

1321658 ORANGE CO. FLA. 175-30-30 E. JR.

DECLARATION OF CONDOMINIUM APR 15 2 07 PM '83  
FOR  
VIRGINIA HEIGHTS CONDOMINIUM C.R. 3367 PG 2709

W. S. HEINDL, JR., herein called "Developer", for himself, his successors, grantees and assigns, does hereby on this 8th day of December, 1982, make, declare, and publish his intention to submit and does hereby submit the real property hereinafter described to condominium ownership and use in accordance with Chapter 718, Florida Statutes, known as and herein called the Condominium Act, as follows:

1. NAME

The name of this condominium is to be Virginia Heights Condominium.

2. DEFINITIONS

The terms used in this Declaration and the schedules hereto shall have the meanings stated in the Condominium Act on the date this Declaration is recorded, or as otherwise defined herein.

3. LEGAL DESCRIPTION OF THE LAND

The legal description of the land, which is submitted hereby to condominium ownership, is as follows:

Lots 2 and 3, Block 5, Replat of a portion of Virginia Heights, as recorded in Plat Book "J", page 28, of the Public Records of Orange County, Florida.

4. OWNERSHIP OF COMMON ELEMENTS

The undivided share in the common elements appurtenant to each unit shall be one-sixth (1/6) for each unit.

(R)

This instrument prepared by:  
E. L. Williamson, Jr.  
CARLTON, FIELDS, WARD, EMMANUEL,  
SMITH & CUTLER, P.A.  
255 South Orange Avenue  
Post Office Box 1171  
Orlando, Florida 32802

A plot plan and survey, entitled Schedule A to Declaration of Condominium, and floor plans depicting the units entitled Schedule B to Declaration of Condominium, are recorded in Condominium Exhibit Book 8, Pages 1 through 3, of the Public Records of Orange County, Florida.

#### 5. THE UNITS

Each of the units in the condominium is identified and designated as set forth in the plot plan and survey contained in Schedule A and the floor plans contained in Schedule B. Each unit consists of (1) the volumes of space enclosed by the unfinished inner surfaces of perimeter walls, ceilings and floors thereof, including vents, doors, windows, and such other structural elements as are ordinarily considered to be enclosures of space, (2) all interior dividing walls and partitions (including the space occupied by such interior walls and partitions) excepting load-bearing interior walls and partitions, (3) the decorated inner surfaces of the perimeter and interior walls (including decorated inner surfaces of all interior load-bearing walls), floors and ceilings, consisting of wallpaper, paint, plaster, carpeting, tiles, and all other finishing materials affixed or installed as part of the physical structure of the unit, and (4) all immediately visible fixtures, mechanical systems and equipment installed for the sole and exclusive use of the unit, commencing at the point of disconnection from the structural body of the condominium building and from the utility lines, pipes, or systems serving the unit. No pipes, wires, conduits or other utility lines or installations constituting a part of the overall systems designed for the service of any particular unit, nor any of the structural members or portions of any kind, including fixtures and appliances within the unit, which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the building, shall be deemed to be a part of any unit.

#### 6. COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

A. The common elements appurtenant to each unit shall include:

1. The condominium property which is not included within the units described in Section 5, above.

2. The following easements from each unit owner to each other unit owner in the condominium and to the Association:

(a) Easements through the common elements, except the limited common elements, for ingress and egress.

(b) An easement of support in every portion of a unit which contributes to the support of the condominium building.

(c) An easement for the purpose of installation, maintenance, repair and replacement of all sewer, water, power and telephone lines, mains, conduits, wire, and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility system.

(d) An easement through any unit, and common elements, for maintenance, repair and replacement of any unit and common elements. Access to units shall only be during reasonable hours, except that access may be had at any time in case of emergency.

3. All other elements of the condominium improvements rationally of common use or necessary to their existence, upkeep and safety, and all other devices or installations within the condominium property existing for common use.

