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JLD
J1 - GULFPORT DISTRICT
Instrument 2021-0030890-D-J1
Filed/Recorded 11/04/2021 9:10:01 AM
Total Fees 55.00
34 Pages Recorded

This Condominium Declaration Amendment dated this the 16 day of October, 2021.

Pass Marianne Condominiums, 1100 West Beach Boulevard, Pass Christian, MS 39571.

Prepared by and return to:

Pass Marianne Home Owner's Association, 1100 West *Beach* Boulevard, *Box #10* Pass Christian, MS 39571
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State of Mississippi

Harrison County

**PLAN OF CONDOMINIUM AND DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PASS MARIANNE CONDOMINIUMS, AS AMENDED**

4th Amended

Plan of Condominium

and

Declaration

of

Covenants, Conditions and Restrictions

for

Pass Marianne Home Owners Association

STATE OF MISSISSIPPI

COUNTY OF HARRISON

**PLAN OF CONDOMINIUM AND DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PASS MARIANNE CONDOMINIUM, AS AMENDED**

This Plan of Condominium and Declaration of Covenants, Conditions and Restrictions for Pass Marianne Condominiums, (The Plan) was originally made on 1st day of August, 2007, by Pass Marianne, LLC, a Mississippi Limited Liability Company, (the "Declarant"), and was amended for the second time on the 12th day of December, 2012, by the Declarant and the Pass Marianne Home Owner' Association, A Mississippi Nonprofit Corporation, (the "Association"), and was amended for the third time on the 24th day of September, 2016, by the Declarant and the Association, and is hereby amended for the fourth time on the 16 day of October, 2021.

NOW THEREFORE, pursuant to the Mississippi Condominium Law (Section 89-9-1, et seq., Miss. Code 1972 Ann., as amended), (hereinafter called the "Act"), Declarant and all recorded holders of a security interest in the Property (as evidenced by a Certificate attached hereto and filed in accordance with Section 89-9-9 of the Act) do hereby submit the Property to the provisions of the Act and subject it to the condominium form of ownership, as provided for in the Act and Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Land and be binding on all parties having right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof, to-wit:

Pass Marianne Home Owners' Association

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

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Pass Marianne Home Owners Association

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

ARTICLE I. DEFINITIONS AND DESCRIPTIONS

Section 1. Definitions

- A. The terms used herein shall have the same meaning as set forth in the Act and as follows, unless the context otherwise requires:
- B. "Act" shall mean the Mississippi Condominium Law of the State of Mississippi, as found in Title 89, Chapter 9, Section 1, et seq. of the Mississippi Code of 1972, Annotated.
- C. "Assessment" shall mean the share allocated to a Unit and thereby the Unit Owners of such Unit of all Assessments levied by the Association pursuant to the provisions of Article VI hereof and any and all expenses, costs, charges, and other amounts incurred with respect to either such Unit or the satisfaction, discharge or compliance with any obligations or duties of the Unit Owners of any Unit as specified in this Declaration.
- D. "Association" shall mean Pass Marianne Home Owners Association, a Mississippi nonprofit corporation, its successors, and assigns.
- E. "Board of Directors" shall mean the Board of Directors of the Association.
- F. "Bylaws" shall mean the bylaws of the Association as amended from time to time.
- G. "Charter" means The Articles of Incorporation of the Association, as amended from time to time.
- H. "Common Area" or "common area" or "Common Elements" or "common elements" shall mean and include all parts of the condominium property not located within the boundaries of a unit. Pursuant to Section 89-9-13 of the Act, each unit is allocated an undivided percentage interest in the Common Area equal to each other unit as further specified in Article I, Section 1, Subsection U.
- I. "Common Expenses" or "common expenses" shall mean all expenditures lawfully made or incurred by, or on behalf of, the Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves.
- J. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Pass Marianne Condominiums, as supplemented from time to time.

- K. "First Mortgage" shall mean a mortgage, deed of trust or similar encumbrance creating a lien or encumbrance against a Unit, which has priority over all other mortgages, deeds of trusts, or similar encumbrances creating liens or encumbrances against such Unit.
- L. "Invitees" shall mean an Owner's tenants, guests, patrons, employees of other guests or invitees.
- M. "Management Agent" means the Person, if any, employed or retained by the Board of Directors for the purpose of conducting and managing the daily operations of the Association.
- N. "Member" shall mean each Person who owns a unit.
- O. "Mortgagee" shall mean any Person who owns, holds or is the beneficiary of a mortgage, deed of trust or similar encumbrance creating a lien or encumbrance against any Unit, including, but not limited, to (i) a bank (ii) a savings and loan association, (iii) a trust company, (iv) an insurance company, (v) a mortgage company, (vi) a trust (vii) a mortgage insurance company (viii) a mutual savings bank (ix) a real estate investment trust, (x) a credit union, (xi) a pension fund, (xii) the Federal National Mortgage Association, (xiii) the Federal Home Loan Mortgage Corporation (xiv) a recognized institutional type lender or loan correspondent, (xv) any agency or a department of The United States of America or any state, county or municipal government, (xvi) a corporation, or (xvii) an individual.
- P. "Plan" shall mean the Plan of Condominium and Declaration of Covenants, Conditions and Restrictions for Pass Marianne Condominiums.
- Q. "Person" shall mean an individual, a corporation, Limited Liability Company, a general or limited partnership, an association, a trust, an estate, or any other legal entity.
- R. "Plat" shall mean the subdivision map(s) or plat(s) of the Property which has been or shall be filed for record in the office of the Chancery Clerk of Harrison County, Mississippi.
- S. "Properties," "Condominium," "Project," or "Property" shall mean the entire parcel of real property divided or to be divided into Condominiums, including the land, all improvements, and structures thereon and all easements, rights and appurtenances belonging thereto including any additions thereto as may hereafter be brought within the jurisdiction of the Association.
- T. "Supplement" means any amendment, modification, change or restatement of or to this Declaration.
- U. "Unit Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any unit which is a part of the Condominium but excluding those having such interest merely as security for the performance of an obligation.
- V. "Unit" or "unit" shall mean a portion of the Condominium within the boundaries hereinafter described which is not owned in common with all other owners of other units in the condominium project. The Condominium consists of 48 units; one of which is deeded to the HOA. Each unit consists of a dwelling and its appurtenant percentage of undivided interest in the Common Area. Each unit's appurtenant percentage of undivided interest in the Common Area is equal to 1/47th of the total. The units are depicted on the diagrammatic floor plans of the building recorded in the office of the Chancery Clerk of the Harrison County, Mississippi in accordance with Section 89-99 of the Act, except as provided in Section I, Subsection G of this Article, which describes the Common Areas, each unit includes that part of the structure, which lies within the following boundaries:

