

JUN 9 1981 *28*

DECLARATION OF CONDOMINIUM

OF

ISLAND SUNRISE, a Condominium

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Book *39*  
Page *475* *Henry D. Line*  
Judge of Probate  
MAY \$1.00 Index \$ *502* By *W*

THIS DECLARATION, made this 16 day of February, 1981, by ISLAND SUNRISE, LTD., a limited partnership, organized under the laws of the State of Alabama, herein called the DEVELOPER, for itself, its successors, grantees and assigns.

WHEREIN, the DEVELOPER makes the following declaration.

WHEREAS, ISLAND SUNRISE, LTD., a limited partnership is the fee simple owner of that certain parcel of real property situated in the Town of Gulf Shores, County of Baldwin, State of Alabama, and intends to improve the same in the manner herein-after described, which said parcel of land is more particularly described as follows, to-wit:

Commence at the Northwest Corner of Lot 18, Block 1, Romeo-Skipper Subdivision run thence North 83°-15'-00" East along the South right-of-way of East Gulf Shores Boulevard for a distance of 18.2'; thence North 82°-29'-32" East along the South right-of-way of East Gulf Shores Boulevard for a distance of 12.05 feet to the Point of Beginning; continue thence North 82°-29'-32" East along the South right-of-way of East Gulf Shores Boulevard for a distance of 141.29 feet; thence North 81°-08'-31" East along the South right-of-way of East Gulf Shores Boulevard for a distance of 40.45 feet; thence South 00°-18'-45" West for a distance of 383 feet; more or less to the North Shore of the Gulf of Mexico; thence South Westerly along said shore line to a point which is South 00°-18'-45" West and 403 feet more or less from the Point of Beginning; thence North 00°-18'-45" East for a distance of 403 feet more or less to the Point of Beginning.

Subject to that certain easement recorded in Real Property Book 91, Page 360, in the Office of the Judge of Probate of Baldwin County, Alabama.

NOW, THEREFORE, ISLAND SUNRISE, LTD., a limited partnership, the DEVELOPER, hereby makes the following declaration as to the division to which said real property and improvements thereon may be put, hereby specifying that said DECLARATION shall constitute covenants to run with the land and shall be binding upon ISLAND SUNRISE, LTD., its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

1. Purpose. The purpose of this Declaration is to submit the lands hereinafter described and the improvements to be constructed thereon to the condominium form of ownership and use in the manner provided by the CONDOMINIUM OWNERSHIP ACT, Act. No. 1059, 1973 Regular Sessions, Alabama Legislature (Title 47, Sec. 313(1), et seq., Code of Alabama, Recompiled as Amended).

2. Name. The name by which this condominium is identified is ISLAND SUNRISE, a Condominium.

3. The Land. The lands owned by the DEVELOPER which are herewith submitted to the condominium form of ownership are the following described lands, lying and being in the Town of Gulf Shores, County of Baldwin, State of Alabama, to-wit:

Commence at the Northwest corner of Lot 18, Block 1, Romeo-Skipper Subdivision run thence North 83°-15'-00" East along the South right-of-way of East Gulf Shores Boulevard for a distance of 18.2'; thence North 82°-29'-32" East along the South right-of-way of East Gulf Shores Boulevard for a distance of 12.05 feet to the Point of Beginning; continue thence North 82°-29'-32" East along the South right-of-way of East Gulf Shores Boulevard for a distance of 141.29 feet; thence North 81°-08'-31" East along the South right-of-way of East Gulf Shores Boulevard for a distance of 40.45 feet; thence South 00°-18'-45" West for a distance of 383 feet; more or less to the North Shore of the Gulf of Mexico; thence South Westerly along said shore line to a point which is South 00°-18'-45" West and 403 feet more or less from the point of Beginning; thence North 00°-18'-45" East for a distance of 403 feet more or less to the Point of Beginning.

SUBJECT to, however, the following:

That certain easement recorded in Real Property Book 91 , Page 360 , in the Office of the Judge of Probate of Baldwin County, Alabama.

A private easement and right-of-way for the owners of property within the tract of land described in page 2 of this Declaration, including the owners of townhouse and apartment units in said condominium, their families, tenants, agents, servants, employees, invitees, and guests, which said private easement and right-of-way is located as appears upon that certain drawing of said property appearing as page 1 of Exhibit A hereto attached and by reference made a part hereof.