4. All personal property owned by the Association or by the unit owners collectively.

B. All unit owners shall have the right to use the common elements, subject to the terms and conditions set forth herein. Such rights shall extend to the unit owners, members of their immediate families, their guests and other authorized occupants and visitors of the unit. Use of the common elements and rights of the unit owners with respect thereto shall be subject to and governed by the provisions of the Condominium Act, this Declaration and the Articles, Bylaws and rules and regulations of the Association.

C. The limited common elements shall consist of the storage spaces and the parking spaces as shown on the plot plan and survey and floor plans attached hereto as Schedules A and B, respectively, and any deck, balcony, terrace or patio attached or adjacent to a unit, including the walls, fencing and railings enclosing such deck, balcony, terrace or patio.

D. Each unit owner shall have the right to the exclusive use of the storage space and parking spaces assigned to his or her unit and to the exclusive use of any deck, balcony, terrace or patio attached or adjacent to his or her unit. The developer shall initially assign the storage space and parking spaces to each unit owner. Unit owners may thereafter reassign all rights to limited common elements to a purchaser of an owner's unit.

#### 7. SURVEY, GRAPHIC DESCRIPTION AND PLOT PLAN

A plot plan and survey of the land are attached hereto as Schedule A. A graphic description of the improvements in which the units are located are attached hereto as Schedule B.

#### 8. ASSOCIATION

A. Prior to the date of the recording of this Declaration there will be or has been created, under the laws of the State of Florida, Virginia Heights Condominium Association, Inc., a corporation not for profit, herein called the Association, which shall be responsible for the administration, operation, maintenance, repair and replacement of the condominium property and which shall have those powers and duties set forth in the Act, this Declaration, the Articles of Incorporation and Bylaws. Copies of the Articles of Incorporation and Bylaws of the Association are attached hereto as Schedules C and D, respectively.

B. Each unit owner shall automatically become and remain a member of the Association as long as he owns the unit. Upon termination of his interest, the unit owner's

membership shall thereupon terminate and transfer and inure to the successor unit owner. Voting rights of the unit owners shall be as set forth in the Articles of Incorporation.

C. Notwithstanding anything to the contrary in this Declaration, or in the Articles of Incorporation of the Association, the Developer may, at his option, control the operation of the Association for a period not to exceed that permitted by Section 718.301, Florida Statutes.

9. AMENDMENTS

A. The provisions of this Declaration may be amended from time to time upon the approval of such amendment or amendments by the Association pursuant to a resolution or written consent approving such amendment or amendments adopted or given by not less than two-thirds (2/3) of the unit owners, except where otherwise required by the Condominium Act or this Declaration. No amendment changing the size or dimensions of a unit shall be effective unless consented to by the unit owner, and no amendment which affects the rights, privileges or interests of the Developer shall be effective without his prior written consent. All amendments to this Declaration shall be evidenced by a certificate of the Association executed with the formalities of a deed and shall be recorded in the public records of Orange County, Florida.

B. Notwithstanding anything herein to the contrary, the Developer may make and record amendments to this Declaration within one year from the recordation of this Declaration. No such amendment shall affect the size, nature, description or character of the condominium in a significant manner or adversely affect the interests of any unit owner other than the Developer.

10. COMMON EXPENSES

A. Each unit owner shall be assessed his proportionate share of the expenses of maintenance, repair, replace-

ment, administration and operation of the common elements, including the limited common elements, and of the taxes and assessments levied thereon, which expenses are hereinafter referred to collectively as common expenses. The proportionate share of the common expenses of each unit owner shall be the same as such unit owner's share of the common elements as set forth herein. Payment thereof shall be in such installments and at such times as may be provided in the Bylaws. In the event of the failure of a unit owner to pay his proportionate share when due, the amount thereof shall constitute a lien on his unit, as provided by the Condominium Act.

B. The proportionate share of the common expenses attributable to each unit may be amended only with the written consent of the unit owner and the mortgagee or mortgagees of the unit.

