

SUNBIRD CONDOMINIUM

CERTIFICATE OF AMENDMENT OF DECLARATION OF CONDOMINIUM

THIS IS TO CERTIFY that, at a properly noticed Special Meeting of the owners and members of Sunbird of Panama City Beach, Owners Association, Inc., held on the grounds of Sunbird Condominium, at 9850 Thomas Drive, Panama City Beach, Florida, on May 31st, 1997 an amendment to the Declaration Of Condominium, in the form of a Restatement of Declaration of Condominium, was adopted by the approval of a Resolution, which adopted the Restatement of Declaration of Condominium, by a vote of 199 members in favor of the Resolution (and 23 opposed), which affirmative vote exceeded the 2/3rds vote required by the Declaration of Condominium for the approval of any amendment to the Declaration Of Condominium.

The original Declaration Of Condominium of Sunbird, a Condominium, is recorded in Bay County Official Record Book 944 at page 1053, on September 28th, 1984.

A true copy of the Restatement Of Declaration Of Condominium, consisting of 28 pages, is attached hereto as Exhibit "A".

DATED in Panama City, Florida this 17<sup>th</sup> day of October, 1997.

Jerry W. Gerde  
Witness:

Jane L. Bowlden  
Jane Bowlden, Vice President  
& Acting President

Jerry W. Gerde  
Witness:

June Smith  
June Smith, Secretary

STATE OF FLORIDA  
COUNTY OF BAY

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of October, 1997 by Jane Bowlden, Vice President & Acting President and by June Smith, Secretary, of Sunbird of Panama City Beach, Owners Association, Inc.

[ ] who are personally known to me  
[  ] who have produced a current driver's license as identification FLA B 435-441-37-850-C (JAB) + GA 252883231 (JS)  
(state and number)  
[ ] who have produced \_\_\_\_\_  
as identification  
and who did take an oath.



NANCY F. HARRIS  
MY COMMISSION # CC324115 EXPIRES  
October 19, 1997  
BONDED THRU TROY FAIR INSURANCE, INC.

Nancy F. Harris  
NOTARY PUBLIC:  
My Commission Expires: \_\_\_\_\_  
NOTARY PUBLIC Comm. No. \_\_\_\_\_  
NANCY F. HARRIS  
(Type or Print Name of Notary)

RESTATEMENT OF  
DECLARATION OF CONDOMINIUM  
OF  
SUNBIRD, A CONDOMINIUM  
Panama City Beach, Florida

“SUBSTANTIAL REWORDING of DECLARATION.  
See Provisions 1 - 14 for present text.”

MADE THIS 31st day of May, 1997, by SUNBIRD OF  
PANAMA CITY BEACH OWNERS ASSOCIATION, INC., a Florida Corporation Not  
for Profit, herein called the “Association”, for itself, its successors, grantees and assigns.

WHEREIN, the Association makes the following declarations:

1. PURPOSE. The purpose of this Declaration is to submit the lands  
to the condominium form of ownership and use in the manner provided by Chapter 718,  
Florida Statutes, hereinafter called the “Condominium Act.”

A. Name and Address. The name by which this condominium is  
to be identified is “Sunbird, a Condominium,” hereinafter called “the condominium,” and  
the condominium’s address is 9850 Thomas Drive, Panama City Beach, Florida 32408.

B. The Land. The lands owned by the Association are the  
lands lying in Bay County, Florida, more particularly described on Exhibit A hereto.

2. DEFINITIONS. The terms used in this Declaration and its  
exhibits shall have the meaning stated in the Condominium Act and as follows unless the  
context otherwise requires:

A. Apartment means unit as defined by the Condominium Act.

B. Apartment Owner means the unit owner as defined by the  
Condominium Act.

C. Association means Sunbird of Panama City Beach Owners Association, Inc., a not for profit Florida corporation, and its successors.

D. Association Property means that property, real or personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefits of its members and may include a condominium unit wherein the Association conducts any lawful business of the Association for the use and benefits of its members.