4. Definitions. The terms used herein and in the By-laws shall have the meanings stated in the Condominium Ownership Act of Alabama, and as follows:

(a) "Unit" means a townhouse, apartment or garage and includes the private elements thereof, together with the undivided interests in the common elements which are assigned thereto.

(b) "Unit Owner" means the owner of a townhouse or apartment, whether singly or jointly, partnership, corporation, or other legal entity or the successors, heirs, administrators, executors or assigns, or the heirs or assigns of the survivor, as the case may be.

(c) "Association" means the ISLAND SUNRISE ASSOCIATION, INC., and its successors, and is the association of Unit Owners referred to in said Act.

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(d) "Common Elements" means common areas and facilities, including but not limited to all parts of the condominium property not included within the unit boundaries as described in paragraph 5.4 hereinafter, and shall include the utility spaces and the tangible personal property required for the maintenance and the operation of the condominium as well as the items stated in the Condominium Ownership Act of Alabama.

(e) "Common Expenses" means and includes the actual and estimated expenses of operating the property, and any reasonable reserve for such purposes as may be found and determined necessary or useful by the Board of Directors, and all sums designated as common expenses by or pursuant to the condominium documents.

(f) "Utility Services" shall include but not be limited to electrical power, water, garbage and sewage disposal.

(g) "Substantial Destruction, Deterioration or Obsolescence" shall mean such destruction or deterioration or obsolescence that the condominium has lost its character as a residential development, and restoration thereof would be the practical equivalent of a newly constructed development.

(h) "Development" comprehends the land, and all buildings, improvements and property which are a part of the condominium.

(i) "Common Interest" means the proportionate undivided interest in the fee simple absolute in the common elements appurtenant to each unit as expressed in this Declaration.

(j) "Common Surplus" means the excess of all receipts of the Association, including but not limited to assessments, rents, profits and revenues on account of the common elements, over the amount of common expenses.

(k) "Operation of the Property" means and includes the administration of the project, the operation, maintenance, repair or replacement of, and the making of any additions or improvements in, the common elements.

(l) "Person" means a natural person, a corporation, a partnership, the Association herein referred to, a trustee, or other legal entity.

(m) "Unit Designation" means the number, letter or combination thereof or other official designations as shown on the plans annexed to this Declaration.

(n) "Declaration" means this declaration and all amendments thereto hereafter made.

(o) "Surfacing materials" means the materials, including but not limited to mats, carpeting, sheetrock, decking, boards, panels and the like which are laid

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upon or attached to foundation slabs, and/or to the studs and structural components of walls, and/or to the under surfaces of ceiling rafters, and/or to the upper surfaces of floor rafters.

5. Development Plan.

.1. The improvements will be constructed as shown upon the drawings thereof, pages 1 through 40, inclusive, of Exhibit A, hereto attached and by reference made a part hereof, which plans were prepared by John M. Senkarik, A.I.A., including a set of floor plans of the building showing the lay-out, location, the designating letters and numbers of each unit, and bearing the verified statement of a Registered Architect that such drawings are in sufficient detail to identify the common elements and the private elements comprising the units as built and which said drawings are supplemented and complemented by the narrative and the graphic descriptions herein contained.

.2. Changes. In order to meet possible unforeseen or varying demands for the number and type of unit, or in order to meet particular requirements of prospective purchasers, lending institutions or title insurance companies, or for any other reason, the DEVELOPER reserves the right to change the size, dimensions, number and location of buildings, units and other improvements, and the size, dimensions, lay-out location and undivided percentage of ownership in the common elements of any unit for which a purchase agreement has not been executed by the DEVELOPER or with respect to which the purchaser is in default, provided such changes do not change the common elements or the undivided percentage interest of ownership in the common elements of any unit already sold or under an executed purchase and sale agreement as to which the purchaser is not in default. The DEVELOPER further reserves the right to substitute for any of the materials, equipment and other articles herein mentioned materials, equipment and articles of equal or better quality.

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

.4. Easements. Easements are reserved throughout the condominium property as may be required for utility services in order to adequately serve the condominium; provided, however, such easements to a unit shall be only in accordance with the plans and specifications for the buildings or as the buildings are constructed, unless approved in writing by the unit owner. Each unit owner shall have an easement in common with the owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility

lines and other common elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other units and located in such unit. The Association shall have a right of access to each unit to inspect the same, to remove violations therefrom, and to maintain, repair or replace the common elements contained therein or elsewhere in any building.