C. If the Board of Directors decides that any unpaid assessment is uncollectible, it shall become a common expense.

#### 11. COMMON SURPLUS

Common surplus shall be the excess of all receipts of the Association over the amount of common expenses. Each unit owner shall own an undivided share in any common surplus in the same percentage as his share of the common elements as set forth herein. All common surplus shall be held and administered by the Association on behalf of the unit owners and may be distributed to the unit owners at such times and in such amounts as the Board of Directors of the Association shall deem fit or otherwise expended by the Association for the benefit of the unit owners as the Board of Directors may determine.

#### 12. DETERMINATION OF BOARD TO BE BINDING

Matters of dispute or disagreement between unit owners with respect to interpretation or application of the provi-

sions of this Declaration, the Articles or Bylaws, shall be decided by the Board of Directors of the Association, which decision shall be final and binding on all unit owners.

13. UTILITIES

Each unit owner shall pay for his own telephone, electricity and other utilities which are separately metered or billed by the respective utility company. Utilities which are not separately metered or billed shall be part of the common expenses.

14. INSURANCE AND RECONSTRUCTION

A. Mortgagee Roster. The Association shall maintain a roster of mortgagees showing the names and addresses of all banks, savings and loan associations, insurance companies and other institutions or persons who have advised the Association in writing that they hold mortgages on a unit.

B. Purchase; named insured; custody and payment of policies. The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the common elements and the unit owners. The named insured shall be the Association individually and as an agent for the owners of units covered by the policy without naming them, and mortgagees to the extent of their respective interests. Unit owners may obtain insurance coverage at their own expense upon their personal property and for their personal liability. All Association policies shall provide that payments for losses made by the insurer shall be paid to the Association.

C. Coverage.

1. Casualty insurance coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location

and use as the buildings on the condominium property. The policies shall state whether the following items are included within the coverage in order that the unit owners may insure themselves if the items are not insured by the Association: air handling equipment for cooling and heating (whether located on the common elements or within the unit); appliances and water heater (whether or not those items are built-in equipment); interior fixtures such as electrical and plumbing fixtures; floor coverings except the floor slab; and inside paint and other inside wall finishes.

2. Public liability in such amounts and with such coverage as shall be required by the Board of Directors of the Association, with cross-liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

3. Workers' Compensation to meet legal requirements.

4. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable, including but not limited to insurance of the officers and directors against liability arising in connection with their duties.

D. Premiums. Premiums upon such insurance policies shall be a common expense.

E. Shares of proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association for the benefit of the unit owners and their mortgagees in the following shares:

1. Unit owners. An undivided share for each unit owner, in an amount proportionate to the undivided share in the common elements appurtenant to the unit.

2. Mortgagees. In the event a mortgagee endorsement of an insurance policy has been issued as to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests may appear. Any bank, savings and loan association, insurance company, or other institution or person holding a mortgage on a unit shall be entitled to request and receive a mortgagee endorsement to the hazard insurance carried by the Association, and a copy of the policy. No mortgagee shall have any right to 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 proceeds made to the unit owner and mortgagee, which distributions shall be made by check payable jointly to the unit owner and the mortgagee.

F. Distribution of proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners in the manner provided.

G. 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.

H. Determination whether to reconstruct and repair. Whether or not condominium property damaged by casualty shall be reconstructed and repaired shall be determined in the following manner:

1. Lesser damage. If two-thirds (2/3) or more of the units are tenantable after the casualty (as determined by the Board of Directors of the Association), the damaged property shall be reconstructed and repaired.

2. Major damage. If less than two-thirds (2/3) of the units are tenantable after the casualty (as determined by the Board of Directors of the Association), whether the damaged property will be reconstructed and repaired or the condominium terminated shall be determined at a meeting of unit owners in the condominium which shall be held within sixty (60) days from the casualty. Notice of such meeting shall be properly given to all such unit owners, and a majority of such unit owners shall constitute a quorum for said meeting. If the reconstruction and repair is approved at the meeting by the owners of one-half (1/2) or more of the units, the damaged property will be reconstructed and repaired; but if not so approved, the condominium shall be terminated in the same manner as provided in this Declaration for termination by agreement, except that no further consent or vote of unit owners or mortgagees shall be required for such termination, it being conclusively presumed in such instance that all of the unit owners and all of the mortgagees have consented to such termination.