E. Board of Directors means the board of administration responsible for the administration of the Association.

F. Bylaws means the Bylaws of the Association as they may exist from time to time.

G. Commercial Condominium means a unit intended for commercial use, rather than private temporary or permanent residence. Residential means a condominium unit which is intended for use as a private temporary or permanent residence unless defined elsewhere in these documents or permanent

H. Common Elements shall include the tangible personal property required for the maintenance and operation of the condominium, and any land or other property acquired by the Association for the condominium, even though owned by the Association, as well as the items stated in the Condominium Act. Residential Unit means a condominium unit which is intended for use as a private temporary or permanent residence unless defined elsewhere in these Documents or which is intended to be used as housing for maintenance, managerial, janitorial or other operational staff of the condominium.

I. Common expenses means all expenses and assessments which are properly incurred by the Association for the condominium.

J. Condominium means all the condominium property as a whole when the context so permits as well as the meaning stated in the Condominium Act.

K. Condominium parcel means a unit, together with the undivided share in the common elements which is appurtenant to the unit.

L. Institutional Mortgagee means a bank, savings and loan association, an insurance company, a pension fund, a real estate investment trust, a mortgage banker, Federal National Mortgage Association, Government National Mortgage Association and Federal Home Loan Mortgage Corporation or other like business entity holding a mortgage on an apartment.

M. Number and Gender are used herein so that, when the context so permits, the use of the plural shall include the singular, the singular shall include the plural and the use of any gender shall be deemed to include all genders.

N. Residential Condominium means a condominium consisting of condominium units which are intended for use as a private temporary or permanent residence or which is intended to be used as housing for maintenance, managerial, janitorial or other operational staff of the condominium.

O. Voting Certificate means a document which designates one of the record title owners, or the corporate, partnership or entity representative who is authorized to vote on behalf of an apartment unit owned by more than one owner or by any entity.

P. Utility Services as used in the Condominium Act and as construed with reference to this condominium, and as used in the Declaration, and By-Laws, shall include but not be limited to electric power, hot and cold water, heating, refrigeration, air conditioning, cable television, garbage, telephone and sewage disposal.

3. SUNBIRD, A CONDOMINIUM DEVELOPMENT PLAN. The subject condominium is described and established as follows:

A. Survey. The survey of the land showing the improvements on it is attached as Exhibit "B."

B. Plans. Improvements upon the land are constructed substantially in accordance with the graphic description of the improvements attached hereto as composite Exhibit "C."

C. Easements.

(1) Utility Easements. Easements are reserved through the condominium property as may be required for utility service to serve the condominium adequately; provided, however, such easements to an apartment shall be only according to the plans and specifications for the apartment building, unless approved in writing by the apartment owner.

(2) Easements for Encroachments. All the condominium property shall be subject to the easements for encroachments which now exist or hereafter exist, caused by settlement or movement of a building, or caused by minor inaccuracies in building or rebuilding, which encroachments shall be permitted to remain undisturbed and such shall continue until such encroachments no longer exist.

(3) Ingress and Egress Easement. Each apartment owner of the condominium shall have a non-exclusive easement for ingress and egress between said apartment and the public roads and streets serving the condominium, over the halls, corridors, stairs, walks, driveways, parking areas, exterior access and other portions of the common elements of the condominium.

(4) Easements as Appurtenances. The easements and other rights created herein for an apartment owner shall be appurtenant to the apartment of that

owner and all conveyances of title to the apartment shall include a conveyance of the easements and rights as are herein provided, even though no specific reference to such easements and rights appears in any such instrument.

D. Apartment Boundaries. Each apartment shall include that part of the building containing the apartment that lies within the boundaries of the apartment, which boundaries are as follows:

(1) Upper and Lower Boundaries. The upper and lower boundaries of the apartment shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(a) Upper Boundary - The horizontal plane of the undecorated finished ceiling.

(b) Lower Boundary - The horizontal plane of the undecorated finished floor.