.5. Access. Each unit has a right of access to a public street or highway, that is to say, to East Gulf Beach Highway 182, upon and over common elements providing such access all as shown upon the site plan (Exhibit A, page 1, hereto attached). The immediate common elements by which each unit has access to such public street or highway are (i) the concrete walkways running along the face of the buildings and the grounds, and (ii) the parking areas, driveways and streets all as shown upon the site plan (Exhibit A, page 1, hereto attached).

6. Descriptions.

.1. The Buildings. The Condominium will include access areas, parking areas, lawn areas, a swimming pool, all facilities located substantially as shown in the plans and drawing, Exhibit A. The lay-out, location and dimensions of each unit are found in Exhibit A.

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

(a) Units Numbered. Each unit is assigned a number which is indicated on the plans attached hereto.

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

(c) Type A. Units of this type are on the first, second, third, fourth, fifth and sixth floor levels, have two (2) balconies, one with a view of the Gulf of Mexico, have one (1) bedroom, one (1) bath and have 662 square feet of space exclusive of balconies and including an entrance hall, living room, closet and kitchen. The kitchen is equipped with dishwasher, garbage disposal, drop-in range, range hood and refrigerator; the unit is equipped with water heater, heater and air conditioner, washer and dryer, all as set forth in the specifications attached hereto as part of Exhibit A.

(d) Type B. Units of this type are on the first, second, third, fourth, fifth and sixth floor levels. Some, Interior B units are located directly on the Gulf of Mexico, non-interior B units all have balconies with a view of the Gulf of Mexico, have two (2) bedrooms and two (2) baths, have one (1) balcony and have 832 square feet of space including an entrance hall, living room, closets and kitchen. The kitchen is equipped with dishwasher, garbage disposal, drop-in range, range hood and refrigerator; the unit is equipped with water heater, heater and air conditioner, washer and dryer, all as set forth in the specifications attached hereto as part of Exhibit A.

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(e) Type C. Units of this type are on the first, second, third, fourth, fifth and sixth floor levels, are all located on the Gulf of Mexico, have one (1) balcony, have two (2) bedrooms and two (2) baths and have 950 square feet of space including an entrance hall, living room, closets and a kitchen. The kitchen is equipped with dishwasher, garbage disposal, drop-in range, range hood and refrigerator; the unit is equipped with water heater, heater and air conditioner, washer and dryer, all as set forth in the specifications attached hereto as part of Exhibit A.

(f) Garage Units. Eighteen (18) of these units available for purchase, as described in Exhibit A and Exhibit B, separately.

(g) All Units. All units shall be constructed as per the plans attached hereto as Exhibit A, and the specifications therein.

(h) Substitutions. DEVELOPER reserves the right to substitute substantially equivalent materials and/or equipment in any type unit.

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

(a) The land described in paragraph 3.

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

(c) Automobile parking spaces, whether or not assigned to the exclusive use of any unit.

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

(e) Balconies and decking.

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

(g) Lawn areas, landscaping, trees, curbs and walkways.

(h) Recreation areas and facilities, including but not limited to the swimming pool and sun deck.

(i) Exterior steps, ramps, hand rails, stairs and stairwells.

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

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

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

(m) All other items listed as such in the Condominium Ownership Act of Alabama, Act No. 1059, 1973 Regular session, Alabama Legislature (Title 47, Sec. 313(1), et seq.; Code of Alabama Recompiled, as amended), and located on the property.

.4. Limited Common Elements. There are no limited common elements.

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

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

.7. Balconies. A valid exclusive easement is hereby declared and established for the benefit of each unit and its owner consisting of the exclusive right to use and occupy the balcony or balconies serving the unit.

7. Determination of Percentages of Ownership in Common Elements, Common Expenses, Common Surplus and Voting. A schedule setting forth the percentage of undivided interest of each unit in the common areas is attached hereto, marked Exhibit B, and by reference made a part hereof, to determine the percentage of ownership in the

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common elements, percentage of common expenses, and percentage of common surplus, and voting in all matters requiring action by the owners. The common expenses shall be charged to the unit owners according to the percentages of the undivided interests of the respective units in the common elements. The common surplus shall be a trust fund for the unit owners and shall be either distributed among the unit owners according to the respective percentages of the undivided interests of the respective units in the common elements or applied against the following year's assessment, unless otherwise determined by the Board of Directors of the Association which shall not in any event use such surplus or any part thereof in any way other than to furnish services, insurance, goods or other items of value to the unit owners.

