, a statement of the monthly assessments. However, the failure to, send or receive such monthly statement shall not relieve the Unit Owner of his obligation to make timely payment of the monthly assessments. If the Board shall not approve an annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay the amount of his monthly assessment as last determined. No Unit Owner shall be relieved of his obligation to pay his assessment by abandonment of his Unit or lack of use of the Common Elements.

**9.05 Reserves for Replacements.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas. The fund shall be maintained out of regular assessments.

9.06 Working Capital. In order to insure that the Association Board will have cash available to meet unforeseen, expenditures or to acquire additional equipment or services deemed necessary or desirable and to provide for the project's operation in the initial months of operation, there shall be established a working capital fund equal to two (2) months assessments for each Unit. Each Unit's share of the working capital fund shall be collected and transferred to the Association at the time of closing of the sale of each Unit and maintained in an account for the use and benefit of the Association. Amounts paid into the fund shall not be considered as advance payment of regular assessments.

9.07 Lien for Expenses. If any Unit Owner shall fail or refuse to make any payment of the common Expenses or other assessments when due, the amount due, together with costs, reasonable attorney's fees, and interest thereon at a rate to be set by the Board of Directors but in no event greater than the maximum percentage rate as may then be permitted under the laws of the State of Alabama, from and after the date said Common Expenses or other assessments became due and payable in accordance with applicable law, shall constitute a lien on the interest of the Unit Owner in the property.

9.08 Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon any assessment for a period of more than thirty (30) days, the Board may accelerate the remaining installments of such assessment upon notice thereof to the Unit Owner, and thereupon the unpaid balance of the assessment shall come due upon the date stated in the notice, but not less than ten (10) days after delivery thereof to the Unit Owner. or not less than twenty (20) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur. Upon default in the payment of an installment upon any assessment, the



Board of the Association shall be entitled to charge interest and service charges at the highest available rate allowable under the law of the State of Alabama.

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

If the Association becomes the Owner of a Unit by reason of foreclosure, it shall offer said Unit and properties for sale and at such time as a sale is consummated it shall deduct from such proceeds all sums of money due it for monthly assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the

Unit, which shall include but not be limited to, advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the Unit in question. All monies remaining after deducting the foregoing items of expense shall be paid to the holder of any mortgage, lien or other encumbrance on the Unit in satisfaction of such mortgage, lien or other encumbrance and all sums remaining thereafter shall be returned to the former Owner of the Unit in question.

9.10 Supplemental Assessments. If during the course of any fiscal year, it shall appear to the Board that the monthly assessments, as determined in the annual budget, are insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency. Copies of the supplemental budget shall be delivered to each Unit Owner, and thereupon a supplemental assessment shall be made to each Unit Owner for his proportionate share of the supplemental budget.

9.11 Annual Statement. Within sixty (60) days after the end of each fiscal year, the Board shall cause to be furnished to each Unit Owner, a statement for the year so ended showing the receipts and expenditures of the Association, and such other information as the Board may deem desirable.

9.12 Accounting Records. The Board shall cause to be kept, in accordance with generally accepted accounting principles, a record of all receipts and expenditures; and a separate account for each Unit showing the assessments or other charges due, the due dates thereof, the present balance due, and any interest in common surplus. Such records shall be open to inspection by Unit Owners at reasonable times.

9.13 Information. The Association shall be required to make available to Unit Owners, lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, or other Rules and Regulations concerning the project, and the books, records, and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. In addition to the above, any holder of a first mortgage is entitled, upon written request, to a financial statement for the immediately preceding fiscal year.

9.14 Lender's Notices. Upon written request to the Owners 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 a material portion of the project of the Unit securing its mortgage.
- (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage.
- (c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owner's Association.

9.15 Depository. The depository of the Association shall be such bank or banks and/or savings and loan associations as shall be designated from time to time by the Directors and in which monies of the Association shall be deposited. Withdrawals of monies from such account shall be only by checks signed by such persons as are authorized by the Directors.

9.16 Fidelity Bonds. Fidelity: Bonds shall be required by the Board from all officers and employees of the Association and from any manager handling or responsible for Association funds and from any employee, agent or subcontractor of a manager handling or responsible for Association funds. The amount of such bonds shall be determined by the Directors, but shall be at least the amount of one hundred and fifty percent (150%) of the total annual assessments against members for recurring expenses. The premiums on such bonds shall be paid by the Association.

### OBLIGATIONS OF THE OWNERS

10.01 Assessments. Every Owner of any Unit in the Condominium shall contribute pro rata toward the expense of administration of the Condominium as provided in the Declaration and in these By-Laws. Each assessment against a Unit shall also be the personal obligation of the Owner at the time the assessment fell due. Such personal obligation shall not pass to successors in title unless assumed by such successors, or required by applicable law.