(2) Perimetrical Boundaries. The perimetrical boundaries of the apartment shall be the vertical planes of the undecorated finished interior of the walls bounding the apartment extended to intersections with each other and with the upper and lower boundaries. When there is attached to the building a balcony, deck, patio, canopy, stairway or other portion of the building serving only the apartment being bounded, the perimetrical boundaries shall be extended to include the intersecting vertical planes adjacent to and which include all of such structures and fixtures thereon.

E. Common Elements. The common elements include the land and all of the parts of the condominium not within the apartment.

4. The Apartments. The residential apartments of the condominium are located in two 12-story apartment buildings (the East Building and the West Building), and a commercial apartment which is the clubhouse building. Each residential building

has two wings, the Left Wing and the Right Wing. The floor plans of the apartments in the Left Wing of each building are the same as the floor plans of the apartments in the Right Wing of each building, except they are reversed (mirror images). The left and right wings of the building are determined by looking South from Thomas Drive. The floor plans of the Right Wing of each building are the same on floors 1 through 11; the floor plans of the Left Wing of each building are the same on floors 1 through 11; the floor plans of the Left Wing of each building are the same on the 12th floor; and the floor plans of the Right Wing of each building are the same. There are twelve floor plans considering that the apartment in each wing of the buildings are the mirror image of the apartments in the other wing, which are generally described below, and which are described in more detail on the graphic description of the improvements attached as Exhibit "C:"

<u>A. Apartment Type</u>	<u>Description</u>
One Bedroom Type A (Left and Right)	Apartments located on floors 1 through 11 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Type B (Left and Right)	Apartments located on floors 1 through 11 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Type C1 (Left and Right)	Apartments located on floors 1 through 11 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Type C2 (Left and Right)	Apartments located on floors 1 through 11 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Type C3	Apartments located on floors 1 through 11

(Left and Right)	of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Type D (Left and Right)	Apartments located on floors 1 through 11 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Penthouse Type A (Left and Right)	Apartments located on floor 12 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Penthouse Type B (Left and Right)	Apartments located on floor 12 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Penthouse Type C1 (Left and Right)	Apartments located on floor 12 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Penthouse Type C2 (Left and Right)	Apartments located on floor 12 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Penthouse Type D (Left and Right)	Apartments located on floor 12 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
One Bedroom Penthouse Type E (Left and Right)	Apartments located on floor 12 of each building and include living room, dining room, kitchen, 1 bathroom, 1 bedroom, and balcony;
Commercial Apartment	Apartment which include the entirety of clubhouse building, containing approximately 2336 square feet.



B. Apartment Numbers. The apartments of the condominium are identified by the numbers set forth on the graphic description of the improvements attached hereto as composite Exhibit "C."

C. Appurtenances to Apartments. The owner of each apartment shall own a share and certain interest in the condominium property, which share and interest is appurtenant to the several apartments as:

(1) Common Elements and Common Surplus. An undivided share in the land and other common elements and the common surplus for each apartment as is set forth in Exhibit "D."

(2) Association Membership. The membership of each apartment owner in the Association and the interest of each apartment owner in the funds and assets held by the Association.

(3) Automobile Parking Space. Automobile parking spaces will be made available so that at least one automobile parking space will be available for use by each apartment owner on a non-assignable basis according to reasonable rules and regulations as may from time to time be promulgated by the Association; provided, that at all times each apartment owner shall be entitled to the use of at least one automobile parking space without charge.

(4) Vote. Each apartment shall be entitled to one (1) vote, said vote to be cast by the apartment owner in the manner prescribed by the By-Laws of the Association.

D. Liability for Common Expense. Each apartment shall be liable for a proportionate share of the common expenses, such share being the same undivided share in the common elements appurtenant to his apartment.

E. Maintenance, Alteration, and Improvement. Responsibility for the maintenance for the condominium property, and restrictions upon its alterations and improvements shall be as follows:

(1) Apartments.