8. Encroachments. If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any building, a valid easement for the encroachment and for the maintenance of the same so long as such building stands shall exist. In the event any building, any unit, any adjoining unit, or any adjoining common element, shall be partially or totally destroyed as a result of fire, or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the common elements upon any unit or of any unit upon any other unit or upon any portion of the common elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such building shall stand.

9.1 Units Subject to Act, Declaration, By-laws and Rules and Regulations. All present and future owners, tenants, and occupants of units shall be subject to, and shall comply with the provisions of the act, this Declaration, the By-Laws, and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any unit shall constitute an agreement that the provisions of the Act, this Declaration, the By-laws and the Rules and Regulations, as they may be amended, from time to time, are accepted and ratified by such owner, tenant, and occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. In the event of a conflict in any of the provisions of any of such documents, the documents shall govern or control in the following order of preference: (1) the Act, (2) the Declaration, (3) the Articles of Incorporation of the Association, (4) the By-laws of the Association, and (5) the Rules and Regulations of the Association.

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



intended, without hindering or encroaching upon the lawful rights of the other owners.

.3. Enforcement. Failure of any owner to comply strictly with the provisions of this Declaration, the By-laws, and the Rules and Regulations, shall be grounds for an action to recover sums due, or damages, or injunctive relief or any or all of them. Such actions may be maintained by the Association on its own behalf or on behalf of the unit owners aggrieved. In any case of flagrant or repeated violation by a unit owner, he may be required by the Association to give sufficient surety or sureties for his future compliance with the provisions of this Declaration, the By-laws, and the Rules and Regulations. Nothing herein contained shall prevent, in a proper case, an independent action by an aggrieved unit owner for such relief.

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

.1. Units.

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

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

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

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

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

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

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

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

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(iii) To maintain the surfacing materials within the unit.

(iv) To maintain, repair and replace all heating, air conditioning, utility and mechanical equipment, and all sewer and water lines, including all pipes, ducts, wires, cables and conduits used in connection therewith, which are for the exclusive use of his unit, whether or not located within the boundaries of his unit.

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

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

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

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

## .2. Common Elements.

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

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

completion of such additional building or structural alteration or addition to any structure, the Association shall duly record or file of record in the office of the Judge of Probate of Baldwin County, Alabama, such amendment together with a complete set of plans of the condominium, as so altered, certified "as built" by a licensed or registered engineer or architect.

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

.1. Share of Common Expenses and Other Charges. Each unit owner shall be liable for a proportionate share of the common expenses and other charges, and shall share in the common surplus, such share being the same as his percentage of ownership in the common elements.

.2. Interest, Application of Payments. Assessments, and installments thereon, paid on or before ten (10) days after the date when due shall not bear interest, but to all sums not paid on or before ten (10) days after the date when due shall be added a \$15.00 penalty and interest at ten percent (10%) per annum for thirty (30) days after date due, until paid.

.3. Liens for Assessments. The Association is hereby granted a lien upon each unit and its appurtenant undivided interest in common elements, which lien shall secure and does secure the moneys due for all assessments now or hereafter levied or subject to being levied against the owner of each unit, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said unit and its appurtenant undivided interest in the common elements. The said lien for non-payment of assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except only (1) tax lien on the unit in favor of the State, the County, any municipality and any special district, and (2) all sums unpaid on a first mortgage of record. In any suit for the foreclosure of said lien, the Association shall be entitled to rental from the owner of any unit from the date on which the payment of any assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said unit, without notice to the owner of such unit. The rental required to be paid shall be equal to the rental charged on comparable types of dwelling units in Gulf Shores, Alabama. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of ten percent (10%) per annum on any such advances made for such purposes. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien granted to the Association.

.4. Rental Pending Foreclosure. In any foreclosure of a lien for assessments, the owner of the unit subject to the lien shall be required to pay a reasonable rental for the unit.

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

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

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

.1. Name. The name of the Association shall be ISLAND SUNRISE ASSOCIATION, INC.

.2. Powers. The powers and duties of the Association shall include those set forth in the Condominium Ownership Act, and those set forth in this Declaration and the By-laws of the Association, attached to and made a part hereof, and those set forth in its Articles of Incorporation, and shall have the power to purchase a unit of the condominium. The powers of the Association shall include but not be limited to the maintenance, management and operation of the condominium property.

.3. Members.

(a) Qualification. The members of the Association shall consist of all of the record owners of units.

(b) Change of Membership. Change of membership in the Association shall be established by the recording in the public records of Baldwin County, Alabama, of a deed or other instrument establishing a record title to a unit in the condominium, and the

delivery to the Association of a certified copy of such instrument, the owner designated by such instrument thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated.

