

This instrument was prepared by:
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420 North 20th Street
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20080514000196360 1/8 \$32.00
Shelby Cnty Judge of Probate, AL
05/14/2008 11:14:17AM FILED/CERT

STATE OF ALABAMA)

COUNTY OF SHELBY)

NINTH AMENDMENT TO DECLARATION OF CONDOMINIUM OF EDENTON,
A CONDOMINIUM

This Ninth Amendment to Declaration of Edenton, A Condominium (the "Amendment") is made this 14th day of May, 2008, by **CAHABA BEACH INVESTMENTS, LLC**, an Alabama limited liability company (the "Declarant") and Edenton Residential Condominium Association, Inc. (the "Association"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, §§ 35-8A-101, *et seq.*, *Code of Alabama* (1975), as amended (the "Act") to amend the Declaration of Condominium of Edenton, A Condominium, recorded in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office") on April 20, 2007, as Instrument Number 20070420000184480 as amended by the First Amendment recorded on May 8, 2007 in the Probate Office as Instrument Number 20070508000215560, the Second Amendment on May 22, 2007, in the Probate Office as Instrument Number 20070522000237580, the Third Amendment on June 6, 2007, in the Probate Office as Instrument Number 20070606000263790, the Fourth Amendment on June 26, 2007, in the Probate Office as Instrument Number 20070626000297920, the Fifth Amendment on August 17, 2007, in the Probate Office as Instrument Number 20070817000390000, the Sixth Amendment on December 14, 2007, in the Probate Office as Instrument Number 20071214000565780, the Seventh Amendment on January 31, 2008, in the Probate Office as 20080131000039890, and the Eighth Amendment on April 11, 2008, in the Probate Office as Instrument Number 20080411000148760) (the "Declaration").

RECITALS

WHEREAS, the Declaration was recorded for the purpose of submitting the lands described therein to the condominium form of ownership and the Condominium created thereby to the provisions of the Act; and

WHEREAS, the Declarant and the Association desire to amend and restate the Declaration as set forth below to correct the Declarant's scrivener's error and bring the Declaration into compliance with the lender requirements.

NOW THEREFORE, upon recording hereof, Declarant and the Association do hereby amend the Declaration as follows:

1. The Declarant and the Association hereby amend and restate the Declaration to insert the following Article XVII:

ARTICLE XVII

Rights of Mortgagees

17.01 Notification of Mortgagees Required. Any Mortgagee who properly notifies the Association in accordance with Section 17.04 below, shall have the right to be given written notification by the Association of (a) any sixty (60) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements or Limited Common Elements if such loss or taking exceeds \$10,000; (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds \$1,000; (d) any condemnation of all or a portion of the Condominium Property; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Mortgagees.

17.02 Right of Inspection. Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property and to receive annual reports, other financial data, and, upon request, an annual audited statement, within one hundred and twenty (120) days following the end of any fiscal year of the Association.

17.03 Priority of Mortgagees.

(a) Any lien which is or may be created hereunder upon any Unit, including, but not limited to, the lien created for assessments under Section 5.06 hereof and the right to foreclose the same is and shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Section 5.06 hereof on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein.

(b) Notwithstanding the above, the lien created pursuant to Section 5.06 hereof is prior to any Mortgage to the extent of the Common Expense assessments based on the annual budget which would have become due in absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.

(c) No provision of this Declaration, the Articles, the Bylaws or the Rules and Regulations shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the Mortgagees of the Units pursuant to their Mortgages in the case of distribution to Unit Owners of the insurance proceeds or condemnation awards for losses or a taking of Units or the Common Elements, the Limited Common Elements or any portion thereof.

(d) As provided in the Act, all assessments, property taxes and other charges imposed by any taxing authority which may become liens prior to a Mortgage, shall be separately assessed against and collected on each Unit as a single parcel, and not on the Condominium Property as a whole.

(e) No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or otherwise.

17.04 Request for Protection by Mortgagees. Whenever the holder of any Mortgage desires the benefit of the provisions of this Article XVII to be applicable to it, it shall serve written notice of such fact upon the Association, by registered or certified mail, addressed to the Association, and actually mailed to its address stated herein, identifying the Unit upon which it holds a Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee. Should the Association send notice of any action requiring the affirmative vote of the Mortgagee, and the Mortgagee shall not respond within thirty (30) days from notice of such right, the Mortgagee shall be deemed to have given its implied consent to such action.

2. The Declarant and the Association hereby amend and restates Article XIV, Section 14.02 of the Declaration to delete Section 14.02 of the Declaration which previously provided:

Section 14.02 Termination.

(a) This Declaration and the condominium form of ownership of the Condominium shall not be terminated except by agreement (an agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by at least eighty percent (80%) in interest of the Owners and the termination agreement must specify a date after which the agreement will be void, unless it is recorded before that date).