(a) Responsibility of the Association. It shall be the responsibility of the Association to maintain, repair and replace as a common expense of this condominium:

(1) All portions of an apartment, except interior surfaces, contributing to the support of the apartment building; which portion shall include but not be limited to the outside walls of the apartment building and all fixtures on its exterior, boundary walls of apartment, floor and ceiling decking, load bearing columns and load bearing walls and all balconies, porches, patios, or similar facilities serving the apartment;

(2) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the portion of an apartment maintained by the Association; and all such facilities contained within an apartment that service part or parts of the condominium other than the apartment within which contained; and

(3) All portions of an apartment which are damaged as a result of a casualty for which the Association has secured insurance coverage;

(4) All incidental damage caused to an apartment by such work shall be repaired promptly at the expense of the Association. 5. The Association shall have authority to require apartment owners at their expense to

maintain, repair and replace screens and glass for windows and doors within their respective apartments. .

(b) Responsibility of the Apartment Owner. The apartment owner shall be responsible for .

(1) Maintaining, repairing and replacing at his expense all portions of his apartment except the portion to be maintained, repaired and replaced by the Association. Such shall be done without disturbing the rights of other apartment owners.

(2) Maintaining repairing and replacing as necessary, the compressor and air handling equipment for space cooling and heating service equipment such as dishwasher, refrigerator, compactor, disposal, oven and stove and hot water heater, whether or not built-in; interior fixtures such as cabinets, electrical and plumbing fixtures; floor coverings except the floor slab; and inside paint and other inside wall finishes. This list may not be all inclusive.

(3) Abstaining from painting or other wise orerwise decorating or changing the appearance of any portion of the exterior of the apartment building whether a part of the apartment or not, in any manner whatsoever.

(4) Obtaining prior written approval from the Board of Directors before painting the floor or installing floor covering on the balcony, porch patio or similar facility. Approval shall not be unreasonably withheld.

(5) Promptly reporting to the Association any defect or need for repairs for which the Association is responsible.

(c) Responsibility of Association and Apartment Owner In Connection With An Alteration or Improvement. Neither the apartment owner nor the Association shall make any alteration in the portions of any apartment building that are to

be maintained by the Association, or remove any portion of such, or make any additions to them, or to do anything that would jeopardize the safety or soundness of the apartment building, or impair any easement, without first obtaining approval in writing from the Board of Directors and the owners of all apartments in which such work is to be done. In the case where an apartment owner desires to initiate change the Association may require that a copy of plans of all such work prepared by an architect and engineer licensed to practice in this state shall be filed with the Association prior to the authorization.

(2) Common Elements.

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

(b) Alteration and Improvement. There shall be no material alteration or substantial additions or improvements to the common elements or to real property which is association property without prior approval in writing by a majority of the apartment owners except as may otherwise be provided by the By-Laws. .  
The

5. ASSOCIATION. The operation of the condominium shall be by the Sunbird of Panama City Beach Owners Association, Inc., a corporation not for profit under the laws of Florida, which shall fulfill its functions pursuant to the following provisions:

A. Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached and made a part hereof as Exhibit "E."

B. By-Laws. The By-Laws of the Association shall be the By-Laws of the condominium, a copy of which is attached and made a part hereof as Exhibit "F."

C. Limitation upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to apartment owners for injury or damage, other than the cost of maintenance and repair, caused by any latent conditions of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

D. Restraint Upon Assignment of Shares in Assets. The shares of members in the funds, assets and property rights of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his apartment.

E. Approval or Disapproval of Matters. Whenever the decision of an apartment owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting. 6.

ASSESSMENTS. The making and collection of assessments against apartment owners for common expenses shall be accomplished pursuant to the By-laws and subject to the following provisions:

A. Share of Common Expenses. Each apartment owner shall be liable for a proportionate share of the common expenses and shall share in the common surplus, such share being the same as the undivided share in the common elements appurtenant to his apartment.

B. Interest; Administrative Late Fees; Attorney's Fees; Application of Payment. Assessments and installments on them, if not paid within ten (10) days after the date they become due, shall bear interest at the rate of eighteen (18%) percent until paid. The Association may charge an administrative late fee in addition to such interest, in an amount not to exceed the greater of \$25 or 5% of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by the Association shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in the collection, and then to the delinquent assessment.