- i. Horizontal (upper and lower): the horizontal boundaries are the interior surfaces of the floors and ceilings. The lower boundary is the top of the unfinished concrete floor and the upper boundary is the bottom surface of the unfinished ceiling.
 - ii. Vertical (perimetric): the vertical boundaries of each unit, and all portions of the units having exterior walls, is the inner unfinished surface of all such exterior walls, provided that where there are windows or doors, the boundary is the exterior surface of such doors and windows when closed. As to the wall between a unit and the adjacent unit the boundary is the centerline of such wall. Where a balcony, (access to which is only from the unit) is shown on the attached plans as part of an individual unit, such balcony shall be and constitute a part of the unit, whether enclosed without the perimeter walls or not.
 - iii. All attachments to the exterior wall or unit which are a part thereof, which protrude beyond the boundaries of a unit as specified above, and which were constructed in accordance with the original design of the unit, even though located beyond the boundaries thereof, shall be and are deemed to be included within the boundaries of the unit so served.
 - iv. Any and all conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility services which serve only one unit or part of that unit, when located within the boundaries thereof, shall be and are deemed to be included within the boundaries of the unit so served.
 - v. The owner of each respective Unit shall not be deemed to own separately the basic structural and supporting portions of the perimeter walls, floors, and ceilings surrounding his respective Unit, nor shall the Unit Owner be deemed to own separately pipes, wire, conduits or other public utility lines, running through said respective Units which are utilized to serve more than one Unit, but the same shall be owned as tenants in as part of the Common Area; however, each Unit Owner shall have an easement in the interest of the other owners in and to the aforesaid Common Areas and facilities as shall be necessary for the support, maintenance, use and enjoyment of his Unit; such Unit Owner shall also be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors, and ceilings and the facilities, fixtures and equipment built or placed in and outside said unit and used for the exclusive service and convenience of such Unit.
- W. Improvement" shall mean any permanent structure at Pass Marianne Condominiums or any work at the Condominiums which is affixed to the Property for a permanent nature, and which increases its value.

ARTICLE II. PROPERTY RIGHTS

Section 1. Ownership and Owner's Easements of Enjoyment.

The Property shall be constituted as a condominium project as defined by the Act and shall continue as such forever unless terminated in the manner provided herein or in said Act. Every Unit Owner shall have and be entitled to all the rights and privileges granted under said Act subject to the provisions as herein set forth:

- A. Each Unit shall be individually transferred, conveyed, and encumbered and shall be subject to ownership, possession, mortgage or sale and all other acts common to the ownership of real property as if it were solely and entirely independent of the other units in the project.
- B. Every Unit Owner shall have an exclusive ownership of his unit and shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every unit, subject to the following provisions:
 - i. the right of the Association, acting by and through its Board of Directors, to suspend the voting rights and right to use of the said facilities by a Unit Owner for any period during which any assessment against his unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations:
 - ii. the right of the Association, acting by and through its Board of Directors, to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility as provided in easements for public utilities and for such other purposes and subject to such other conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by sixty-seven percent (67%) of the members agreeing to such dedication or transfer has been recorded; and:
 - iii. the right of the Association, acting by and through its Board of Directors, to manage, control and adopt rules and regulations governing the management and use of the Common Area in accordance with this Declaration, the Articles of Incorporation and By-Laws of the Association.

Section 2. Delegation of Use.

Any Unit Owner may delegate, in conformance with the By-Laws of the Association, his right of enjoyment of the Common Area and facilities to the members of their family, tenants under a lease approved pursuant to the provisions of Restrictions on Transfers or contract purchasers who reside on the property and not otherwise.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership.

The Members of the Association shall be every person who is, or who hereafter becomes, a Unit Owner.

Section 2. Voting Rights.

Each Member shall have one vote in the election or removal of each member of the Board of Directors of the Association.

Section 3. Memberships Appurtenant to Real Property.

A membership shall not be held, assigned, transferred, pledged, hypothecated, encumbered, conveyed, or alienated in any manner except in conjunction with and as an appurtenance to the ownership, assignment, transfer, pledge, hypothecation, encumbrance, conveyance, or alienation of the unit to which the membership is appurtenant.

Section 4. Other Voting Provisions.

If a unit is owned of record by more than one person or entity, then the vote appurtenant to such unit may be exercised by any one of the owners thereof unless the other owner or owners of such Unit shall object prior to the completion of voting upon the particular matter under consideration. In the case of any such objection, the vote appurtenant to said unit shall not be counted and shall be considered as abstaining.

ARTICLE IV.

MANAGEMENT AND CONTROL OF COMMON AREAS

The Association shall have the exclusive right to control all the Common Area and each unit owner's ownership of an undivided interest in the Common Area is expressly made subservient to the rights of the Association to manage and control the Common Area. It is the intention of the Declaration that the Association be free and uninhibited in the exercise of its rights and duties hereunder, and to such end the words "management and control" shall be given their broadest possible meaning. In addition, the Association shall have the following powers and duties:

Section 1. Management, Control and Common Expenses.

The Association, acting by and through its Board of Directors, shall manage, operate, and maintain the condominium project and, for the benefit of the condominium units and the owners thereof, shall enforce the provisions hereof and shall pay out of a common expense fund the following:

- A. The cost of providing water; sewer; garbage and trash collection; electrical, gas and other necessary utility services for the common areas, and, to the extent that the same are not separately metered or billed to each condominium unit, for the condominium units:
- B. The cost of the services of a person or firm to manage the project to the extent deemed advisable by the Association, together with the services of such other personnel as the Board of Directors of the Association shall consider necessary for the operation of the condominium project:
- C. The cost of providing such legal and accounting services as may be considered necessary to the operation of the condominium project:
- D. The cost of painting, maintaining, replacing, repairing, and landscaping the Common Area and such furnishings and equipment for the Common Area as the Board of Directors shall determine are necessary and proper; including, but not limited to:
 - i. all portions of a unit, except interior surfaces, 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 on the exterior thereof; boundary walls of units, floor, and ceiling slabs; and load-bearing columns and load-bearing walls, all exterior walls and doors of any storage or closet forming a part of any unit; and
 - ii. 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 utilities contained within a unit which service part or parts of the condominium other than the unit within which contained.

All incidental damage caused to a unit by such work shall be promptly repaired at the expense of the Association.

- E. The cost of any and all other materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like, which the Association is required to secure or pay for by law, or otherwise, or which in the discretion of the Board of Directors shall be necessary or proper for the operation of the common areas; provided, however, that if any of the aforementioned are provided or paid for the benefit of a particular condominium unit or units, the cost thereof shall be specially assessed to the owner or owners thereof in the manner provided for special assessments, except that no vote of unit owners shall be required:
- F. The cost of the interior or exterior maintenance or repair of any condominium unit in the event such maintenance or repair is reasonable and necessary in the discretion of the Board of Directors to protect the common areas or to preserve the appearance or value of the condominium project, or is otherwise in the interest of the general welfare of all owners of the condominium units; provided, however, that no such maintenance or repair shall be undertaken without a resolution by the Board of Directors and not without reasonable written notice to the owner of the condominium unit proposed to be so maintained and provided, further, that the cost thereof shall be assessed against the condominium unit on which such maintenance or repair is performed, and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then owner of said condominium unit at which time the assessment shall become due and payable and a continuing lien and obligation of said owner in all respects as other liens provided for herein; and
- G. Any amount necessary to discharge any lien or encumbrance levied against the condominium project or any portion thereof, which may, in the opinion of the Board of Directors, constitute a lien against any of the Common Area rather than the interest of the owner of any individual condominium unit. Payment of this expense is discretionary with the Board of Directors.

Section 2. Association as Attorney-in-Fact.