(b) Any termination agreement adopted pursuant to Section 14.02(a) above shall be effective when duly recorded in the Probate Office. Following the termination of this Declaration and the condominium form of ownership of the Condominium pursuant to the terms and conditions of Section 14.02(a) above, all Unit Owners shall own the Condominium and all assets of the Association as tenants in common in undivided shares, subject to the terms and provisions of §35-8A-218 of the Act.

and to substitute the following provision therefor:

Section 14.02 Termination

(a) **Termination by Consent.** Except in the event of a condemnation of all Units by eminent domain, this Declaration and plan of condominium ownership established herein may only otherwise be terminated by the consent of the Owners of Units to which at least eighty (80%) of the votes in the Association are allocated and sixty-seven percent (67%) of all Mortgagees, in which event the termination of the Condominium Property shall be by such plans as may be then adopted by at least eighty (80%) percent of the votes in the Association and sixty-seven (67%) percent of the Mortgagees. Such election to terminate this Declaration and the plan of condominium ownership established herein shall be evidenced by a termination agreement executed in writing by all of the aforesaid parties in recordable form, and such instrument shall

be recorded in the Probate Office of Shelby County, Alabama. Any termination agreement and the ownership of the property which constituted the Condominium Property and all other assets of the Association shall be subject to the terms and provisions of § 35-8A-218 of the Act.

(b) The Association Appointed as Attorney-In-Fact for Unit Owners. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the termination of this Declaration and plan of condominium ownership established herein.

3. The Declarant and the Association hereby amend and restates Article XV, Section 15.03 of the Declaration to delete Section 15.03 of the Declaration which previously provided

15.03 Appointment of Officers and Directors. As set forth in this Declaration and in the Bylaws, Declarant reserves the right to appoint or remove any officer of the Association and certain members of the Board during the Declarant Control Period.

and to substitute the following provision therefor:

15.03 Appointment of Officers and Directors. Declarant, its successors and assigns, may control the Association by appointing and removing officers and members of the Board (the "Declarant Control Period") until the earlier of (a) sixty (60) days have elapsed since seventy-five percent (75%) of the Units in the Condominium have been conveyed to purchasers of Units other than the Declarant, (b) five (5) years have elapsed since the first Unit is conveyed to purchasers of Units other than the Declarant; or (c) the Declarant elects, at its option, to terminate control of the Association, whichever first occurs. Not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units to Unit Owners other than the Declarant, the Unit Owners other than Declarant shall be entitled to elect at least one member or not less than twenty-five percent (25%) of the members of the Board. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than Declarant, not less than thirty-three and one-third percent (33⅓%) of the members of the Board must be elected by the Unit Owners. Within sixty (60) days before the date of termination of control of the Association by the Declarant, the Board of Directors shall call and give not less than ten (10), nor more than thirty (30), days' notice of a special meeting of the membership for the purpose of electing the members of the Board of Directors.

4. It is the intention of the Declarant and the Association that the provisions of this Ninth Amendment to Declaration are severable, so that if any provision is invalid or void under any applicable federal, state or local law or ordinance, decree, order, judgment or otherwise, the remainder shall be unaffected thereby.

5. This Ninth Amendment to Declaration has been executed by the undersigned and filed in the Office of the Judge of Probate of Shelby County, Alabama for the purposes stated above. Except for the aforesaid, the terms and conditions of the Declaration shall continue to be in full force and effect without any other changes whatsoever.

6. Capitalized terms as used herein shall have the same meaning as they are defined in the Declaration, unless the context clearly indicates a different meaning therefore.

7. This Ninth Amendment to Declaration may contain more than one counterpart of the signature page and this Ninth Amendment to Declaration may be executed by the affixing of the signatures of each party to one of such counterpart signature pages; all of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page. Signatures by facsimile or e-mail shall have the same effect as an original signature.

IN WITNESS WHEREOF, the Declarant and the Association have executed this Ninth Amendment to Declaration on this 13th day of May, 2008.