C. Lien for Assessments. Each apartment shall be subject to a lien in favor of the Association for unpaid assessments, with interest and reasonable legal fees incurred by the Association which are incident to the collection of the assessment or enforcement of the lien. Such lien shall secure all unpaid assessments, interest, administrative late fees, and reasonable legal fees and costs incurred in collection which are due and which may accrue subsequent to the recording of the lien and prior to entry of a final judgment of foreclosure. All such liens shall be effective from and after recording a claim of lien in the public records of Bay County, Florida, stating the description of the condominium apartment, the name of the record owner, the amount due, and the date when due, and the lien shall continue in effect for a period of one (1) year after the claim of lien has been recorded, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of the lien.

D. Collection and Foreclosure. The Board of Directors may take such action as it deems necessary to collect assessments of the Association by personal

action or by enforcing and foreclosing the Association's lien, and may settle and compromise same, if in the best interests of the Association. The Association's lien shall be effective as and in the manner provided for by the Condominium Act, and shall have the priorities established by the Act. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien, and to apply a cash credit against its bid, all sums due the Association covered by the lien enforced.

7. INSURANCE. The insurance other than title insurance that shall be carried on the condominium property and the property of the apartment owners shall be governed by the following provisions:

A. Authority to Purchase; Named Insured. All insurance policies upon the condominium property shall be purchased by the Association individually and as agent for the apartment owners, without naming them, and as agent for their mortgagees. Provision shall be made for the insurance of mortgagees endorsements and memoranda of insurance to the mortgagees of apartment owners. Such policies shall provide that payments by the insurer for losses shall be made to the Association, or if required by the holder of a first mortgage on one of the apartments, an insurance trustee designated by the Association, and all policies and their endorsements shall be deposited with the Association or, if applicable, the insurance trustee. Apartment owners may obtain coverage at their own expense upon their personal property and for their personal liability and living expense.

B. Coverage.

(1) Casualty. All buildings and improvements upon the land shall be insured in an amount equal to the maximum insurable replacement value and all personal property included in the common elements shall be insured for its value, all as determined annually by the Board of Directors of the Association with such

deductible clauses required to obtain coverage at a reasonable cost. Such coverage shall afford protection against:

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

(b) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, including but not limited to vandalism and malicious mischief, windstorm and flooding.

(c) Insurance policies providing casualty coverages pursuant to 7(b)(1)(a) and (b) above shall provide that the word "building" wherever used in the policy shall include, but shall not necessarily be limited to, fixtures, installations, or additions comprising the part of the building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual apartments initially installed or replacements thereof, in accordance with the original plans and specifications. With respect to the coverage provided for by this paragraph, the apartment owners shall be considered additional insureds under the policy. Further, such policies, when appropriate and possible, shall waive the insurer's right to (a) subrogation against the Association and against the apartment owners individually and as a group (b) benefit of the pro rata cause that reserves to the insurer the right to pay only a fraction of any loss if other insurance have issued coverage on the same risk and (c) avoid liability for a loss that is caused by an act of the Board of Directors of the Association or a director or one or more apartment owners.

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

(3) Workers' Compensation. Workers' compensation policy, if required to meet the requirements of law.



(4) Other. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

C. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense of this condominium; provided, however, that any apartment owner who shall use or maintain his apartment in such manner as to cause a greater insurance premium to be assessed than would have been assessed if he had used his apartment as other apartment owners, then said apartment owner shall be liable for and pay a special assessment in an amount equal to the increased premium cost caused by his maintenance or use of his apartment.

D. Insurance Trustees; Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the apartment owners and their mortgagees as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Association or to such bank located in the State of Florida with the trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is referred to in this instrument as the insurance trustee. The insurance trustee shall not be liable for payment of premiums, nor the renewal of the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee, or the Association if no insurance trustee is designated, shall be to receive such proceeds as are paid and to hold the proceeds in trust for the purpose elsewhere stated in this instrument and for the benefit of the apartment owners and their mortgagees in the following shares but which shares need not be set forth on the records of the insurance trustee:

(1) Apartment Owners. An undivided share for such apartment owner; such share being the same as the undivided share in the common elements appurtenant to his apartment.

