

PREPARED BY AND RETURN TO:

David H. Milam  
1414 County Highway 283, South  
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CERTIFICATE OF AMENDMENT TO  
DECLARATION OF CONDOMINIUM  
OF MOONDRIFTER, A CONDOMINIUM

NOTICE IS HEREBY GIVEN that at a duly called meeting of the members of the MOONDRIFTER OWNERS ASSOCIATION, INC., a Florida not for profit corporation ("Association") on September 20, 2008, by a vote of not less than two thirds (2/3) of the voting interests of the Association, amended the Declaration of Condominium of Moondrifter, a Condominium ("Condominium"), recorded in O.R. Book 836, Page 656, et seq. of the Public Records of Bay County, Florida (the "Declaration") as follows:

The Declaration is hereby amended in accordance with Exhibit "A" attached hereto and incorporated herein by the reference entitled "Schedule of Amendments to Declaration of Condominium of Moondrifter, a Condominium."

IN WITNESS WHEREOF the Association has caused this Certificate of Amendment to be executed in accordance with the authority hereinabove expressed this 31<sup>st</sup> day of October, 2008.

ATTEST:

MOONDRIFTER OWNERS ASSOCIATION, INC.,  
a Florida not for profit corporation

By: [Signature]  
Print Name: Rebecca Drube

By: [Signature]  
Print Name: David H. Milam  
Its: Attorney

By: [Signature]  
Print Name: CHARLOTTE FLOYD

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of October, 2008, by David H. Milam as Attorney of MOONDRIFTER OWNERS ASSOCIATION, INC., a Florida not for profit corporation, on behalf of the corporation. He [is personally known to me] [has produced \_\_\_\_\_ as identification] and [did] [did not] take an oath.

[Signature]

Notary Public  
Print Name: \_\_\_\_\_

My Commission Expires \_\_\_\_\_

NOTARY PUBLIC-STATE OF FLORIDA  
Charlotte Floyd  
Commission # DD503257  
Expires: FEB. 18, 2010

# **Exhibit A**

AMENDMENTS TO DECLARATION OF CONDOMINIUM

OF

MOONDRIFTER, A CONDOMINIUM

Panama City Beach, Florida

Made this \_\_\_\_ day of \_\_\_\_\_, 1981, Moondrifter Inc., a Florida corporation, herein called the "Developer," for itself, its successors, grantees and assigns.

WHEREIN, the Developer makes the following declarations:

1. PURPOSE. The purpose of this Declaration is to submit the lands described in this instrument and the improvements on such lands to the condominium form of ownership and use in the manner provided in Chapter 718, Florida Statutes, 1980, hereinafter called the "Condominium Act".

A. Name and Address. The name by which this condominium is to be identified is "Moondrifter, a Condominium," hereinafter called "the condominium," and the condominium's address is 8815 Thomas Drive, Panama City Beach, Florida 32408.

B. The Land. The lands owned by the Developer, which by this instrument are submitted to the condominium form of ownership, are the following described lands lying in Bay County, Florida:

Commencing at the NE corner of Lot 1, Blk. 43, A. W. Pledgers Panama City Beach Plat, as per Plat thereof recorded in Plat Book 7, Page 13 of the Public Records of Bay County, Florida; thence S 57 degrees, 46 minutes and 02 seconds E along the South R/W line of S. R. 392 for 414.81 feet to the P. C. of a curve concave to the North, said curve having a central angle of 12 degrees, 00 minutes and 18 seconds and a radius of 2914.93 feet; thence southeasterly along said curve, 610.76 feet (the chord being S63 degrees, 45 minutes and 27 seconds E for 609.76 feet) to the P. T. of said curve, thence S69 degrees, 45 minutes and 27 seconds E along said R/W line for 443.67 feet to the P. C. of a curve concave to the south and having a radius of 2242.01 feet; thence southeasterly along said curve 267.99 feet (the chord being S66 degrees, 20 minutes and 00 seconds E for 267.83 feet); thence continue southeasterly along said curve for 200.05 feet (the chord being S60 degrees, 21 minutes and 10 seconds E for 199.99 feet); thence continue along said same curve southeasterly for 28.02 feet (the chord being S59 degrees, 59 minutes and 41 seconds E for 28.02 feet); thence continue along said same curve southeasterly for 165.92