The Association, acting by and through its Board of Directors, is hereby irrevocably appointed as attorney-in-fact for the owners of all the condominium units in the project, and for each of them, to manage, control and deal with the interests of such owners in the common areas of the project to permit the Association to fulfill all its powers, functions, and duties under the provisions of this Declaration, the Charter, and the By-Laws. The foregoing shall be deemed to be a power of attorney coupled with an interest and the acceptance by any person or entity of any interest in any condominium unit shall constitute an appointment of the Association as attorney-in-fact as aforesaid.

Section 3. Management Agent.

The Association, acting by and through its Board of Directors, may by contract in writing delegate any of its ministerial duties, powers, or functions to the Management Agent. The Association and Board of Directors shall not be liable for any omission or improper exercise by the Management Agent of any such duty, power, or function so delegated. Any management agreement entered by the Association shall provide, among other things, that such an agreement may be terminated for cause by either party upon thirty (30) days written notice thereof to the other party. The term of any such management agreement shall not exceed one year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one-year periods.

Section 4. Unit Owner's Duty to Maintain.

- A. The owner of any condominium unit shall, at such owner's expense, maintain the interior of such condominium unit and any and all equipment, appliances or fixtures therein situated, and its other (including, without limitation, any balcony appurtenant to such condominium unit and designated or reserved for exclusive use by the owner of a particular condominium unit), in good order, condition and repair, provided however, that all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of any balcony appurtenant to such unit shall be performed by the Association, at the Association's expense, and not the Unit Owner. In addition to the foregoing, the owner of any condominium unit shall, at such owner's expense, maintain, repair, replace any plumbing and electrical fixtures, water heaters, plenum, heating and air-conditioning equipment (including air-conditioning compressors located outside the unit, which shall be maintained at each owner's expense), lighting fixtures, refrigerators, freezers, trash compactors, dishwashers, clothes washers, clothes dryers, disposals, ranges, range hoods, and/or other equipment that may be in or appurtenant to such condominium unit.
- B. Windows, Doors. The owner of any condominium unit shall, at such owner's expense, clean and maintain any balcony appurtenant to the condominium unit, the interior and exterior surface (that can be reached safely) of all windows of the condominium unit, and both the interior and exterior glass surfaces of all glass entry doors of the condominium unit, including the interior and exterior surfaces of any door leading into a unit or to any balcony appurtenant to the condominium unit. Replacement of exterior glass must meet Code Standards and be made with equal or superior quality. Maintenance of exterior surfaces required by this subsection (b) shall not include painting. All exterior painting shall be done under the supervision, control, and expense of the Association unless otherwise herein specifically provided.

- C. In the event that the owner of any unit fails to maintain such owner's unit equipment, appliances, fixtures and equipment and its other appurtenances and such failure, in the opinion of the Board of Directors, might cause or result in damage to the property or other units within the property if not repaired or properly maintained as required by this Section, the Association, after approval by two-thirds vote of the Board of Directors, shall have the right through its agents and employees to enter upon said parcel and to repair, maintain and restore such unit. The cost of such repair and maintenance shall be assessed to such unit and its owner as provided in Special Assessments payable by Unit Owners as the Board of Directors of the Association deem necessary and advisable.

Section 5. Access at Reasonable Times.

For the purpose solely of performing any of the repairs or maintenance required or authorized by this Declaration, through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the Unit Owner or occupant, to enter any condominium unit at any hour considered to be reasonable under the circumstances.

In the event of a bona fide emergency involving illness or potential danger to life or the property, the Association will first call 911 and endeavor to meet them at the unit involved with the key for them to enter without causing damage to the property.

Section 6. Easements for Utilities and Belated Purposes.

The Association is authorized and empowered to grant (and shall from time to time grant) such licenses, easements and/or rights-of-way for sewer lines, water lines, electrical cables, telephone cables, gas lines, storm drains, underground conduits and/or such other purposes related to the provision of public utilities to the condominium project as may be considered necessary and appropriate by the Board of Directors for the orderly maintenance, preservation and enjoyment of the Common Area or for the preservation of the health, safety, convenience and/or welfare of the owners of the condominium units.

Section 7. Limitation of Liability.

The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid out of the common expense funds, or for injury or damage to person or property caused by the elements or by the owner of any condominium unit, or other person, or resulting from electricity, water, snow, or ice which may leak or flow from any portion of the common areas, another Unit, or from any wire, pipe, drain, conduit, appliance, or equipment. The Association shall not be liable to the owner of any condominium unit for loss or damage, by theft or otherwise, of articles, which may be stored in any Unit or upon any of the Common Area.

ARTICLE V.

USE RESTRICTIONS

Section 1. Residential Use.

All condominium units shall be used for private residential purposes exclusively.

Section 2. Leasing.

No Unit Owner, or a Unit Owner's tenant, shall be permitted to lease, or sub-lease, such owner's unit on a short-term basis, i.e., for less than a six [6] month period.

Section 3. Time Sharing.

No Unit Owner shall be permitted to sell time-share interest in and to their unit.

Section 4. Prohibited Uses and Nuisances.

- A. No noxious or offensive trade or activity shall be carried on within the project or within any condominium unit situated thereon, nor shall anything be done therein or thereon which may be or become an annoyance to the neighborhood or the other owners. No nuisances or solicitations shall be permitted within the condominium project, nor shall any use or practice be permitted which is or becomes a source of annoyance to the members or which interferes with the peaceful use and possession thereof by the members.
- B. There shall be no obstruction of any Common Area. Nothing shall be stored upon any Common Area (excepting those areas designated for storage of personal property by the owners of the condominium units), or within or upon any parking space (except for motor vehicles), without the approval of the Board of Directors.
- C. Vehicular parking upon the common areas may be regulated by the Board of Directors; however, each unit owner is allowed one (1) parking place. If additional spaces are available under the main structure, each unit owner is allowed to park one additional vehicle inside the garage on a first come first serve basis.
- D. Nothing shall be done or maintained in any condominium unit or upon the common area, which will increase the rate of insurance on any condominium unit or common area, or result in the cancellation thereof, without the prior written approval of the Board of Directors. Nothing shall be done or maintained in any condominium unit or upon the Common Area, which would be in violation of any law. No waste shall be committed upon the Common Area.
- E. No structural alteration, construction, addition, or removal of any portion of the common area or common elements shall be commenced or conducted except in strict compliance with the provisions of this Declaration and with the written approval of the Architectural Review Committee.
- F. Unit Owners and tenants may have pets inside Units or designated Common Areas. Unit Owners must accompany their pets on the balcony and in the areas designated by the Association through the Board of Directors, surrounding the main structure, in accordance with the "Rules and Regulations" as they may be amended from time to time. No pet shall be allowed outside their owner's unit under any circumstances unless accompanied by or under the control of the Unit

Owner; keeping or harboring pets in units shall be governed by such rules and regulations as may from time to time be adopted by the Board of Directors; no pet may be kept for any commercial purpose; Unit Owners walking pets shall be responsible for the proper disposal of their waste.