(2) Mortgages. In the event a mortgagee endorsement has been issued as to an apartment, the share of the apartment owner shall be held in trust for the mortgagee and the apartment owner as their interest may appear; provided, however, no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions of such proceeds made to the apartment owner and mortgagee pursuant to the provisions of this Declaration.

E. Distribution of Proceeds. Proceeds of insurance policies received by the Association or the insurance trustee shall be distributed to or for the beneficial owners in the manner herein provided in "8. RECONSTRUCTION OR REPAIR AFTER CASUALTY."

F. Association as Agent. The Association is irrevocably appointed agent for each apartment owner and for each owner of a mortgage or other lien upon an apartment and for each owner of any other interest in the condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

8. RECONSTRUCTION OR REPAIR AFTER CASUALTY.

A. Determination to Reconstruct or Repair. If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

(1) Common Element. If the damaged improvement is a common element, other than an apartment building, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated.

(2) Apartment Building.

(a) Lesser Damage. If the damaged improvement is an apartment building and if at least fifteen (15) of the apartments are found by the Board of Directors of the Association to be tenantable, the damaged property will be reconstructed or repaired unless within sixty (60) days after the casualty it is determined by agreement in the manner elsewhere that the condominium shall be terminated.

(b) Major Damage. If the damaged improvement is an apartment building and more than fifty (50)% of the apartments are found by the Board of Directors to be tenantable, then the damaged property will be evaluated by an engineer registered in the state of Florida to determine whether reconstruction of the existing building is more effective than termination of the building. If reconstruction is deemed more cost effective, the building will be reconstructed or repaired, unless within sixty (60) days after the casualty the owners of three-fourths (3/4) of the apartments and the mortgagee holding the greatest number of recorded mortgages on all apartments consents in writing to terminate the condominium.

(3) Certificate. The insurance trustee may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.

B. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached as exhibits; or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is the apartment building, by the owners of the apartments, which approval shall not be unreasonably withheld.

C. Responsibility. If the damage is not the result of a casualty for which the Association has secured insurance coverage and is only to those parts of one apartment for which the responsibility of maintenance and repair is that of the apartment owner, then the apartment owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

D. Estimates of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility for reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. Assessments. If the process of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair by the Association, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against all apartment owners in sufficient amounts to provide funds for the payment of such costs. Such assessment shall be in proportion to the owner's share in the common elements.

F. Construction Funds. The funds for payment of the costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Association or the insurance trustee and funds collected by the Association from assessments against apartment owners shall be disbursed in payment of the costs in the following manner:

(1) Association. If the total assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair that is the responsibility of the Association is more that \$10,000.00, then the sums paid

upon such assessments shall be deposited by the Association with the insurance trustee if one has been designated. In all other cases, the Association shall hold the sums paid upon such assessments and disburse them in payment of the costs of reconstruction and repair.

(2) Construction Fund. The proceeds of insurance collected on account of a casualty, and the proceeds from collections of assessments against apartment owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

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

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

(c) Apartment Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an apartment owner shall be paid by the Association or the insurance trustee to

the apartment owner, or if there is a mortgagee endorsement as to the apartment, then to the apartment owner and the mortgagee jointly, who may use such proceeds as they be advised.

(d) Surplus. It shall be presumed that the first monies disbursed in payment of cost or reconstruction and repair shall be from insurance proceeds. If there is a balance in construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be either utilized in general operation to offset future assessments or be distributed to the beneficial owners of the fund in the manner elsewhere stated..

(e) Certificate. Notwithstanding the provisions of this instrument, the insurance trustee shall not be required to determine whether or not sums paid by the apartment owners upon assessment shall be deposited by the Association with the insurance trustee, nor to determine whether the disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid. Instead, the insurance trustee may rely upon a certificate of the Association made by its president and secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is required in this instrument to be named as payee, the insurance trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to an apartment owner; and further provided that when the Association, or a mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund, so requires the approval of an architect named by the Association upon disbursement in payment of costs of reconstruction and repair.