I. Responsibility for reconstruction and repair.

The responsibility for reconstruction and repair after casualty shall be the same as for maintenance and repair of the condominium property as provided herein.

J. Plans and specifications. Any reconstruction and repair must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by the Board of Directors of the Association and two-thirds (2/3) of the unit owners.

K. Assessments; determination of sufficiency of funds. If the proceeds of insurance are not sufficient to defray the costs of construction and repair for which the Association is responsible, assessments shall be made by the Association against all unit owners in sufficient amounts to provide funds for the payment of those costs. The assessments shall be made as for a common expense.

L. Disbursement of funds. The funds held by the Association after a casualty, which will consist of proceeds of insurance and the sums collected from assessments against unit owners on account of the casualty, shall be disbursed in the following manner and order:

1. Termination of condominium. If the condominium is terminated, either by agreement after lesser damage or by failure of the unit owners to approve reconstruction and repair after major damage, the remaining funds shall be deemed to be common surplus, shall be owned by the unit owners and their mortgagees as their interests appear and shall be distributed to the unit owners and their mortgagees by joint check.

2. Reconstruction and repair of damage. If the damaged property is to be reconstructed and repaired, the funds shall be disbursed in the following manner:

(a) If the estimated costs of reconstruction and repair which are the responsibility of the Association do not exceed \$3,000, the funds shall be disbursed in payment of these costs.

If the estimated costs of reconstruction and repair which are the responsibility of the Association exceed \$3,000, the funds shall be disbursed in payment of these costs in the manner required by the Board of Directors of the Association, which shall supervise the work and

approve all disbursements as being due and properly payable.

(b) If there is a balance of insurance proceeds after payment of costs of reconstruction and repair which are the responsibility of the Association, this balance shall be distributed to owners of damaged units who have responsibility for reconstruction and repair of their units. The distribution shall be in the shares that the estimated cost of reconstruction and repair of this damage in each damaged unit bears to the total of these costs in all damaged units; provided, however, that no unit owner shall be paid in an amount in excess of the estimated costs for his unit. If there is a mortgage upon a unit, the distribution shall be paid to the unit owner and the mortgagee jointly and they may use the proceeds as they may determine.

M. Benefit of mortgagees. Certain provisions in this section are for the benefit of mortgagees of condominium units, and may be enforced by any such mortgagee and shall not be amended without the consent of all banks, savings and loan associations, mortgage companies, life insurance companies or other mortgagees holding first mortgages on units.

N. Insurance policies. A copy of each insurance policy in effect shall be available for inspection by the unit owners at reasonable times.

15. MAINTENANCE, REPAIRS AND REPLACEMENTS

A. Maintenance, repair and replacements of the common elements, including limited common elements, shall be furnished by the Association as part of the common expense.

B. Each unit owner shall furnish his unit at his own expense and be responsible for all of the maintenance, repairs and replacements within his own unit, provided,

however, that such maintenance, repairs and replacements as may be required for the bringing of water, gas or electricity to the unit shall be furnished by the Association as part of the common expense. The Association may provide in its rules and regulations for ordinary maintenance and minor repairs and replacements to be furnished to units by Association personnel at the common expense.

C. If, due to the negligent act or omission of a unit owner, or of a member of his family or household pet or of a guest or other authorized occupant or visitor of such unit owner, damage shall be caused to the common elements or to a unit or units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such unit owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association.

D. To the extent that equipment, facilities and fixtures within any unit or units shall be connected to similar equipment, facilities or fixtures affecting or serving other units or the common elements, then the use thereof by the individual unit owners shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors, or of the manager or managing agent for the building, shall be entitled to reasonable access to the individual units as may be required in connection with maintenance, repair or replacement of the common elements or any equipment, facilities or fixtures affecting or serving other units or the common elements.