- G. No signs of any character, including "For Sale" signs, shall be erected, posted, or displayed upon, in, from or about any condominium unit, including any window of a Unit, or common areas. The Board of Directors, at its sole discretion, authorize signage at such location it may determine for informational purposes, although the Board of Directors cannot authorize "For Sale" signs.
- H. No inoperable vehicle, no junk vehicle or other vehicle on which current registration plates are not displayed may be kept on grounds. Trailers, truck campers, camper truck house trailers, boats or the like shall be not kept upon any of the common areas, nor shall the repair or extraordinary maintenance of boats, automobiles or other vehicles be carried out on any of the Common Areas or within or upon any parking area.
- I. No part of the Common Areas shall be used for commercial activities of any character.
- J. No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used building materials, or trash of any other kind shall be permitted within any condominium unit or upon any Common Areas. Trash and garbage containers shall not be permitted to remain in public view. All refuse shall be placed in plastic bags and deposited with care in trash compactors for such purpose at such locations as may from time to time be designated by the Board of Directors.
- K. No structure of a temporary character, trailer, tent, shack barn or other outbuilding shall be maintained upon any common elements at any time, outdoor clothes dryers or clothes lines shall not be maintained upon any of the common areas at any time. No clothing, laundry or the like shall be hung from any exterior part of any condominium unit or upon any of the Common Areas or from or upon any balcony.
- L. No outside television or radio aerial antenna or dish, for reception or transmission, shall be maintained upon any condominium unit or upon any of the common areas except for such antenna or dish that may be placed upon the Common Area by the Association for service to all units, without the prior written consent of the Board of Directors.
- M. Nothing shall be stored upon any of the Common Areas, nor shall the cooking or preparation of food be permitted thereon or upon any other portion of the Common Areas of the project, except for areas designated for such purposes on the plan attached hereto and such other areas as may be designated by the Board of Directors from time to time.
- N. No member shall engage or direct any employee of the Association on any private business of the membership during the hours such employee is employed by the Association nor shall any member direct, supervise or in any manner attempt to assert control over any employee of the Association.
- O. There shall be no violation of any rules for the use of the common areas, or other "house rules", which may from time to time be adopted by the Board of Directors.
- P. That portion of all window coverings and all covering used in connection with windows or glass, enclosing any balcony, including but not limited to shades, curtains, sheers, drapes, blinds, etc., which are visible when looking at the exterior of the building, must be off-white in color.
- Q. No childcare service or related activities shall be conducted or carried on within a Unit or on the Common Area.

R. No Unit Owner or Tenant will change or alter the exterior or interior of their Unit without complying with the applicable building codes for the City Pass Christian, Harrison County, and the State of Mississippi, nor without complying with the provisions of the Architectural Review Committee. Hot tubs cannot be placed either within the unit or on the balcony of a Unit.

Section 5. Occupancy.

Occupancy of all Units is limited to the Unit Owner and tenants of the Unit Owner and invited relatives and guests of the Unit Owner and Tenant. Each Unit Owner shall be responsible for the actions of all invitees (including family and guests) and compliance with the terms of this Declaration, the Bylaws and applicable rules and regulations of the Association.

ARTICLE VI.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Each owner of a unit whether or not it shall be so expressed in the deed, is deemed to covenant, and agrees to pay to the Association:

- A. annual maintenance assessments of charges on a per unit basis (Budgeted HOA Assessment
- B. and Budget shortfalls);
- B. special assessments payable by all Unit Owners; and
- C. supplemental assessments payable by one or more Unit Owners as the situation warrants.

Such assessments are to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the units and shall be a continuing lien upon the unit against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be obligation of the owner of such unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the owner's successors in title unless expressly assumed by them, but the passing of title shall not affect the validity of the lien upon the unit and unless the Association has registered and filed such lien in the Condominium lien books at the Chancery Clerk's office in Harrison County.

Section 2. Purpose of Assessments.

The assessment levied by the Association shall be used exclusively for the protection, improvement, and maintenance of the Common Area. Such assessments shall include, but shall not be limited to, funds for the actual cost of the Association of all administration, insurance, repair, replacements and maintenance of the Common Area as may be required by the Declaration, including water and sewer services provided for common use, and as may from time to time be authorized by the Association or its Board of Directors, and shall include the establishment and maintenance of an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and the Limited Common Area which the Association, by the terms of this Declaration, may be obligated to maintain.

Section 3. Annual Maintenance Assessment.

Prior to the first day of January in each year the Board of Directors shall adopt a budget estimated by the Board of Directors to be sufficient to meet the cost and expenses and shall fix and levy the Annual Maintenance Assessment at an amount sufficient to meet the budget adopted by the Board of Directors. The Board of Directors may fix the annual assessment at any amount not more than the maximum. The maximum annual assessment is hereby up to \$14,000 per unit. Should economic conditions exist that the maximum set herein be raised, the Association may alter the maximum by a vote of fifty-one percent (51%) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

A. Budgeting Process:

The Treasurer and Bookkeeper will start working on the budget in October of each year by reviewing contracts and estimating the costs for the following year. Each working committee submits their budget request to the Finance Committee in October. The Finance Committee must consider the priority of the costs while developing the budget.

B. Costs that the HOA pay for the Unit Owners:

Built into the HOA annual maintenance costs are the following basic services that are not being billed to the Unit Owner separately:

WATER
SECURITY
PEST CONTROL IN COMMON AREAS
TV AND CABLE SERVICE
INTERNET SERVICE
TRASH PICKUP
LANDSCAPING
POOL MAINTENANCE
FIRE ALARM MONITORING
CONDO (UNITS INCLUDED) PROPERTY INSURANCE*
FLOOD INSURANCE*

*Does not include betterments (if any) to the Unit since it first sold.

C. Budget Computation:

The amount that a Unit Owner pays annually for their annual maintenance assessment is a calculation where the total Property and Flood Insurance is prorated based on each unit's square footage to the total of the 47 units square footage. The remainder of the costs are divided equally among the 47 units.

D. Annual Shortfall Budget:

If during the course of any fiscal year, it shall appear to the Board that the annual maintenance assessment, which is billed monthly, as determined in the annual budget is insufficient or inadequate to cover the estimated Common Expenses for the remainder of that year, then the Board shall prepare and approve an annual shortfall budget to cover the estimated deficiency. Copies of the shortfall budget shall be delivered to each Unit owner. The amount of the shortfall due by each Unit owner will be computed exactly like the budget and will be divided by the remaining months in the annual year. That amount will be added to the amount of the HOA assessment collected presently each month for the current year. The sum of the shortfall amount and the prior monthly assessment will be due each month for the remainder of the year.

Section 4. Special Capital Improvement Assessments.

The Association may levy, in any assessment year, a capital improvement assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any capital improvement, construction, reconstruction, repair or replacement of capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of fifty-one percent (51%) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose. Capital improvements are such that there are additions to the infrastructure.

Section 5. Special Major Repair Assessments

The Association may levy, in any assessment year, a major repairs assessment applicable to that year only for the purpose of defraying in whole or in part, the cost construction, reconstruction, repair or replacement of upon the Common Area, including exterior and personal property related thereto, provided that any such assessment shall have the assent of the Board of Directors. The rate of assessment will be fixed at a uniform rate for all units except for railings. Assessment for repairs for all railings will be on a pro rata basis with the basis being the number of linear feet of railing a particular unit has on its balcony. Special major repairs assessments are such that there no additional infrastructure, but significant repair to the current buildings and grounds.

Section 6. Other Special Assessments.