9. USE RESTRICTIONS. The use of the condominium property shall be in accordance with the following provisions as long as the condominium exists and the apartment building in useful condition exists on the land.

A. Apartments. Each of the apartments, except the commercial apartment, shall be occupied only as a private temporary or permanent residence. One and only one residential apartment may be designated by the Board of Directors as housing for maintenance, managerial, janitorial, or other operational functions of the condominium and for no other purposes. The commercial apartment may be used for any purpose that other apartments may be used as well as for commercial purposes. No apartment may be divided or subdivided into a smaller unit nor any portion sold or otherwise transferred without first amending this Declaration to show the change in the apartment to be effective.

B. Common Elements. The common elements shall be used for the purpose for which they are intended in the furnishing of services and facilities for the enjoyment of the apartments.

C. Nuisances. No nuisances shall be allowed upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No apartment owner shall permit clothes, towels, or any other items of personal property to be hung, draped or otherwise displayed on the apartment's balcony or patio for the purpose of drying or for any other purpose in a manner which would allow said clothing, towel or other personal property to be viewed by any other person occupying or using the condominium. No apartment owner shall permit any use of his

apartment or make any use of the common elements that will increase the cost of insurance upon the condominium property unless provisions have been made for a special assessment pursuant to paragraph 7 (C).

D. Lawful use. No immoral, improper, offensive or unlawful use shall be made of the condominium property nor any part of it; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

E. Leasing. Apartments, or portions thereof, may be rented or leased only pursuant to this Declaration, the Articles and By-Laws of the Association, and provided the occupancy is by the lessee only, his family, servants or guests.

F. Regulations. Reasonable rules and regulations concerning the use of the condominium property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and By-Laws. Copies of such rules and regulations and amendments shall be furnished by the Association to all apartment owners and residents of the condominium upon request.

10. COMPLIANCE AND DEFAULT. Each apartment owner shall be governed by and shall comply with the terms of the Declaration of Condominium, Articles of Incorporation and By-Laws and rules and regulations adopted pursuant to those documents, and all of such as they may be amended from time to time. Failure of an apartment owner to comply with such documents and rules and regulations shall entitle the Association or other apartment owners to the following relief in addition to the remedies provided by the Condominium Act:



A. Negligence. An apartment owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guest, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. An apartment owner shall pay the Association the amount of increase in its insurance premiums occasioned by use, misuse, occupancy, or abandonment of an apartment or its appurtenances, or of the common elements, by the apartment owner.

B. Fines. In addition to all remedies provided in this Declaration, the Articles or the By-Laws, and pursuant to Chapter 607 and Chapter 617, the Board of Directors of the Association, upon notice and hearing before said Board, may impose reasonable fines against the apartment for the failure of the owner of the apartment, or its occupant, licensee or invitee, to comply with any provision of the Declaration, Articles, By-Laws or reasonable rules and regulations of the Association. No fine may exceed \$100.00 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000.00. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the apartment owner and, if applicable, his licensee or invitee.

C. Costs and Attorney's Fees. In any proceeding arising because of an alleged failure of an apartment owner or the Association to comply with the terms of the Declaration, the Articles, or the By-Laws or the rules and regulations adopted pursuant to them, and the documents and rules and regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the Court.

D. No Waiver of Rights. The failure of the Association or any apartment owner to enforce any covenant, restriction or other provision of the Condominium Act, the Declaration, the Articles, or the By-Laws shall not constitute a waiver of the right to do so thereafter.

11. SPECIFIC RIGHTS OF INSTUTUTUNAL MORTGAGEES  
In addition to the rights and privileges expressly granted to the mortgagees of condominium apartments in this Declaration of Condominiums, each and every institutional mortgagee shall have the rights they are entitled to under Florida Law.

12. AMENDMENTS. Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

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

B. Adoption. A resolution for adoption of a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association, at a meeting called for this purpose. Directors and members 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.