(c) Voting Rights. Each unit shall be entitled to one (1) vote, which vote shall be the percentage assigned to the unit as stated in Exhibit B hereto attached. The vote for a unit shall be cast by the owner thereof or the owner of a possessory interest therein, or in the case of a corporate owner, by the officer or employee thereof designated as the voting representative of such unit, as hereinafter provided. Owners of more than one (1) unit shall be entitled to a vote for each unit owned. However, should the Association be a unit owner, it shall not have the voting right for that unit. Garage units have no vote.

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

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

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

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

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

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

.7. By-laws. By-laws of the Association shall be in the form attached as Exhibit C hereto.

13. Insurance. Insurance (other than title insurance) which shall be carried upon the condominium property and the property of the unit owners shall be governed by the following provisions:

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

.2. Coverage.

(a) Casualty. All buildings and improvements upon the land and all personal property comprising the condominium property shall be insured with a single insurance agent in an amount sufficient to avoid application of a co-insurance clause, but not more than the maximum insurable replacement value, without deduction for depreciation, as determined annually by the Board of Directors of the Association. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment

clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild.

(i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsements; and

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

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

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

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

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

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

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

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

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

(d) Contain a waiver by the insurer of any right of subrogation to any right of the Association, or either against the owner or lessee of any unit; and

(e) Contain a standard mortgage clause which shall:

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

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

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

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

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

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

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

(c) Mortgages. In the event a mortgagee endorsement has been issued as to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests may appear.

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



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

14. Reconstruction or Repair after Casualty. In the event of the damage or destruction of all or part of the property, then, unless it be determined by a vote of one hundred percent (100%) of the owners and one hundred percent (100%) of all record owners of liens on the units not to repair or reconstruct such damaged or destroyed property, the following provisions shall apply:

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

(a) Common Areas and Facilities. If the damaged improvement is a common area or facility, the damaged property shall be reconstructed, replaced or repaired.

(b) Building.

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

(ii) Total Destruction. If a building is so damaged that the same is untenable, the building shall be reconstructed.

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

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

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

.4. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, assessments shall be made against the unit owners who own the damaged property, and against all unit owners in the case of damage to common areas and facilities, in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair, or upon completion

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of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the unit owners who own the damaged property, and against all unit owners in the case of damage to common areas and facilities, in sufficient amounts to provide funds for the payment of such costs. Such assessments against unit owners for reconstruction and/or repair of damages to units shall be in proportion to the cost of reconstruction and repair of their respective units. Such assessments for reconstruction and/or repair of damage to common areas and facilities shall be in proportion to the owner's share in the common areas and facilities.

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

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

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

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

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

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

15. Use Restrictions. The use of the property of the condominium shall be in accordance with the following provisions:

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

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

.3. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the condominium property nor any part thereof; and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned. No commercial use except as set forth in paragraph .4.

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

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

.6. Proviso. Provided, however, that until the DEVELOPER of the condominium has completed and sold all of the units of the condominium or until February 1, 1986, or until DEVELOPER elects to terminate its control of the condominium, whichever shall first occur; and provided, further, that until the DEVELOPER of the condominium has completed and sold eighty percent (80%) of the aggregate of all the units of the condominium

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or until four (4) years after the date of the filing of the certificate by the DEVELOPER, or until the DEVELOPER elects to terminate its control over the condominium, whichever shall first occur; neither the unit owners nor the occupants shall interfere with the completion of the contemplated improvements and the sale of the units. DEVELOPER may make such use of the unsold units and of the common areas and facilities as may facilitate such completion and sale, including but not limited to the showing of the property and the display of signs.

16. Maintenance of Community Interests. In order to maintain a community of congenial residents, preserve the financial stability of the condominium regime, and protect the value of the units, the transfer of condominium parcels by any owner other than the DEVELOPER shall be subject to the following provisions so long as the condominium shall exist.

.1. Transfers Subject to Approval.

(a) Sale. No unit owner may dispose of a condominium unit or any interest therein by any sale without approval of the Association, except to another unit owner.

(b) Lease. No unit owner may dispose of a condominium unit or any interest therein by lease without approval of the Association, except to another unit owner.

(c) Gift. If any unit owner shall acquire his title by gift, the continuance of his ownership of his condominium unit shall be subject to the approval of the Association.

(d) Devise or Inheritance. If any unit owner shall acquire his title by devise or inheritance, the continuance of his ownership of his condominium unit shall be subject to the approval of the Association.