10.02 Maintenance and Repair. Every Owner of any Unit in the Condominium shall promptly perform all maintenance and repair work, as provided in the Articles, the Declaration or these By-Laws. An Owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common areas or facilities damaged through the Owner's fault.

10.03 Use of Units. All Units shall be utilized in accordance with the provisions of the Declaration, these By-Laws and the Rules and Regulations of the Association.

## RULES AND REGULATIONS

11.01 House Rules. The Board of Directors may from time to time, and subject to the provisions hereof providing for DECLARANT control, adopt, modify, amend, or add to rules and regulations concerning the use of the Condominium property; provided, however, that a majority of the members may overrule the Board with respect to any such rules and regulations or modifications thereof or any amendments or additions thereof. Copies of such rules and regulations, or any amendments, additions, or modifications, shall be delivered to each Unit Owner not less than fourteen. (14) days prior to the effective date thereof. No rule or regulation that is in conflict with the Condominium Documents shall be adopted.

## AMENDMENTS TO THE BY-LAWS

12.01 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.

12.02 Resolution. An amendment may be proposed by either a majority of the Board of Directors or by members holding one-third (1/3rd) of the votes of the Association. A resolution adopting a proposed amendment must be adopted by an affirmative vote of not less than a majority of the Board of Directors and the consent of the Owners of the Units to which two-thirds of the votes in the Association are allocated and the approval of fifty-one (51%) percent of the holders of first mortgages on Units. Provided, however, that until the Declarant of the Condominium has completed and sold seventy-five (75%) percent of the Units in all phases of the Condominium, or until three (3) years from the date the first Unit is sold, or until the Declarant elects to terminate its control of the Condominium, whichever shall first occur, no amendment may be made unless the Declarant shall join in the

execution of such amendment, nor shall any amendment make any change that would in any way affect the rights, privileges, or powers of the Declarant unless the Declarant shall join in the execution thereof.

12.03 Agreement. In the alternative, an amendment may be made by an Agreement signed and acknowledged by all record Owners, including all first mortgagees of Units in the Condominium in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the office of the Judge of Probate of Baldwin County, Alabama. If any provision or provisions of these By-Laws, or any section, sentence, clause, phrase or word herein, or the application thereof, is in any circumstances held invalid, the validity of the remainder of these By-Laws and the application thereof shall not be affected thereby.

12.04 Prohibited Amendments. No amendment may be adopted that would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges, or priorities granted to the declarant or institutional mortgagee without the consent of the declarant or institutional mortgagee, as the case may be. No amendment that is in conflict with the Articles or the Declaration shall be adopted.

12.05 Recording. Any amendment shall become effective when recorded in the office of the Judge of Probate of Baldwin County, Alabama, with these By-Laws in accordance with the Act.

## MISCELLANEOUS

13.01 Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of gender shall be deemed to include all genders.

13.02 Captions. The captions herein are inserted only as a matter of convenience for all reference, and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision hereof.

13.03 Conflicts. In the event of any conflict between the provisions of these By-Laws and the Declaration, the Declaration shall govern.

13.04 Compliance. These By-Laws are set forth to comply with the requirements of the Alabama Non-profit Corporation Act and shall be considered an appendage to the Declaration filed prior hereto.

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

## REGISTERED OFFICE AND AGENT

14.01 Name and Address. The address of the initial registered office of BAY GARDENS CONDOMINIUM OWNERS ASSOCIATION, INC. is 1556 Gulf Shores Parkway, Gulf Shores, Baldwin County, Alabama, 36542, and the name of its initial registered agent is Ralph Sanderson.

## ARCHITECTURAL CONTROL

The architectural essence concept of Bay Gardens which makes it unique and thereby enhances the value of each Unit and the condominium project as a whole. Therefore, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to the surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board, one of whom shall be the Board's vice president and also the Chairperson of this Committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. THIS PROVISION CONCERNING ARCHITECTURAL CONTROL WILL BE STRINGENTLY ENFORCED AND NO UNIT OWNER SHOULD MAKE ANY ASSUMPTION THAT THE PLANS AND SPECIFICATIONS FOR IMPROVEMENTS TO BE LOCATED ON ANY UNIT WILL BE AUTOMATICALLY APPROVED. (BYLAWS AMENDMENT 3)

The following guidelines are presented to indicate the general tenor of architectural control to be exercised but are not intended to represent every detail that may be subjected to architectural control.

Building Setback requirements typical of Bay Gardens are as follows:

1. Front setbacks (from street) shall be ten feet minimum.
2. Sides and rear line setbacks shall be five feet minimum , except for Lots 37 through 48 where the minimum rear setbacks must be 10 feet due to the location of the existing sewer line. (BYLAWS AMENDMENT 3)

Architectural Style of the structures shall be cottages reminiscent of the late 19th and early 20th centuries.