C. Approval of Amendments. Except as may elsewhere be provided, such approval must be by a majority of the owners of the apartments.

D. Proviso. Provided, however, that no amendment shall discriminate against any apartment owner nor against any apartment or class or group of apartments, unless the apartments so affected shall consent; and no amendment shall change the configuration or size of any apartment in any material fashion, materially alter or modify the appurtenances to the apartment, or change the proportion or percentage by which the owner of the apartment shares the common expenses, unless the record owner of the apartment concerned and all record owners of mortgages on such apartment shall join in the execution of the amendment. Neither shall an amendment make any change in the section entitled "Insurance" nor in the sections entitled "Reconstruction or Repair After Casualty" unless the record owners of all mortgages upon the condominium shall join in the execution of the amendment and unless a majority of the record owners of all other apartments approve.

E. Execution and Recording. A copy of each amendment shall be attached to or incorporated in a certificate certifying that the amendment was adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate is recorded in the public records of Bay County, Florida.

13. TERMINATION. In addition to the manner provided by the Condominium Act, the condominium will be terminated without agreement if it is determined in the manner elsewhere provided in this Declaration that the apartment building shall not be reconstructed because of major damage.

14. SEVERABILITY. The invalidity in whole or in part of any covenant or restriction, of any section, subsection, sentence, clause, phrase or word, or other provision in this Declaration of Condominium or the exhibits thereto including the

Articles of Incorporation, By-Laws and rules and regulations of the Association shall not affect the validity of the remaining portions.

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

WITNESS:

*Jerry W. Gerde*

SUNBIRD OF PANAMA CITY BEACH OWNERS ASSOCIATION, INC.

By:

Jane Bowlden, Vice President

*Jane G. Bowlden*  
(CORPORATE SEAL)

STATE OF FLORIDA)  
COUNTY OF BAY)

BEFORE ME, the undersigned authority, personally appeared Jane Bowlden, Vice President of SUNBIRD OF PANAMA CITY BEACH, OWNERS ASSOCIATION, INC., a Florida corporation not for profit, to me well known to be Declaration of Condominium and acknowledged that he executed the same for the uses and purposes therein expressed, on behalf of said corporation. *Provided FLA Drivers License B435-441-37-850-0*

WITNESS my hand and official seal in the County and State last aforesaid this 17 day of Oct, 1997.



(AFFIX SEAL)

NANCY F. HARRIS  
MY COMMISSION # CC324115 EXPIRES  
October 19, 1997  
BONDED THRU TROY FAIN INSURANCE, INC.

*Nancy F. Harris*  
Notary Public  
My Commission Expires:

WITNESS:

*Jerry W. Gerde*

SUNBIRD OF PANAMA CITY BEACH OWNERS ASSOCIATION, INC.

By:

B. June Smith, Secy.

*B. June Smith*  
(CORPORATE SEAL)

STATE OF FLORIDA)  
COUNTY OF BAY)

BEFORE ME, the undersigned authority, personally appeared B. June Smith, Secy. of SUNBIRD OF PANAMA CITY BEACH, OWNERS ASSOCIATION, INC., a Florida

corporation not for profit, to me well known to be Declaration of Condominium and acknowledged that she executed the same for the uses and purposes therein expressed, on behalf of said corporation. *provided GA Drivers license 252883231*  
WITNESS my hand and official seal in the County and State last aforesaid this *17th* day of *October* 1997.

(AFFIX SEAL)

THIS INSTRUMENT PREPARED BY:

Laura Roesch, Esquire  
HILTON, HILTON, KOLK,  
PENSON & ROESCH  
1610 Beck Avenue  
Panama City, FL 32405  
Fla. Bar No. 794694

February 1997

Notary Public *Nancy F. Harris*  
My Commission Expires: *NANCY F. HARRIS*



NANCY F. HARRIS  
MY COMMISSION # CC24115 EXPIRES  
October 19, 1997  
BONDED THRU TROY FAIR INSURANCE, INC.

RCD Oct 20 1997 09:21am  
HAROLD BAZZEL, CLERK