(e) Other Transfers. If any unit owner shall acquire his title by any manner not heretofore considered in the foregoing subsections, the continuance of his ownership of his condominium unit shall be subject to the approval of the Association.

.2. Approval by Association. The approval of the Association which is required for the transfer of condominium units shall be obtained in the following manner:

(a) Notice to Association.

(i) Sale. A unit owner intending to make a bona fide sale of his unit or any interest therein shall give to the Association at least thirty (30) days' written notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require.

(ii) Lease. A unit owner intending to make a bona fide lease of his unit or any interest therein shall give to the Association notice of such intention, together with the name and address

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of the intended lessee, such other information concerning the intended lessee as the Association may reasonably require, and an executed copy of the proposed lease.

(iii) Gift, Devise or Inheritance; Other Transfers. A unit owner who has obtained his title by gift, devise or inheritance, or by any other manner not heretofore considered, shall give to the Association notice of the acquiring of his title, together with such information concerning the unit owner as the Association may reasonably require, and a certified copy of the instrument evidencing the owner's title.

(iv) Failure to Give Notice. If the notice to the Association herein required is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a unit, the Association, at its election and without notice, may approve or disapprove the transaction or ownership. If the Association disapproves the transaction or ownership, the Association shall proceed as if it had received the required notice on the date of such disapproval.

(b) Certificate of Approval.

(i) Sale. If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the President or Secretary in recordable form and shall be delivered to the purchaser and shall be recorded in the public records of Baldwin County, Alabama.

(ii) Lease. If the proposed transaction is a lease, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the President or Secretary in recordable form and shall be delivered to the lessee.

(iii) Gift, Devise or Inheritance; Other Transfers. If the unit owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the continuance of the unit owner's ownership of his unit. If approved, the approval shall be stated in a certificate executed by the President or Secretary in recordable form and shall be delivered to the unit owner and shall be recorded in the public records of Baldwin County, Alabama.

(c) Approval of Corporate Owner or Purchaser. Inasmuch as the condominium may be used only for

residential purposes, and a corporation cannot occupy a unit for such use, if the unit owner or purchaser of a unit is a corporation, the approval of ownership by the corporation may be conditioned by requiring that all persons to use or occupy the unit be also first approved by the Association.

.3. Disapproval by Association. If the Association shall disapprove a transfer of a unit, the matter shall be disposed of in the following manner:

(a) Sale. If the proposed transaction is a sale, then within sixty (60) days after notifying the unit owner of such disapproval, the Association shall deliver or mail by certified mail to the unit owner an offer to purchase either by the Association, or by a purchaser approved by the Association, and to whom the unit owner must sell the unit upon the following terms:

(i) At the option of the purchaser to be stated in his offer, the price to be paid shall be that stated in the disapproved contract to sell, or, if less, then the fair market value, determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association, who shall base their determination upon an average of their appraisals of the unit; and a judgment of specific performance of the sale upon any award rendered by the arbitrators may be entered in a court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(ii) The purchase price shall be paid in cash.

(iii) The sale shall be closed within thirty (30) days after the delivery or mailing of said offer to purchase, or within ten (10) days after the determination of the sale price if such is by arbitration, whichever is the later.

(iv) If the Association shall fail to purchase or to provide a purchaser as herein required, then notwithstanding the disapproval, such transfer of ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided.

(b) Lease. If the proposed transaction is a lease, the unit owner shall be advised of the disapproval in writing, and the lease shall not be made.

(c) Gift, Devise or Inheritance; Other Transfers. If the unit owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt from the unit owner of the notice and information required to be furnished, the Association shall deliver or mail by certified mail to the unit owner an offer to purchase either by the Association or by a purchaser

approved by the Association, and to whom the unit owner must sell the unit upon the following terms:

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

(ii) The purchase price shall be paid in cash.

(iii) The sale shall be closed within ten (10) days following the determination of the sale price.

(iv) If the Association shall fail to purchase or to provide a purchaser as herein required, then notwithstanding the disapproval, such transfer of ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided.

.4. Unit Mortgage. No unit owner may mortgage his unit nor any interest therein without the approval of the Association except to a bank, life insurance company, a savings and loan association, or the DEVELOPER. The approval of any other mortgage may be upon conditions determined by the Association or may be arbitrarily withheld.