feet to the P. T. of said curve (chord being S54 degrees, 30 minutes and 42 seconds E for 165.89 feet); thence continue along said R/W line S52 degrees, 49 minutes and 57 seconds E for 6.54 feet to the POINT OF BEGINNING; thence N52 degrees, 49 minutes and 57 seconds W along said Southerly R/W line of S. R. 392 for 6.54 feet to the P. T. of the aforementioned curve; thence in a northwesterly direction along said curve for 34.58 feet (the chord being N53 degrees, 14 minutes and 12 seconds W for 34.58 feet); thence S32 degrees, 13 minutes and 38 seconds W for 52.98 feet; thence N57 degrees, 46 minutes and 22 seconds W for 131.26 feet; thence S32 degrees, 13 minutes and 38 seconds W for 262.47 feet; thence S57 degrees, 46 minutes and 22 seconds E for 11.95 feet; thence S10 degrees, 46 minutes and 53 seconds W for 54.60 feet; thence S31 degrees, 28 minutes and 55 seconds W for 133.40 feet; thence S50 degrees, 14 minutes and 31 seconds W for 199.54 feet; thence S32 degrees, 13 minutes and 38 seconds for 18.30 feet more or less to the waters edge of the Gulf of Mexico; thence in a southeasterly direction along said waters edge to a point that is S32 degrees, 13 minutes and 38 seconds W of the point of beginning; thence N32 degrees, 13 minutes and 38 seconds E for 715.30 feet more or less to the point of beginning. Subject to a 10 foot easement along the east line of above described property as recorded in O.R. Book 380, Pages 2 and 4 of the Public Records of Bay County, Florida.

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. **Unit** means unit as defined by the Condominium Act.
- B. **Unit owner** means the unit owner as defined by the Condominium Act.
- C. **Association** means Moondrifter Owners Association, Inc., a non-profit Florida Corporation, and its successors.
- D. **Common Elements** shall include the tangible personal property required for the maintenance and operation of the condominium, and any land or other property, even though owned by the Association, as well as the items stated in the Condominium Act.
- E. **Common Expenses** shall include expenses of administration; expenses of insurance; expenses of maintenance, operation, repair, replacement and betterment of the common elements and the portions of the unit to be maintained by the Association; expenditures or amounts of assessments by the Association for payment of costs that are the responsibility of a unit owner, including but not limited to costs of repair of damage to a unit in excess of insurance proceeds, and the costs of insurance upon a unit; expenses declared

common by provisions of this Declaration and the Association's By-Laws and any valid charge against the condominium as a whole.

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

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

H. Number and Gender are used herein so that, where 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.

I. 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, wireless internet and sewage disposal.

3. MOONDRIFTER, 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 "A".

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

C. Amendment of Plans.

(1) Alteration of Plans. No change to the interior design and arrangement of units or alteration of the boundaries of any unit shall increase or decrease the number of units nor alter the boundaries of the common elements without amendment of this Declaration by approval of the Association, unit owners and owners of mortgages in the manner

elsewhere provided. If any changes in units are so authorized, such changes shall be reflected by amendment of this Declaration.

(2) Amendment of Declaration. This Declaration may be amended as provided in Section 11.

D. 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 a unit shall be only according to the plans and specifications of the unit building, or as the building is constructed, unless approved in writing by the unit owner.

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

(3) Ingress and Egress Easement. Each unit owner of the condominium shall have a non-exclusive easement for ingress and egress between said unit 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 a unit owner shall be appurtenant to the unit 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.

E. Unit Boundaries. Each unit shall include that part of the building containing the unit that lies within the boundaries of the unit, which boundaries are as follows:

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

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

4. THE UNIT. The units of the condominium are described more particularly and the rights and obligations of their owners are established as follows:

A. Typical Unit Plans. There are four (4) unit floor plans and two (2) commercial units which are generally described below and which are described in more detail on the graphic description of the improvements attached as Exhibit "B":

<u>UNIT</u>	<u>DESCRIPTION</u>
Type A	unit located on floors 1 through 8 including living-dining room, kitchen, two (2) baths, bedroom(s) and patio opening on the living area and bedroom(s) for ground floor units and balconies opening on the bedroom(s) and living area for the other units.

Type B	unit located on floors 1 through 8 including living-dining room, kitchen, two (2) baths, bedroom(s) and patio serving the living area for ground floor units and balconies serving the living area for the other units.
Type C	unit located on floors 2 through 8, including living-dining room, kitchen, two (2) baths, bedroom(s) and balconies serving the living areas and dining area.
Commercial	Two (2) commercial units located on the ground floor.