- a. Porches will be encouraged, with turned or boxed wood columns and decorative millwork brackets and railing.
- b. Wood exterior siding in many styles, such as: Lap pine, cedar, or composition; ornamental shingles, vertical board or board and batten. Wooden siding or Hardy Plank is preferred; however, any other type of siding material must be approved by the Board or its designee, the Architectural Committee. (BYLAWS AMENDMENT 3)
- c. Exterior colors should compliment the other homes and. colors with white trim being preferred. Drawings submitted for approval to the Architectural Committee must include the proposed exterior colors and finishes. (BYLAWS AMENDMENT 3)
- d. All structures are to be built on piling to that height required by the current building codes. (BYLAWS AMENDMENT 3)
- e. Spaces under the home are to be enclosed with vinyl or wooden lattice. (BYLAWS AMENDMENT 3)
- f. Each house site to be enclosed to the street by a picket fence. The pattern of railing cannot be repeated for every four house sites.
- g. Houses may be constructed to three levels and loft provided they meet building code requirements.
- h. Metal roofing will be the preferred roofing material.
- i. Interiors are left to the owner's preference; however, traditional wood flooring is recommended.
- j. Authentic styling is desired to maintain the ambiance of Bay Gardens, and plans for construction will be subject to review by the Architectural Committee before construction plans are submitted to appropriate governmental authority to obtain a building permit.

## LANDSCAPING

Many flowering shrubs shall be required for the individual home site, and the planting of at least one flowering tree is mandatory.

We foresee that the nature of the plants and trees to be introduced to Bay Gardens, will establish this area as the garden spot on the peninsula, and add to the charm of the quaint cottages.

In order that the garden theme shall be expressed in full harmony, a landscape plan must be submitted to the Architectural Committee at the time construction plans are submitted for approval.

No Concrete shall be used without written prior approval of the Architectural Committee. Walkways and patios may be constructed with shell or pressure treated wood. No floors of any construction shall be concrete slab.

## OCCUPANCY, USE, AND LEASING RESTRICTIONS RESIDENTIAL USE

No Owner, tenant or other occupant of the Properties herein described shall, without prior written consent of the Board of Directors:

a. Paint or otherwise change the appearance of any exterior wall, door, window, terrace, balcony or any exterior surface; ~~enclose any terrace or balcony with screen, glass or other material~~; erect any exterior lights or signs; place any signs or windows; erect or attach any structures or fixtures to the Common Area; nor make any structural additions or alterations (except the erection or removal of nonsupport carrying interior partitions wholly within the unit) to any Unit or to the Common Area. Any Owner who wishes to accomplish any of the foregoing shall make such request in writing to the Board of Directors together with, if necessary, one (1) copy of the plans and specifications for the work proposed by the Owner. In the event the Board of Directors shall fail to approve or disapprove such request by an Owner within sixty (60) days from the submission of same to the Board of Directors or of its designated representative, such approval will not be required and this covenant shall be deemed to have been fully

complied with; and, nothing herein contained shall prevent, or is intended to prevent, an Owner from maintaining or making repairs to his Unit so as to maintain his Unit in the condition existing at the time of purchase; **(BYLAWS AMENDMENT 3)**

b. Permit loud and objectional noises or obnoxious odors to emanate from the Unit or from vehicles which may cause a nuisance to the occupants of other Units;

c. Make any use of a Unit which violates any laws, ordinances or regulations of any governmental body or governmental agency;

d. Fail to conform to and abide by the By-Laws and the uniform rules and regulations in regard to the use of the Common Area which may be adopted from time to time by the Board of Directors of the Association;

e. Erect, construct, or maintain any wire, radio, television or other type antennas, garbage or refuse receptacles, or other equipment or structures on the exterior of the building or on the Common Area, except with the written consent of the Board of Directors; **Satellite dishes 36 inches in diameter or less do not require the Board's consent; (BYLAWS AMENDMENT 3)**

f. Permit or suffer anything to be done or kept on the Properties which will increase insurance rates on any Unit;

g. Commit or permit any nuisance, upon the Properties herein described;

h. Divide or subdivide a Unit into a smaller Unit or Units as to create a Unit smaller in size than that shown by plat of the properties; provided, however, that an entire Unit may be combined with an entire adjacent unit and occupied as one Unit;

i. Obstruct the common way of ingress and egress to the other Units or to the Common Area;

j. Place or allow anything to remain in or on the Common Area which would be unsightly or hazardous;

k. Allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles provided therefor; and each Unit and the Common Area shall at all

times be kept in a clean and sanitary condition. Garbage shall be placed in waterproof bags or similar containers before being placed in the appropriate receptacles;