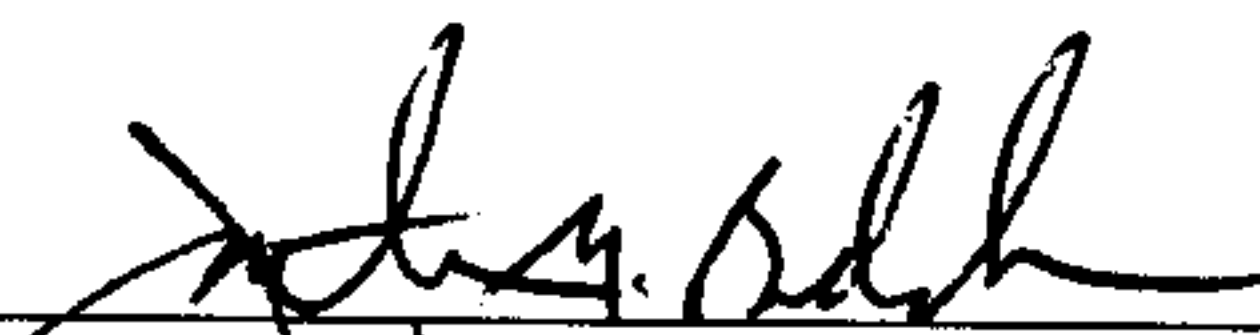
SIGNATURES APPEAR ON FOLLOWING PAGE



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Shelby Cnty Judge of Probate, AL
05/14/2008 11:14:17AM FILED/CERT

DECLARANT:

CAHABA BEACH INVESTMENTS, LLC,
an Alabama limited liability company

By: 
Name: Jonathan M. Belcher
Its: President

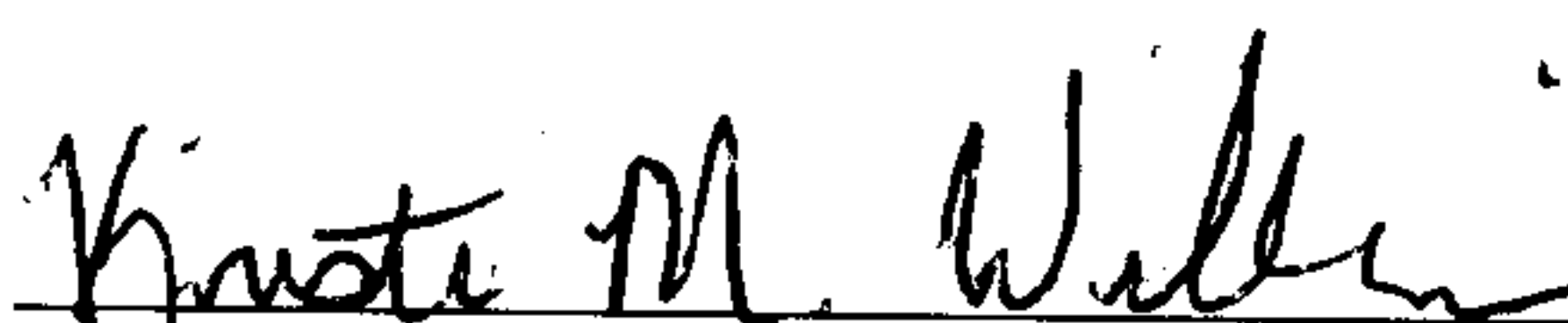
STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jonathan Belcher, whose name as President of **CAHABA BEACH INVESTMENTS, LLC**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this 8 day of May, 2008.

[Notarial Seal]


Notary Public
My commission expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov 30, 2011
BONDED THRU NOTARY PUBLIC UNDERWRITERS

ASSOCIATION:

**EDENTON RESIDENTIAL CONDOMINIUM
ASSOCIATION, INC., and Alabama nonprofit
corporation**

By: *Jonathan M. Belcher*
Name: Jonathan M. Belcher
Its: PRESIDENT

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jonathan M. Belcher, whose name as President of **EDENTON RESIDENTIAL CONDOMINIUM ASSOCIATION, INC.,** an Alabama nonprofit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this 13th day of May, 2008.

[Notarial Seal]

Jonathan M. Belcher
Notary Public
My commission expires: 7/5/2010

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 5, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

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Shelby Cnty Judge of Probate, AL
05/14/2008 11:14:17AM FILED/CERT

CONSENT BY MORTGAGEE

Compass Bank, a banking corporation organized under the laws of the State of Alabama (the "Mortgagee"), does hereby consent to this Ninth Amendment to Declaration of Condominium of Edenton, A Condominium. Nothing contained herein shall be deemed or construed to make the Mortgagee the Declarant under the Declaration, this Ninth Amendment or the Condominium. The Mortgagee does not assume any obligation whatsoever under the terms, covenants and conditions of the foregoing Eighth Amendment to Declaration, and the execution hereof does not in any way subordinate or make the mortgage inferior to the said Ninth Amendment to Declaration.

Acknowledged and agreed this 9 day of
MAY, 2008.

COMPASS BANK

By: B. C. Hendrick
Name: BEN C HENDRICK
Its: SIC VICE President

STATE OF ALABAMA)

COUNTY OF Jefferson

I, the undersigned, a notary public in and for said county in said state, hereby certify that Ben C Hendrick, whose name as S.R.V. P. of **COMPASS BANK**, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 9th day of may, 2008.

B. Ann Moore
Notary Public
My commission expires: 11-6-10

[Notarial Seal]