E. Each unit owner shall be responsible for the maintenance, repair and replacement of all windows of his unit.

#### 16. ALTERATIONS, ADDITIONS AND IMPROVEMENTS

No alterations to any common elements and limited common elements, or any additions or improvements thereto, shall be made by any unit owner without the prior written approval of the Association.

17. ENCROACHMENTS

If any portion of the common elements shall encroach upon any unit, or if any unit shall encroach upon any portion of the common elements, as the common elements and units are shown by the surveys comprising the plat attached hereto as Schedule A, there shall be deemed to be mutual easements in favor of the owners of the common elements and the respective unit owners involved to the extent of such encroachments so long as they shall exist.

18. LIABILITIES AND REMEDIES

A. Each unit owner shall promptly pay the regular assessments against his unit when due, and any and all other assessments, charges and expenses as levied from time to time by the Board of Directors. All unpaid assessments, charges and expenses so levied shall bear interest at the maximum legal rate applicable to individuals. No owner may exempt himself from any or all of the monthly assessments or other assessments by non-use or waiver of the use or enjoyment of any of the common elements, or of the facilities of the condominium or of facilities or services of the Association or by abandonment of his unit.

B. All such assessments, charges and expenses levied upon each unit or unit owner shall support a lien in favor of the Association against the owner's unit.

C. The lien or liens held by the Association for any and all unpaid assessments, charges and expenses shall be prior to all other liens except (1) liens for assessments, charges for taxes past due and unpaid on the unit, and (2) liens securing payments due under bona fide mortgages recorded prior to the creation of such lien or liens in favor of the Association.

D. Upon the transfer of title to any unit, by whatever means, all liens thereon, except those which may be

assumed with the lienholder's consent, shall be paid out of the sales price or by the transferee. This provision shall not apply to a mortgagee who takes title by foreclosure or by deed in lieu of foreclosure, who shall be liable only for assessments accruing after its ownership commences.

E. The transferee of title to a unit shall be jointly and severally liable with the transferor thereof for any and all amounts owing by the transferor to the Association up to the time of the transfer of title, without prejudice to the transferee's right to recover from the transferor any amount thereof paid by the transferee. The Association shall provide for the issuance to every transferee, upon his request, a statement of the amounts due, and the transferee's liability hereunder shall thereupon be limited to the amount stated, except that the purchaser of a unit at a mortgage foreclosure sale, and his successors and assigns, shall not be liable therefor.

F. In the event that any lien arises against a unit due to the failure of the unit owner to pay any assessments, charges and expenses, and the assessments, charges and expenses remain unpaid for more than seven (7) days after they shall have become due and payable, or the unit owner shall in any way default under any provisions of the Condominium Act, this Declaration, the Articles of Incorporation and Bylaws, or the rules and regulations, the Association shall have each and all of the rights and remedies which may be provided for in the Condominium Act, this Declaration, or the Articles of Incorporation and the Bylaws, or which may be available at law or in equity, and may prosecute any action or other proceedings against the defaulting unit owner or others or both for enforcement of any and all liens, statutory or otherwise, including foreclosure of its liens in the manner provided in the Condominium Act and the appointment of a receiver for the

unit and the ownership interest of the unit owner, or for damages or injunction of specific performance or judgment for payment of money and collection thereof, or any combination of remedies, or for any other relief.

G. In the event of default by any unit owner, the Association shall have the authority to correct the default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against the defaulting unit owner.

H. All expenses of the Association in the enforcement hereof, whether by legal proceedings or otherwise, including court costs, attorneys' fees and other fees and expenses, shall, in addition to the amount due, be recoverable by the Association against the defaulting unit owner. Such costs, fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum legal rate chargeable to an individual, shall be charged to and assessed against the defaulting unit owner and be secured by a lien against the unit.

I. Any and all rights and remedies provided herein may be exercised at any time and from time to time, cumulatively or otherwise. The Association's rights and remedies may be waived only by written authority of the Board of Directors, and any such waiver shall not constitute a continuing waiver or be renewed or extended without such written authority.