The Association may levy special assessments through a vote of the majority of the Board against units for reimbursement of repairs, corrections, or other actions performed by the Association pursuant to this Declaration or the Bylaws together with interest and other reasonable charges thereon resulting from the following circumstances:

A. Special Assessments—applicable to all unit holders

Insurance Proceeds Insufficient:

If the proceeds of insurance obtained by the Association are not sufficient to reconstruct improvements located on the Property or otherwise effect any repair or restoration of any damage or destruction to all or any portion of the Property, then and in that event, all the Unit owners shall be assessed, as a special assessment, for the necessary funds to restore the damaged Owners of the Property which is to be repaired or restored as provided in Insurance and Casualty Losses as a special assessment for the necessary funds to restore the damaged improvements. Said special assessments shall be payable by written notification from the Board of Directors to the owners of the Property which is to be repaired or restored as provided in Insurance and Casualty Losses of this Declaration shall be payable in full to the Association, as Trustee, within sixty (60) days following such notice or as otherwise may be specified in said notice. Notwithstanding the foregoing, the Board of Directors, in their sole discretion, may instead vote to use funds of the Reserve Fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Units and/or the common area, to make up all or any portion of such insufficiency in the proceeds of insurance. To the extent such fund is not used to fully make up such insufficiency, the Unit Owners shall be assessed as aforesaid to the extent of any remaining insufficiency of the insurance proceeds.

B. The following are examples of situations that may cause a special assessment to one or more-unit holders, but not to all.

i. Owner's failure to Maintain Improvements.

If any Unit Owner fails to perform the maintenance or make the repairs required by Unit Owner's Duty to Maintain of this Declaration, and the Board of Directors causes such maintenance or repair to be performed in accordance with the provisions of this Declaration, all costs and expenses incurred in connection with such work maintenance or repairs shall be immediately assessed and charged solely to and against such unit as a special assessment. Said special assessment shall be made by written notification by the Board of Directors to the Unit Owner and shall be payable in full to the Association within thirty (30) days following such notice.

ii. Damage Common Areas.

If any damage or destruction to any portion of the Common Area or Limited Common Area (if any) is caused by any negligent or malicious act or omission of any Unit Owner or their invitee, the Board of Directors shall cause the same to be repaired or replaced, and all costs and expense incurred in connection therewith (to the extent not covered or reduced by insurance proceeds paid to or received by the Association) shall be assessed and charged solely to and against said Unit Owner and their unit as a special assessment. Said special assessment shall be made by written notification from the Board of Directors to the Unit Owner and shall be payable in full to the Association within thirty (30) days following such notice.

iii. Act Increasing Insurance Premiums.

If any act or omission of any Unit Owner or any of their invitees shall increase the premiums for any insurance policy maintained by the Association for the benefit of the Property and the owners; the amount of such increase shall be assessed and charged solely to and against such Unit Owner and their unit as a special assessment. Said special assessment shall be made by written notification from the Board of Directors to the Unit Owner and shall be payable in full to the Association within thirty (30) days in advance of the date or dates for the payment of such increased insurance premiums, or within thirty (30) days following such notice, whichever is later. The making of such payment by said Unit Owner shall in no way violate, authorize, sanction, or permit the act or omission and shall not limit any of the right of the Association provided by law or granted herein, including without limitation the right to enjoin the activity.

iv. Excessive Use of Common Metered Utilities.

Any Unit Owner desiring to use appliances, air conditioning or other equipment or utilities which would result in such Unit Owner using more of the common metered utilities than the normal anticipated use, as determined by the Board of Directors, may request that their unit be assessed for such additional use. If the Board of Directors, in its sole discretion, determines that an owner's use of the common metered utilities is, in its opinion, substantially greater than that of other owners, and such Unit Owner has not submitted same to the Association for assessment, the Board of Directors shall be entitled to levy a special assessment against such Unit Owner and their unit to cover the additional cost of the Association of such owner's heavy use. Said special assessment shall be made by written notification from the Board of Directors to the Unit Owner and shall be payable in full to the Association within thirty (30) days following such notice.

v. **Excessive Use Damaging Property.**

In the event any portion of the Property is damaged because of excessive usage by any Unit Owner or their invitees, the cost of such maintenance and repairs shall be assessed against such Unit Owner as a special assessment. Such special assessment shall be made by written notification from the Board of Directors to the Unit Owner and shall be payable in full to the Association within thirty (30) days following such notice.

vi. **Other Special Assessments Authorized by this Declaration.**

In addition to the special assessments specifically authorized by the provisions of this section, whenever this Declaration provides that the Association shall have the right to assess a cost or expense against a Unit Owner and his unit as a special assessment, such special assessment shall be made by written notification from the Board of Directors to the Unit Owner and shall be payable in full to the Association within thirty (30) days from such notice or within such extended period as the Association shall determine shall be applicable to any such special assessment.

vii. **Delinquent Payment.**

Any special assessment made in accordance with this Declaration shall be a separate debt of each Unit Owner against whom the same is specially assessed and against their unit and shall bear interest upon any unpaid portion thereof after the due date at the maximum rate permitted **Mississippi** by law or at the rate of ten percent (10%) per annum, whichever is less.

Section 7. Notice and Quorum for any Action on Assessments other than those Described in Article VI Section 3 and 4

Written notice of any meeting called for the purpose of taking any action on assessments shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall not be necessary, and the assessment may be approved by the assent of sixty-seven percent (67%) of the votes of the members who are voting in person or by proxy.

Section 8. Date of Commencement of Annual Assessments Due Dates.

The annual assessment period shall be January 1 thru December 31. Written notice of the annual assessment shall be sent to every Unit Owner subject thereto. The due dates shall be established by the Board of Directors, provided however, at unit owners request, said assessment may be paid monthly.

Section 9. Effect of Nonpayment of Assessments, Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten (10) percent per annum or the highest amount allowed by Mississippi State Law whichever is less. The Association may bring an action at law against the Unit Owner, who is personally obligated to pay the same, or foreclose the lien against the property or both. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use

of the Common Area or abandonment of their unit and no Unit Owner may voluntarily resign from membership. The Association can register a lien on the unit by recording same in the office of the Chancery Clerk in Harrison County, Mississippi. In addition to the interest and finance charges assessed in this Section, the association may also collect reasonable attorneys' fees costs and expenses incurred in the collection of the unpaid assessments.

Section 10. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on the property, or upon any individual unit. Sale or transfer of any unit shall not affect the assessment lien, provided same has been registered in the condominium lien records in the Chancery Clerk's office in Harrison County, Mississippi. Provided, the sale or transfer of any unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall only extinguish the lien of such assessments as to payments which become due prior to such sale or transfer, and no such sale or transfer shall relieve such unit from liability for any assessments thereafter becoming due or from the lien thereof, and the grantee of any such unit shall become a Unit Owner thereof subject to this Declaration.

ARTICLE VII.

RESTRICTIONS ON TRANSFER

The Unit Owner of any Condominium Unit shall have the right and privilege to sell, convey and transfer said unit on such terms and conditions as he may desire, provided such terms and conditions are not in conflict with the provisions of this Declaration. All such transfers shall be subject to and the Grantee bound by those declarations whether referred to in the Deed or not.

ARTICLE VIII.