.5. Blanket Mortgage. Notwithstanding any other provisions of this Declaration or the By-laws, the entire condominium property or some or all of the units included therein may be subjected to a single or blanket mortgage constituting a first lien thereon created by a recordable instrument executed by all of the owners of the property or units covered thereby. The instrument creating any such mortgage shall provide a method whereby any unit owner may obtain a release of his unit from the lien of such a mortgage, and a satisfaction and discharge in recordable form, upon payment to the holder of the mortgage of a sum equal to the proportionate share attributable to his unit of the then outstanding balance of unpaid principal and accrued interest and any other charges then due and unpaid, which proportionate share attributable to each unit shall be the proportion in which all unit owners whose units are then subject to the lien of such mortgage own among themselves the common elements and the private elements as provided in the Declaration, or such other reasonable proportion as shall be specifically provided in the mortgage instrument; and such mortgage may contain provisions for converting the same to individual mortgages on the individual units included therein.

.6. Exceptions. The foregoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to or purchase by any holder of the mortgage

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which comes into possession and title of the unit as a result of owning a mortgage upon the unit concerned, and this shall be so whether the title is acquired pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed from the mortgagor in lieu of foreclosure; nor shall such provisions apply to a transfer, sale or lease by such holder of the mortgage which so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a unit at a duly advertised public sale with open bidding as may be provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

.7. Unauthorized Transactions. Any sale, mortgage or lease which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

.8. Notice of Lien or Suit.

(a) Notice of Lien. A unit owner shall give notice to the Association of every lien upon his unit other than for permitted mortgages, taxes and special assessments, within five (5) days after the owner's receipt of notice thereof.

(b) Notice of Suit. A unit owner shall give notice to the Association of every suit or other proceeding which may affect the title to his unit, such notice to be given within five (5) days after the unit owner receives knowledge thereof.

(c) Failure to Comply with this subsection concerning liens will not affect the validity of any judicial sale.

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

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

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

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

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

19. Amendment. This Declaration of Condominium and the By-laws of ISLAND SUNRISE ASSOCIATION, INC., may be amended in the following manner:

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

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

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

.4. Agreement. In the alternative, an amendment may be made by an agreement signed and acknowledged by all of the record owners, including first mortgagees, of units in the condominium in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the office of the Judge of Probate of Baldwin County, Alabama.

.5. Proviso. Provided, however, that no amendment shall discriminate against any unit owner nor against any unit or class or group of units, nor change any condominium unit nor increase the owner's liability for common expenses unless the record owner thereof and all record owners of liens thereon shall join in the execution of the amendment.

.6. Provisions Pertaining to the Developer.

(a) Notwithstanding any other provisions herein contained, for so long as the DEVELOPER continues to own any of the units, the DEVELOPER reserves the unrestricted right to sell, assign or lease any unit which it continues to own after the recording or filing of this Declaration, and to post signs on the condominium property.

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(b) Provided, however, that until the DEVELOPER of the condominium has completed and sold all of the units of the condominium or until February 1, 1986, or until DEVELOPER elects to terminate its control of the condominium, whichever shall first occur; and provided, further, that until the DEVELOPER of the condominium has completed and sold Eighty (80%) percent of the aggregate of all the units of the condominium, or until the DEVELOPER elects to terminate its control over the condominium, whichever shall first occur; the following additional provisions shall be deemed to be in full force and effect:

(i) The DEVELOPER reserves the right to amend the By-laws of the Association.

(ii) The Directors of the Association shall be designated by the DEVELOPER and such Directors as may be so designated need not be unit owners.

(c) None of the provisions in this subparagraph contained shall be construed so as to relieve the DEVELOPER from any obligations of a unit owner to pay assessments as to each unit owned by it, in accordance with the condominium documents.

20. Proportionate Changes in Common Expenses, Common Surplus, and Voting Rights. In the event of any one (1) or more of the units are not rebuilt by reason of the loss of lands as a result of destruction, condemnation or otherwise, and therefore the number of units is reduced, or in the event the number of units is reduced because (a) the Association has become the owner of a unit by foreclosure of its lien as heretofore provided, or (b) an entity has acquired title to a unit as the result of owning a mortgage upon the unit concerned, whether by deed from the mortgagor or through foreclosure proceedings, then the proportionate share of the common expenses and of the common surplus and the voting rights of each unit shall be increased by adding to each remaining unit their proportionate percentages of ownership out of the percentages of ownership of the units so reduced.

21. Termination. The condominium may be terminated in the manner provided by the Condominium Ownership Act; provided, however, that, in the event of termination, each unit shall be subject to the payment of a share of the common expenses as heretofore defined, subject to increase as provided in paragraph 20 hereof.