B. Unit Numbers. The units of the condominium are identified by the numbers set forth on the graphic description of the improvements attached hereto as composite Exhibit "B":

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

(1) Common Elements and Common Surplus. An undivided share in the land and other common elements in the common surplus.

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

(3) Automobile Parking Spaces. At least one automobile parking space will be available for use by each unit owner according to such reasonable rules and regulations as may from time to time be promulgated by the Association; provided, that at all times, each unit owner shall be entitled to the use of at least one available automobile parking space.

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



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

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) Units

(a) By the Association. The Association shall maintain, repair and replace as a common expense of this condominium:

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

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

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

(4) All incidental damage caused to a unit by such work shall be repaired promptly at the expense of the Association provided that the Association shall have authority to require unit owners at their expense to maintain, repair and replace screens and glass for windows and doors within their respective units, except in case of damage for which insurance proceeds are paid under policies purchased by the Association.

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

(1) To maintain, repair and replace at his expense all portions of his unit except the portion to be maintained, repaired and replaced by the Association, or, in the event of damage resulting from casualty, that portion for which the Association has secured insurance coverage. Such shall be done without disturbing the rights of other unit owners.

(2) Except in the event of damage resulting from casualty for which the Association has secured insurance coverage, the portions of a unit to be maintained, repaired and replaced by a unit owner at his expense shall include but not be limited to the following: 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 electrical and plumbing fixtures; floor coverings except the floor slab; and inside paint and other inside wall finishes.

(3) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the unit building, including any balcony, porch, patio or similar facility whether a part of the unit or not, in any manner whatsoever without the prior written consent of the Board of Directors of the Association, including installation of television antennas.

(4) To promptly report to the Association any defect or need for repairs for which the Association is responsible.

(5) Any unit owner desiring to install hurricane shutters must obtain prior written consent of the Board of Directors. The hurricane shutters must be installed in compliance with the Florida Statutes.

(c) Alteration and Improvement. Neither any unit owner nor the Association shall make any alteration in the portions of any unit building that are to be maintained by the Association, or remove any portion of such, or make any additions to them, or do anything that would jeopardize the safety or soundness of the unit building, or impair any easement, without first obtaining approval in writing of owners of all units in which such work is to be done and the approval of the Board of Directors of the Association. The Association may require that a copy of plans of all such work prepared by an architect licensed to practice in this state shall be filed with the Association prior to the start of work. If any unit owner installs

ceramic flooring or tiling in their unit, a sound proof membrane or layer must be installed to reduce noise in the units below. Prior written approval of the Board of Directors shall be obtained by any unit owner before he or she installs any type of alarm system within their unit.

(2) Common Elements.

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

(b) Alteration and Improvement. After the completion of the improvements included in the common elements contemplated by this Declaration, there shall be no substantial alteration nor further substantial improvement of the real property constituting the common elements without prior approval in writing by the owners of not less than two-thirds (2/3) of the common elements except as provided in the By-Laws. Any such alteration or improvement shall not interfere with the rights of any unit owner without their consent. The costs of such work shall not be assessed against an institutional mortgagee that acquires its title as a result of owning a mortgage upon the unit owned, unless such owner shall approve the alteration or improvement, and this shall be so whether title is acquired by deed or from mortgagor or through foreclosure proceedings. The share of any cost not so assessed shall be assessed to the other unit owners in the share that their shares in the common elements bear to each other. There shall be no change in the shares of rights of a unit owner in the common elements altered or further improved, whether or not the unit owner contributes to the cost of such alteration or improvements.

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

A. Share of Common Expenses. Each unit 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 unit ; that is, one-sixty-second (1/62).

B. Designated Common Expenses. Provision for heating and air conditioning and for electricity and water service to the commonly used facilities described as

the entrance, shower room and vestibule is through equipment located in and metering through the commercial units. The expense of providing such service shall be apportioned between the commercial units and said commonly-used facilities as shall be determined by the Board. The portion of the expense thus determined and allocable to said commonly used facilities shall be a common expense of the Association.

C. Interest; Application of Payment. Assessments and installments on such assessments paid on or before fifteen (15) days after the date when due shall not bear interest, but all sums not paid on or before fifteen (15) days after the date when due shall bear interest at the maximum legal rate of interest from the date when due until paid. In addition to interest, the Association may charge an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each installment of the assessment for each delinquent installment that the payment is late. All payments upon accounts shall be first applied to interest, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection and then to the assessment payment first due.