RIGHTS OF MORTGAGEES

Section 1. Substantial Damage

In the event of substantial damage to or destruction of any unit or any part of the common area, then the holder of any first mortgage on a unit will be entitled to timely written notice of any such damage or destruction and no provision of any document establishing the Project will entitle the Unit Owner or other party to priority over such institutional holder with respect to the distribution to such unit of any insurance proceeds. Such notice shall be given provided the holder has given written notice of their lien to the Board of Directors along with their address. The Association shall have no duty to check the lien records on title.

Section 2. Condemnation.

If any unit or portion thereof or the common area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any first mortgage on a unit will be entitled to timely written notice of any such proceeding or proposed acquisition and notwithstanding any other provisions of this instrument, neither the Unit Owner or any other party shall be entitled to priority over such institutional holder with respect to the distribution to such unit of the proceeds of any award or settlement. Such notice shall be given provided the holder has given written notice of their lien to the Board of Directors along with their address. The Association shall have no duty to check the lien records on title.

ARTICLE IX. EASEMENTS

Section 1. Enjoyment of Common Area.

Every Unit Owner shall have a right and easement of enjoyment in and to the unlimited common area (as distinguished from limited common area) and such easement shall be appurtenant to and shall pass with the title to every unit, subject to the following provisions:

- A. the right of the Association's Board of Directors to limit the number of guests that may use the common area:
- B. the right of the Association's Board of Directors to charge reasonable admission and other fees for the use of any recreational facilities situated upon the common area: and:
- C. the right of the Association's Board of Directors to suspend the voting rights and right to use of the recreational facilities by a Unit Owner for any period during which any assessment against his unit remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations. Any Unit Owner in good standing may delegate, in accordance with the By-Laws, their right of enjoyment to the common area to the members of their family tenants who reside on the property.

Section 2. Encroachments and Support.

Each unit and the property included in the common area shall be subject to an easement for encroachments created by construction, settling and overhangs as designed or constructed. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. If any building is partially or totally destroyed and then rebuilt, the owners of the units so affected agree that minor encroachments of parts of the adjacent unit or common area due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Every portion of a unit contributing to the support of an abutting unit shall be burdened with an easement of support for the benefit of such abutting unit.

Section 3. Utilities, etc.

- A. An easement in each Unit shall exist for the benefit of all units for pipes, wired, conduits, or utility lines which are utilized by or serve more than one unit as set forth herein.
- B. There is hereby granted a blanket easement upon, across, over and under all of the property for ingress, egress, installation, replacing, repairing, and maintaining a master television antenna system, television cable, computer cable, and all utilities including, but not limited to, water, sewers, telephones, and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain utility wires, circuits, and conduits on, above, across and under the roofs and exterior and interior walls of the units. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially programmed and approved by the Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Association through its Board shall have the right to grant such easement on said property without conflicting with the terms thereof. The easements provided for in this Insurance and Casualty Losses shall in no way affect any other recorded easement on said property.

Section 4. Other

There is hereby granted a blanket easement to the Association, its Directors, officers, agents, and employees, to any Manager employed by or on behalf of the Association and to all policemen, firemen, ambulance personnel and all similar persons to enter upon the property or any part thereof in the proper performance of their respective duties. Except in the event of emergencies, the rights accompanying the easements provided for in this Article shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to and with the permission of the Unit Owner or Owners directly affected thereby.

ARTICLE X.

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance.

The Association's Board of Directors shall have the authority to and shall obtain insurance for all of the improvements on the property (with the exception of improvements and betterments made by the respective owners at their expense) against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard, and shall also obtain a public liability policy covering all common area and all damage or injury caused by the negligence of the Association or any of its agents, which public liability policy shall be at least \$1,000,000 single limit as respects bodily injury and property damage. Premiums for all such insurance coverage shall be common expenses. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for each of the unit owners in the percentages of undivided interest in and to the common area as provided for in Article IV hereof. Such insurance shall be governed by the provisions hereinafter set forth:

- A. All policies shall be written with a company, admitted or non-admitted, holding a Best's Rating Classification of "A" or better and a Financial Size Category of "X" or better as reflected from time to time in the current edition of BEST'S KEY RATING GUIDE, PROPERTY-CASUALTY.
- B. All policies shall be for the benefit of the unit owners and their mortgagees as their interests may appear.
- C. Provision shall be made for the issuance of a certificate of insurance to each Unit Owner and his mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular owner's unit.
- D. The original of all policies and endorsements thereto shall be deposited with the Insurance Trustee, which shall hold them subject to the provisions of that Article.
- E. Exclusive authority to adjust losses under policies hereafter in force on the property shall be vested in the Association's Board of Directors; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

- F. In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual owners or their mortgagees.
- G. Each Unit Owner may obtain additional insurance at his own expense; provided, however, that no Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the owners and their mortgagees, may realize under any insurance policy which the Association's Board of Directors may have in force on the property at any particular time.
- H. Any Unit Owner who obtains an individual insurance policy covering any portion of the property, other than improvements and betterments made by such Unit Owner, shall be required to file a copy of each such individual policy with the Association's Board of Directors within 30 days after purchase of such insurance.
- I. It shall be the individual responsibility of each Unit Owner at his own expense to provide, as he sees fit, owner's title insurance on his individual unit, homeowner's liability insurance, theft and other insurance covering improvements, betterments and personal property damage and losses.
- J. The Association's Board of Directors shall conduct an insurance review at least every five years which shall include a replacement cost appraisal, without respect to depreciation, of all improvements on the property (with the exception of improvements and betterments made by the respective owners at their expense) by one or more qualified persons at least one of whom should be a qualified building cost estimator.
- K. The Association's Board of Directors shall be required to make every reasonable effort to secure insurable policies that will provide for the following: (1) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its Manager, the owners and their respective servants, agents and guests; (2) a waiver by the insurer of its right to repair and reconstruct instead of paying cash; (3) that the master policy on the property cannot be canceled, invalidated or suspended on account of any one or more individual owners; (4) that the master policy on the property cannot be canceled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association or its duly authorized Manager without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Manager, any Unit Owner or mortgagee; and (5) that any "other insurance" clause in the master policy exclude individual owner's policies from consideration.

Section 2. No Partition.

There shall be no judicial partition of the property or any part thereof, nor any person acquiring any interest in the property or any part thereof seek any such judicial partition except: (1) as set forth in Section 4 of this Article in the case of damage or destruction of the property and (2) as provided by Section 89-9-35 of the Miss. Code of 1972, as the same may be hereafter amended or modified and any other applicable laws of the State of Mississippi.

Section 3. Insurance Trustee.

- A. All insurance policies purchased by and in the name of the Association shall provide that proceeds covering property losses shall be paid to the Association. The Board of Directors may serve as the Insurance Trustee or may, at its discretion, select another to serve as Insurance Trustee. Immediately upon the receipt by Association of such proceeds, the Association shall endorse the instrument by means of which such proceeds are paid and delivered or cause to be delivered such

instrument to the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of the policies or for the failure to collect any insurance proceeds. Nor shall the Insurance Trustee have any obligation to inspect the property to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.