- l. Allow any fire or health hazard to exist;
- m. Make use of the Common Area in such a manner as to abridge the equal rights of the other Owners to the use and enjoyment of same;
- n. Permit a boat or boat trailer to be kept or maintained on the parking spaces or permit said parking spaces be used for the storage of campers, motor homes or any other vehicle, apparatus or equipment (excluding passenger vehicles) without the written approval of the Board of Directors;
- o. Use the Unit for anything other than for residential purposes; said Properties are hereby restricted to residential dwellings for residential use only;
- p. No Owner of a Unit shall repair any motor vehicle, boat or other vehicle upon any portion of any Unit except for emergency repairs thereto and then only to the extent necessary to enable movement thereof to a proper repair facility;
- q. Raise, breed or keep animals, livestock or poultry or any kind on any Unit except that dogs, cats and other household pets may be kept, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose;
- r. Erect buildings or storage buildings of any kind upon the Properties;
- s. Cut or otherwise destroy any growing tree which is four (4) feet in height or more unless said growing tree becomes a hazard to person or property;
- t. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

**MAINTENANCE, ALTERATION, AND IMPROVEMENTS -  
MAINTENANCE BY THE ASSOCIATION.**

**Common Areas.** Except as provided in the next Section, the Association shall provide exterior maintenance upon each improvement located on the common areas designated in the Plat of the properties which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, walks, drives, parking areas, and other improvements. The Association shall also trim, cut, prune, fertilize, water, weed and otherwise maintain trees, shrubs, and grass, located in the Common Areas designated in the plat of the properties.

**OWNER'S OBLIGATIONS TO REPAIR AND RESTORE**

Except for those portions which the Association is required to maintain and repair hereunder, each Owner shall, at his sole cost and expense, maintain and repair his Unit keeping the same in good condition and making all structural repairs as they may be required.

In the event an Owner of any Unit in the Properties shall fail to maintain the premises and the improvements situated thereon, as provided for herein and should any owner fail to maintain the premises and improvements situated thereon, the Association, after approval by two-thirds (2/3rds) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Unit and to repair, maintain and restore the Unit and the building and any other improvements erected thereon. The cost of the same shall be added to and become part of the assessment to which such Unit is subject.

All fixtures and equipment installed with a Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Unit shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Unit or impair any easement or hereditament nor any act, nor allow any condition to exist which will adversely affect the other units or their Owners. (BYLAWS AMENDMENT 1)

A \$500.00 refundable cash deposit will be required from. Each property owner prior to beginning any construction. This deposit is fully refundable once such construction is

completed and verification that no damage to the Common Areas has occurred. Costs (if any) for damage to the Common Areas will be deducted from the deposit and the remaining balance will be refunded within 30 days. Costs for repairs exceeding the deposit will be billed to the property owner as an assessment which shall constitute a lien as provided for in the Declaration, in the event, payment is not received within 60 days. (BYLAWS AMENDMENT 3)

All pilings shall be installed using "fresh water" not "bay water" and shall meet all current building code requirements. (BYLAWS AMENDMENT 3)

**THIS DOCUMENT IS REPLACED FROM THE ORIGINAL RECORDED DOCUMENT (MISC. BOOK 59, PAGES 1678 – 1711) BY DECLARANT EXECUTED ON 28<sup>TH</sup> DAY OF APRIL, 1987. ANY CONFLICTS WITH THIS REPLACEMENT, THE ORIGINAL RECORDED DOCUMENT TAKES PRECEDENCE.**

**THE ORIGINAL RECORDED DOCUMENT HAS BEEN AMENDED BY "AMENDMENT 1" TO THE BYLAWS AND RECORDED IN MISC. BOOK 65, PAGES 0788-0796 DATED 25<sup>TH</sup> OF AUGUST, 1989. AMENDED ITEMS ARE DENOTED WITH A CHANGE BAR AT LEFT OF AFFECTED PARAGRAPHS.**

**THE ORIGINAL RECORDED DOCUMENT HAS BEEN AMENDED BY "AMENDMENT 2" TO THE BYLAWS AND RECORDED IN MISC. BOOK 69, PAGES 1644-1646 DATED 21<sup>ST</sup> OF NOVEMBER, 1991. AMENDED ITEMS ARE DENOTED WITH A CHANGE BAR AT LEFT OF AFFECTED PARAGRAPHS.**

**THE ORIGINAL RECORDED DOCUMENT HAS BEEN AMENDED BY "AMENDMENT 3" TO THE BYLAWS AND RECORDED IN MISC. BOOK , PAGES DATED 3<sup>RD</sup> OF MARCH, 2007. AMENDED ITEMS ARE DENOTED WITH A CHANGE BAR AT LEFT OF AFFECTED PARAGRAPHS.**