19. RESTRICTIONS ON LEASING UNITS

No unit owner may lease his unit for a term of less than three (3) months without the prior written approval of the Association. Each unit owner must notify the Association of the name of any lessee of a unit.

20. TERMINATION

The condominium form of ownership may be terminated only by the agreement of all unit owners and all mortgagees of record. Such termination shall become effective when an instrument executed by all such owners and mortgagees in the manner required for the conveyance of land in Florida evidencing the termination has been recorded in the public records of Orange County, Florida, and the unit owners shall have executed and delivered deeds conveying all of the property to the Association. The Association shall endeavor to sell the condominium property, and shall hold the proceeds of sale in trust for the benefit of the unit owners and mortgagees. In the event that termination occurs after a casualty loss, the insurance proceeds shall be combined with the proceeds of sale. After providing for all necessary costs and expenses, including court costs and reasonable attorneys' fees in the event of litigation necessary to complete the termination and sale, the unit owners and their mortgagees shall have an undivided interest in the accumulated proceeds of sale and in any common surplus of the condominium, in accordance with the percentages or fractions of ownership in the common elements set forth in this Declaration. Membership in the Association of each unit owner shall cease upon recording of the instruments terminating the condominium and he shall thereafter have no further interest in the Association.

21. DEVELOPER'S PRIVILEGES

A. The Developer is irrevocably empowered, notwithstanding anything herein to the contrary, to sell, lease or rent units to any persons approved by him. Until all units owned by the Developer have been sold, the Developer shall have the right to transact on the condominium property any business necessary to consummate sale or re-sale of units, including, but not limited to, the right to maintain models, have signs, employees

in the office, use the common elements and to show units, until all property owned by the Developer in the condominium is sold. A sales office, signs and all items pertaining to sales, shall not be considered common elements and shall remain the property of the Developer.

B. The Developer shall not be liable for the payment of common expenses on units which he owns during the three month period beginning on the date this declaration is recorded. During that period the Developer guarantees that: (1) assessments for common expenses to unit owners other than the Developer shall not increase over the amounts set forth in the initial estimated operating budget, and (2) the Developer will pay all common expenses in excess of the amounts collected from unit owners other than the Developer. The Developer may extend the period of guaranteed assessments from month to month.

#### 22. NOTICES

Notices provided for in the Condominium Act, Declaration, Articles of Incorporation or Bylaws shall be in writing, and shall be addressed to the Association or to any unit owner at the mailing address of the condominium property or at such other address as may hereafter be provided. The Association or Board of Directors may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all unit owners at such time. Any unit owner may also designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof, or, if addressed to a unit owner, when deposited in his mailbox in the building or at the door of his unit in the building.

23. SEVERABILITY

If any provision of this Declaration, the Articles of Incorporation or the Bylaws shall be held invalid, it shall not affect the validity of the remainder of the Declaration, Articles and the Bylaws.

24. USE RESTRICTIONS

A. A unit shall be occupied and used only as a private single family residence and for no other purposes.

B. Not more than two persons may reside in any one bedroom unit and not more than four persons may reside in any two bedroom unit.

C. No unit owner may make additions, alterations or renovations which alter the exterior appearance of his unit, unless the written approval of the Board of Directors of the Association is first obtained.

D. No unit owner shall be permitted to keep pets or animals other than one cat, one dog weighing not more than 20 pounds, and one bird on the condominium property, unless the written approval of the Board of Directors of the Association is first obtained.

25. RIGHTS AND OBLIGATIONS

The provisions of this Declaration, the Articles of Incorporation and the Bylaws, and the rights and obligations established thereby, shall be deemed to be covenants running with the land so long as the property remains subject to the provisions of the Condominium Act and shall inure to the benefit of and be binding upon, each and all of the unit owners and their respective heirs, representatives, successors, assigns, purchasers, lessees, grantees, and mortgagees. By the recording or the acceptance of a deed conveying a unit or any interest therein, or any ownership interest in the property whatsoever, the person to whom such unit or interest is con-

veyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of the Condominium Act, this Declaration, the Articles of Incorporation and the Bylaws.