- B. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and delivered to it and to hold such proceeds in trust for the benefit of the owners and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee. An undivided share of such proceeds on account of damage or destruction to the common area shall be held in trust for the owners in accordance with their respective percentages of undivided interest in and to the common area as provided for in the Article of Management and Control of Common areas. Proceeds on account of damage or destruction to units shall be held in trust for the owners of the damaged or destroyed units in proportion to the cost of repairing or reconstructing the damage or destruction suffered by each such Unit Owner. In the event that a mortgagee endorsement has been issued as to any particular unit, the share of each Unit Owner shall be held in trust for such Unit Owner and his mortgagee as their interests may appear.
- C. Proceeds of insurance policies received by the Insurance trustee shall be disbursed as follows:
- i. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying cost of repairs or reconstruction shall be added to the Association Reserve Maintenance Fund or such other fund as may be established for the purpose of providing for the maintenance, repair, and replacement of the units and/or common area as the Board of Directors in the exercise of their discretion may determine.
 - ii. If it is determined as provided for in the next section of this Article that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed to such persons as therein provided.
 - iii. Any and all disbursements of funds, whether such funds consist of insurance proceeds, special assessments, sales proceeds or any combination thereof, to be made by the Insurance Trustee for any purpose whatsoever shall be made pursuant to and in accordance with a certificate of the Association signed by the President or Vice President and attested by the Secretary setting forth whether or not the damage or destruction is to be repaired or reconstructed and whether the damage or destruction was to the common area or one or more units or both. If the damage or destruction is not to be repaired or reconstructed, said certificate shall direct that disbursements be made by the Insurance Trustee as by law provided in accordance with the terms of Section 4, Subsection C of this Article.
 - iv. If the damage or destruction is to the common area and is to be repaired or reconstructed, said certificate shall also be signed by or on behalf of the mortgagee known by the Insurance Trustee to have the largest interest in or lien upon such common area and may direct disbursements be made by the Insurance Trustee to those persons and in such amounts as may be specified therein or, in the alternative, said certificate may authorize the Insurance Trustee to make disbursements upon and pursuant to such written authorizations as may be submitted to it by an architect or other person named therein as having been employed by the Association to supervise such repairs or reconstruction.

- v. If the damage or destruction is to one or more units and is to be repaired or reconstructed, said shall also be signed by or on behalf of the mortgagee or mortgages, if any, known by the Insurance Trustee to have an interest in or lien upon such unit or units and may that disbursements be made by the Insurance Trustee to those persons and in such amounts as may be specified therein or, in the alternative, said certificate may authorize the Insurance Trustee to make disbursements upon and pursuant to such written authorization as may be submitted to it by an architect or other person named therein as having been employed by the Association to supervise such repairs or reconstruction.
- vi. The Insurance Trustee shall not incur any liability to any Unit Owner, mortgagee other person for any disbursements made by it pursuant to and in accordance with any such certificates or written authorization.

Section 4. Damage and Destruction.

- A. Immediately after the damage or destruction by fire or other casualty to all or any part of property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction (including any derivation of such terms), as used in this Article means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty (except for any betterments or improvements made by a past or the present Unit Owner to a Unit, which shall be the sole responsibility of the present Unit Owner should the present Unit Owner desire to have such betterments or improvements repaired or restored, and in the event the present Unit Owner does not desire to repair or restore any such betterments or improvements {including any derivation of such terms}, as used in this Article means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty, except any such betterments or improvements to a Unit shall instead be substantially the same as the original design of said Unit), with each unit and the common area having the same vertical and horizontal boundaries as before.
- B. In the event more than 75% of the project has been destroyed or substantially damaged, any such damage or destruction shall be repaired or reconstructed unless at least 50% of the total vote of the Association shall decide within 60 days after the casualty, not to repair or reconstruct. If, for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction are not made available to the Association within said period of 60 days after the casualty, then such period shall be extended until such information shall be made available to the Association; provided, however, that said period of time shall in no event exceed 90 days from the date the Association through the Board of Directors determines it has received reliable and detailed estimates of the cost of repair of reconstruction, although the Board may extend that time for good reason.
- C. In the event that it should be determined by the Association in the manner prescribed above that the damage or destruction shall not be repaired or reconstructed, then and in that event (i) the property shall be deemed to be owned in common by the unit owners, (ii) the undivided interest in the property owned in common which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by such Unit Owner in the common area, (iii) any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the percentage of undivided interest of the Unit Owner in the property and (iv) the property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale shall be paid to the Insurance Trustee. Said net proceeds of sale, together with the net proceeds of the insurance on the property, shall be considered as one fund which, after paying all

expenses of the Insurance Trustee, shall be divided among all of the unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective share of the unit owners, to the extent sufficient for the purpose, all liens of the undivided interest in the property owned by each Unit Owner. Disbursements to such owners shall be made as provided for in Section 3 of this Article. The foregoing provisions of this Section 4(c) shall apply only as long as may be necessary to comply with the applicable provisions of the Act. The foregoing provisions of this Section 4(c) shall apply only as long as said provisions are not in conflict with Section 89-9-35 of the Mississippi Code of 1972 or any other applicable laws of the State of Mississippi. In the event that the laws of the State of Mississippi should be hereafter amended so as to eliminate the right of action for partition upon determining that the damage or destruction shall not be repaired or reconstructed, then this Section 4, Subsection C, and such other provisions hereof as may be necessary to its implementation, shall be deemed amended accordingly.

- D. In the event that 75% or less of the project has been destroyed or substantially damaged any damage or destruction shall be repaired or reconstructed as herein provided.

Section 5. Insufficient Insurance to Repair and Reconstruction.

- A. If the damage or destruction for which the insurance proceeds are paid to the Insurance Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, subject to the prior Article on thereof and without a vote of the members, levy a special assessment against all owners of the damaged units, and against all owners in the case of damage to the common area, in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Such assessments on account of damage to the common area shall be in proportion to the owner's share in the common area.
- B. Any and all sums paid to the Association under and by virtue of those special assessments provided for above to defray the estimated excess cost of repair or reconstruction shall be deposited by the Association with the Insurance Trustee. The proceeds from insurance and assessments, if any, received by the Insurance Trustee, when the damage or destruction is to be repaired or reconstructed, shall be disbursed as provided for in Section 3 of this Article.

Section 6. Expenses of Insurance Trustee.

Any expenses incurred by the Insurance Trustee shall be paid from the general assessments, if the same are sufficient for the purpose; otherwise from the proceeds of special assessments levied in accordance with Section 5 of this Article.

ARTICLE XI.

CONDEMNATION

In the event of a taking in condemnation or by eminent domain of part or all of the Common Elements, the award made for such taking may be payable to the Board of Directors if such award amounts to \$100,000 or less, and to the Insurance Trustee if such award amount to more than \$100,001. If 75% or more of the unit owners duly and promptly approve the repair and restoration of such Common Elements, the Board of Directors shall arrange for the repair and restoration of such common elements, and the Board of Directors or the Insurance Trustee, as the case may be, shall disburse the proceeds of such award to the contractors

engaged in such repair and restoration in appropriate progress payments. In the event that 75% or more of unit owners do not duly and promptly approve the repair and restoration of such common elements, the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the net proceeds of such in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of damages, as provided in Section 4 of the previous Article of this Declaration.

ARTICLE XII.