D. Acceleration of Assessments. The Association has the right to accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

E. Lien for Assessments. Each unit shall be subject to a lien in favor of the Association for unpaid assessments, which lien shall also secure reasonable attorney's fees, including, but not limited to, attorneys fees and costs incurred by the Association incident to the collection of such assessments or enforcement of such lien. 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 parcel, the name of the record owner, the amount due, and the due dates. Such claims of lien shall include assessments which are due and payable when or the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied at the unit owner's cost. The claim of lien shall relate back to the recording of this Declaration of Condominium; however, as to first

mortgagees of record, the lien is effective from and after recording of a claim of lien in the public records of the Bay County, Florida.

F. Collection and Foreclosure. The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The Association shall give notice to the unit owner of its intention to foreclose its lien at least thirty (30) days, or such other time period as may be prescribed by law, before the foreclosure action is filed. Said lien shall then be effective in the manner provided for by the Condominium Act, and shall have the priorities established by said Act. The Association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments.

6. ASSOCIATION. The operation of the condominium shall be by Moondrifter 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 "C".

B. The 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 "D".

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 unit 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 a member 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 unit.

E. Approval or Disapproval of Matters. Whenever the decision of a unit 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, unless the joinder of record owners is specifically required by the Declaration.

7. INSURANCE. The insurance other than title insurance that shall be carried on the condominium property and the property of the unit 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. The named insured shall be the Association individually and as agent for the unit owners, without naming them, and as agent for their mortgagees. Provision shall be made for the issuance of mortgagee endorsements and memoranda of insurance to the mortgagees of unit 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 units, 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. Unit 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 flood insurance.

(c) Insurance policies providing casualty coverages pursuant to the paragraph 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

that part of the building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual units initially installed or replacements thereof, in accordance with the original plans and specifications. Anything to the contrary notwithstanding, the terms "condominium property," "building," "improvements," "insurable improvements," "common elements," "association property," or any other term found in the declaration of condominium which defines the scope of property or casualty insurance that the condominium association must obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries. Further, such policies, when appropriate and possible, shall waive the insurer's right to (a) subrogation against the Association and against the unit owners individually and as a group (b) benefit of the pro rata clause that reserves to the insurer the right to pay only a fraction of any loss if other insurers 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 unit 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) Workmen's Compensation. Workmen's 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 unit owner who shall use or maintain his unit in such manner as to cause a greater insurance premium to be assessed than would have been assessed if he had used his unit as other unit owners, then said unit 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 unit .

D. Insurance Trustees; Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their 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 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 for the renewal or 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 purposes elsewhere stated in this instrument and for the benefit of the unit owners and their mortgagees in the following shares but which shares need not be set forth on the records of the insurance trustee:

(1) Common Elements. Proceeds on account of damage to common elements – an undivided share for such unit owner; such share being the same as the undivided share in the common elements appurtenant to his unit .

(2) Unit. Proceeds on account of damage to units shall be held in the following undivided shares;

(a) When the building is to be restored – for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Association.

(b) When the building is not to be restored – an undivided share for each unit owner, such share being the same as the undivided share in the common elements appurtenant to his unit divided by the total of the undivided shares in the common elements appurtenant to all units of the building not to be restored.

(3) Mortgages. In the event a mortgagee endorsement has been issued as to a unit , the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interest may appear; provided, however, that 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 to have applied to the reduction of a mortgage debt an insurance proceeds except distributions



of such proceeds made to the unit owners and mortgagee pursuant to the provisions in 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 benefit of owners in the following manner:

(1) Expense of the Trust. All expense of the insurance trustee shall be paid first or provisions made for such payment.

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

(3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittance to unit owners and their mortgagee being payable jointly to them. This is a covenant for the benefit of any mortgagee of any unit and may be enforced by such mortgagee.

(4) Certificate. In making the distribution to unit owners and their mortgagees, the insurance trustee may rely upon a certificate of the Association made by its president and secretary as to the names of the unit owners and their respective shares of the distribution.

F. Association as Agent. The Association is irrevocably appointed agent for each unit owner and for each owner of a mortgage or other lien upon a unit 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, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated.

(2) Unit Building.

(a) Lesser Damage. If the damaged improvement is the unit building and if one unit is found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired unless within sixty (60) days after the casualty it is determined by agreement in the manner elsewhere provided that the condominium shall be terminated.