22. Eminent Domain.

.1. Partial Taking Without Direct Effect on Units. If part of the condominium shall be taken or condemned by any authority having the power of eminent domain in such manner that no unit is taken, compensation and damages for and on account of the taking of the common elements, exclusive of compensation for consequential damages to affected units, shall be payable to the Association as Trustee for all unit owners and mortgagees of record according to the loss or damages to their respective interests in such common elements. The Association, acting through its Board of Directors, shall have the right to act on behalf of the unit owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation

affecting the common elements, without limitation on the right of the unit owners to represent their own interests. Such proceeds shall be paid to the Association and shall be used promptly to the extent necessary for restoring or replacing improvements so taken on the remaining property in as substantial compliance with the original plans and elevations of the improvements as possible and so as to restore the general value of the condominium. In the event such restoration or reconstruction is impossible or impractical, or in the event there is an award in excess of the amount necessary to so substantially restore or reconstruct the common elements, the amount of such award or the excess, as the case may be, shall be distributed by the Association to the unit owners in proportion to their share of undivided interest in the common elements. Nothing herein shall be deemed to prevent unit owners whose units are affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for damages relating to loss of value of the affected units, or personal improvements therein, exclusive of damages related to the taking of common elements. In the event the condemnation award does not allocate damages to specific units, but includes an award for reduction in value of the units without such allocation, the award shall be distributed to the affected unit owners and mortgagees of record in proportion to each unit owner's undivided interest in the common elements.

.2. Partial or Total Taking Directly Affecting Units. If part or all of the condominium shall be taken or condemned by any authority having the power of eminent domain in such manner that any unit or part thereof is taken, the Association shall have the right to act on behalf of the unit owners with respect to common areas as in sub-section .1. of this paragraph 22, and the proceeds shall be used or distributed as outlined therein. The Association, acting through its Board of Directors, shall have the right to act on behalf of the unit owners affected with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the taken area, without limitation on the right of the unit owners to represent their own interests. The awards so made shall be used by the Association first to restore the units and improvements on the remaining common elements in the same manner as provided for restoration or reconstruction under paragraph 14 of this Declaration, to the extent possible, attempting to rebuild buildings containing new units of the same number, size and basic plan as the units taken, and with any excess award distributed as provided in sub-section .1. of this paragraph 22. In the event that the Board of Directors determines that such a taking so removed land and buildings containing units that they cannot effectively be restored or replaced substantially in compliance with the building plans, and unless seventy-five (75%) percent of the unit owners and holders of record of mortgages on at least seventy-five (75%) percent of the units vote to accept an alternative plan, the award shall be distributed as provided in sub-section .1. of this paragraph 22.

.3. Notice to Mortgagees. The Board of Directors, immediately upon having knowledge of the institution or threat of institution of any proceedings or other action with respect to the taking of condominium units, the common elements, or any portion of any condominium unit or common element in condemnation, eminent domain or other proceeding or actions involving any unit of government or other entity having the power of eminent domain, shall notify mortgagees holding liens

of record on any of the units. Any such mortgagee may, at its option, and if permitted by law, participate in any such proceedings or actions or, in the event, may at its option, participate in negotiations in connection therewith, but shall have no obligation so to do.

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

24. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, sub-section, sentence, clause, phrase or word, or other provision of this Declaration of Condominium and the By-laws of the Association shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, the said ISLAND SUNRISE, LTD., a limited partnership, has caused THESE PRESENTS to be executed by its partners, all thereunto duly authorized, this the day and year first above written.

ISLAND SUNRISE, LTD., a limited partnership

By:

Gerald T. King  
General Partner

David Bodenhamer  
General Partner

STATE OF ALABAMA  
COUNTY OF BALDWIN

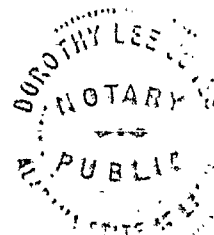
I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Gerald T. King and David Bodenhamer, whose names as general partners, respectively, of ISLAND SUNRISE, LTD., a limited partnership, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they as such partners and with full authority, executed the same voluntarily on the day the same bears date, for and as the act of said partnership.

Given under my hand and seal this 16<sup>th</sup> day of February, 1981.

Dorothy Lee Jones  
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

MICHAEL J. SALMON, ATTORNEY  
P. O. Box 162  
Gulf Shores, Alabama 36542



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