#### 26. CONDEMNATION

A. Deposit of awards with Association. The taking of condominium property by condemnation shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Association, even though the awards may be payable to unit owners. If a unit owner fails to do so, in the discretion of the Board of Directors of the Association a special assessment shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that owner.

B. Determination whether to continue condominium. Whether the condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty. For this purpose, the taking by condemnation shall be deemed to be a casualty.

C. Disbursement of funds. If the condominium is terminated after condemnation, the proceeds of the awards and special assessments will be deemed to be condominium property and shall be owned and distributed in the manner provided for insurance proceeds if the condominium is terminated after a casualty. If the condominium is not terminated after condemnation, the size of the condominium will be reduced, the owners of condemned units will be made whole and the property damaged by the taking will be made useable in the manner provided below. The proceeds of the awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds after a casualty.

D. Unit reduced but tenantable. If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the award for the taking of a portion of the unit shall be used for the following purposes in the order stated and the following changes shall be effected in the condominium:

1. Restoration of unit. The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the owner of the unit.

2. Distribution of surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

3. Adjustment of shares in common elements. If the floor area of the unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

E. Unit made untenable. If the taking is of the entire unit or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated and the following changes shall be effected in the condominium:

1. Payment of award. The market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and the mortgagees.

2. Addition to common elements. The remaining portion of the unit, if any, shall become a part of the common

elements and shall be placed in condition for use by all of the unit owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner elsewhere required for further improvement of the common elements.

3. Adjustment of shares in common elements. The shares in the common elements appurtenant to the units that continue as part of the condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these owners as they exist prior to the adjustment.

4. Assessments. If the amount of the award for the taking is not sufficient to pay the market value of the condemned unit to the owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by assessments against all of the unit owners who will continue as owners of units after the changes in the condominium effected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes effected by the taking.

5. Arbitration. If the market value of a unit prior to the taking cannot be determined by agreement between the unit owner and mortgagees of the unit and the Association within 30 days after notice by either party, the value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their deter-

mination upon an average of their appraisals of the unit; and a judgment of specific performance upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all unit owners in proportion to the shares of the owners in the common elements as they exist prior to the changes effected by the taking.

F. Taking of common elements. Awards for the taking of common elements shall be used to make the remaining portion of the common elements useable in the manner approved by the Board of Directors of the Association; provided, that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for further improvement of the common elements. The balance of the awards for the taking of common elements, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If there is a mortgage of a unit, the distribution shall be paid jointly to the owner and mortgagees of the unit.

G. Amendment of Declaration. The changes in units, in the common elements and in the ownership of the common elements that are effected by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all directors of the Association.

#### 27. RIGHTS OF FIRST MORTGAGEES

Notwithstanding anything in this Declaration to the contrary:

A. The prior written approval of all first mortgagees must be obtained for termination of the condominium, partition or subdivision of any unit, or any change in the undivided share in the common elements appurtenant to any unit.

B. The lien for delinquent and unpaid assessments described in this Declaration shall be subordinate to the lien of a first mortgage on any unit.

C. The Association shall furnish notice to the first mortgagee of a default in the payment of assessments by the unit owner not cured within thirty (30) days.

D. Each first mortgagee shall have the right to inspect the books and records of the Association and to require such reports as are necessary to ascertain the financial status of the condominium.

Witness:

E. L. Williams, Jr. W. S. Heindl, Jr.  
W. S. HEINDL, JR.  
Anna M. Williams

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing Declaration of Condominium was acknowledged before me this 8th day of December, 1982, by W. S. HEINDL, JR.

E. L. Williams, Jr.  
NOTARY PUBLIC

My Commission Expires:  
Notary Public, State of Florida at Large  
My Commission Expires October 14, 1985  
Bonded by The Ohio Casualty Insurance Co.