(b) Major Damage. If the damaged improvement is the unit building and if none of the units are found by the Board of Directors to be tenantable, then the damaged property will not be reconstructed or repaired and the condominium will be terminated without agreement as elsewhere provided, unless within sixty (60) days after the casualty the owners of three units agree in writing to such reconstruction or repair.

(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 unit building, by the owners of not less than seventy-five percent (75%) of the common elements, including the owners of all damaged units 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 unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit 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 proceeds 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, assessment shall be made against the unit owners who own the damaged units, and against all unit owners in the case of damage to the common elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against unit owners for damage to units shall be in proportion to the cost of reconstruction and repair to their respective units. Such assessments on account of damage to common elements 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 unit 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 than \$100,000.00, 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 unit owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner 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 \$100,000.00, 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 \$100,000.00, 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 of an architect, engineer, or other qualified professional licensed to practice in Florida and employed by the Association to supervise the work.

(c) Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a unit owner shall be paid by the Association or the insurance trustee to the unit owner, or if there is a mortgagee endorsement as to the unit, then to the unit 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 costs of 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 distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner that is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

(e) Certificate. Notwithstanding the provisions of this instrument, the insurance trustee shall not be required to determine whether or not sums paid by the unit owners upon assessments 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 to 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 a unit 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, engineer, or other qualified professional named by the Association upon disbursements 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 unit building, in useful condition, exists on the land.

A. Units. Each of the units, except the commercial units, shall be occupied only as a residence, either permanent or transient, and for no other purpose. The commercial units may be used for any purpose that other units may be used as well as for commercial purposes. No unit 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 unit to be affected.

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

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 unit owner shall permit clothes, towels, or any other items of personal property to be hung, draped or otherwise displayed on the unit'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 unit owner shall permit any use of this

unit or make any use of the common elements that will increase the costs of insurance upon the condominium property unless provisions have been made for a special assessment.

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, modifications or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

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

F. Regulations. Reasonable 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 regulations and amendments shall be furnished by the Association to all unit owners and residents of the condominium upon request.

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

A. Negligence. A unit 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, employee, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. A unit owner shall pay the Association the amount of any increase in its insurance premiums occasioned by use, misuse, occupancy, or abandonment of a unit or its appurtenances, or of the common elements, by the unit owner.

B. Fines. The Board of Directors of the Association may upon notice and hearing before said Board, fine, assess and charge any offending member a sum not to exceed \$100.00 for each infraction of the provisions of this Declaration, the Articles, By-Laws or rules and regulations of the Association. Any such fines shall not constitute a lien against the unit owned or occupied by the violator.

C. Costs and Attorney's Fees. In any proceeding arising because of an alleged failure of a unit owner or the Association to comply with the terms of the Declaration, Articles of Incorporation of the Association, the By-Laws or the regulations adopted pursuant to them, and the documents 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 unit owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation of the Association, or the By-Laws shall not constitute a waiver of the right to do so thereafter.

11. 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 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, at a meeting called for this purpose or in conjunction with the Annual Meeting of the Membership. 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. Except as elsewhere stated, such approval must be not less than two-thirds (2/3) of the votes of the entire membership of the Association.

C. Proviso. Provided, however, that no amendment shall discriminate against any unit owner nor against any unit or class or group of unit, unless the units so affected shall consent; and no amendment shall change any unit nor the share in the common elements

appurtenant to it, nor increase the owner's share of the common expenses, unless the record owner of the unit concerned and all record owners of mortgage on such unit shall join in the execution of the amendment.

D. Execution and Recording. A copy of each amendment shall be attached to 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 and a copy of the amendment are recorded in the public records of Bay County, Florida.

12. 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 condominium building shall not be reconstructed because of major damage.

13. SEVERABILITY. The invalidity in whole or in part of any covenant or restriction, or 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 regulations of the Association, shall not affect the validity of the remaining portions.

14. OFFICIAL RECORDS. The official records of the association shall be maintained at the association office, or other designated facility as may be determined by the board, within Bay County, Florida. The records of the association shall be made available to a unit owner within 5 working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property. The official records of the association are open to inspection by any association member or the authorized representative of such member during normal business hours. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. Each unit owner or their authorized representative shall be permitted to inspect the association records one time per quarter. Any unit owner requesting copies of records shall pay the actual cost of copying the documents by the association manager. Said costs shall include any charges for labor.