ADDITIONS TO PROPERTY SUBJECT TO THIS DECLARATION

Additional lands may become subject to this Declaration in any of the following manners:

- A. The Association upon first obtaining the affirmative approval of 67% of the unit owners; provided, however that no land shall be added to the provisions of this declaration unless said land is adjacent to the condominium.
- B. Any additions made pursuant to Paragraphs (a) or (b) of this Section, when made, shall automatically extend the jurisdiction, functions, duties, and membership of the Association to the properties added. Upon filing of record a supplementary Declaration of Covenants, Conditions and Restrictions describing the property to be annexed which shall extend the scheme of the Covenants, Conditions and Restrictions of this declaration to such property; however, in no event shall such supplementary declaration otherwise modify the covenants established by this declaration for the existing properties.
- C. Upon a merger or consolidation of the Association with another association, as provided in its Articles of Incorporation, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties rights and obligations of another association may, by operations of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration except as hereinafter provided.

ARTICLE XIII.

ARCHITECTURAL CONTROL

Section 1. Architectural Review.

Except for the original construction and except for the purposes of proper maintenance and repair or as otherwise provided in this Declaration, no change or alteration in any manner whatsoever shall be made to the exterior of any unit, including any balcony windows, lights, tiles, exterior doors, or railings (including any alteration or change in color) nor shall any change or alteration in any manner whatsoever be made to the interior of any unit which affects the Common Area or another Unit. The Architectural Review Committee shall be composed of three (3) or more representatives appointed by Board of Directors.

Section 2. Rules and Regulations, etc.

The Architectural Review Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted to it for approval, and may publish and record such statements of policy, standards, guidelines and may establish certain criteria relative to architectural styles, details, colors, materials, or other matters relative to architectural review and the promotion of the building and property, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria, or the like shall be considered as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The decision of the Board of Director shall be final.

ARTICLE XIV.

RULE MAKING

Section 1. Rules and Regulations.

Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of the common areas, common elements, limited common area, and facilities as said Board, from time to time, may determine necessary or prudent for the protection, use and enjoyment of all of the Owners, including regulating the number of guests and hours of outside activity.

ARTICLE XV.

GENERAL PROVISIONS

Section 1. Enforcement.

The Association, or any Unit Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration and the By-Laws and Articles of Incorporation of the Association. Failure by the Association or by any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment.

Except as elsewhere provided otherwise, this declaration may be amended in the following manner:

- A. Notice. Notice of such matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

- B. Resolutions. Resolutions for the adoption of a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association. Directors and members do not present in person or by proxy at the meeting considering the amendment may express their approval in writing provided such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approval must be either by:
- i. not less than 67% of the entire membership of the Board of Directors and not less than 67% of the votes of the entire membership of the Association; or
 - ii. not less than 80% of the votes of the entire membership of the Association; or
 - iii. until the first election of Directors, only by all of the Directors, provided the amendment does not increase the number of units nor alter the boundaries of the common elements.
- C. Restrictions. No amendment shall discriminate against any Unit Owner or against any unit or class or group of units unless the unit owners so effected shall consent. No amendment shall change neither any unit nor the share in the common elements appurtenant to it, nor increase the owner's share of common expenses, unless the record owner of the unit and all recorded owners of liens thereon shall join in the execution of the amendment. Neither shall an amendment make any change in the Article entitled "Insurance and Casualty Losses" unless the record owners of all mortgages upon the condominium or any part thereof shall join in the execution of the amendment.
- D. Amendments. Notwithstanding Section 3 of this Article this Declaration may be amended, modified and/or by the Owners of at least 51% of the Units.
- E. Execution recording. A copy of each amendment shall be certified by the president or secretary of the Association as having been duly adopted and shall be effective when recorded in the office of the Chancery Clerk of Harrison County at Gulfport, Mississippi.

Section 4. Certificate of Consent by Pass Marianne Homeowners' Association.

By executing this Plan of Condominium, the Pass Marianne Homeowners' Association, through its President, hereby consents to the recordation of the Plan pursuant to the provisions of Chapter 9, Section 89-1- I, et seq., Mississippi Code of 1972 as amended. The aforementioned Association certifies that this amended document has been approved by the Board of Directors and the Members of the Association, which comprises the owners of the individual units and an interest in the common areas.

Section 5. Primacy of Documents.

The Condominium Declarations are subject to the Mississippi Condominium Act, and to decisions of Mississippi courts construing the Act. To the extent possible, these Declarations are to be construed in harmony with that Act.

The Condominium Declarations, By-laws, and Rules and Regulations are to be read in harmony with each other. Where there is a conflict among the Declarations, By-laws, or Rules and Regulations, the Declarations will prevail over the By-laws and Rules and Regulations, and the By-laws will prevail over the Rules and Regulations.

Section 6. No Waiver Provision.

It is the intent of this section to provide the Board of Directors of the Association, and the Association itself, the most flexibility possible in order to respond to individual situations which arise during the governance of the Association. To that end, any decision made by either the Board or the Association which may elect or waive a remedy or option available under the Declarations, By-Laws, or Rules and Regulations, does not have the effect of waiving that the right to exercise that remedy or option in responding to another situation.

IN WITNESS WHEREOF, being the Association Representatives herein, have hereunto set their hand and seal, this 26 day of Oct. 2021.

HOME OWNERS ASSOCIATION

Pass Marianne Home Owners Association

X Anna Crawford

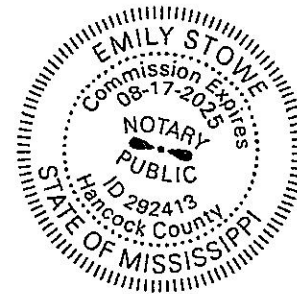
Anna Crawford, President

STATE OF MISSISSIPPI
COUNTY OF HARRISON

PERSONALLY appeared before me, the undersigned authority in and for the said county and state, on this 26 day of October, 2021 within my jurisdiction, the within named Anna Crawford who acknowledged that she is the President of the Pass Marianne Home Owners Association, a Mississippi corporation, and that for and on behalf of said corporation and as its act and deed, she executed the foregoing instrument, for the purposes mentioned, on the day and year therein mentioned, after first having been duly authorized so to do.

NOTARY PUBLIC My Commission Expires:

Curly Stone 8.17.2025



Prepared by and Return to:

Items for Walter/Pass Marianne LLC:

1. Declarant agrees to amend the Declaration of Covenants, Conditions, and Restrictions and acknowledges that Pass Marianne LLC no longer holds any special voting rights as outlined in Article III - Voting Rights, giving Class B voting rights of seven (7) votes per unit owned for development to the Declarant. The Declarant will be omitted from the revised Condo Docs, and such amendments will be presented to the Pass Marianne HOA for approval at the October, 2021 annual meeting.
2. The Developer agrees to amend the By-Laws and to omit Section 12.02 from the By Laws, stating that the rights of the Developer must be considered before any changes to the ByLaws can be made. This specific reference can be found in the By Laws section of the Condo Docs, page 20. The Developer will be omitted from Section 12.02 of the ByLaws, and such amendment will be presented to the Pass Marianne HOA for approval at the October, 2021 annual meeting.


Pass Marianne LLC Agent/Declarant and Developer

6 July 2021
Date signed

original

Filing Instructions:

Units:

201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212 – 12 Units
301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312 – 12 Units
401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412 – 12 Units
501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512 – 12 Units
Total – 48 Units

Prepared by and return to:

Pass Marianne Homeowners' Association
1100 West Beach Blvd.
Box # /0
Pass Christian, MS 39571
Phone: 228-563-4400
Email: manager@passmarianne.com