

CERTIFICATE OF AMENDMENT

TO THE

DECLARATION OF CONDOMINIUM

OF

VIVIENDA WEST, a Condominium

VIVIENDA WEST CONDOMINIUM ASSOCIATION, INC., its address being 699 Vivienda West Boulevard, Venice, Florida 34293, Sarasota County, by the hands of the undersigned hereby certify that:

The Declaration of Condominium of VIVIENDA WEST, a Condominium, is recorded in O.R. Book 1235, page 867, of the Public Records of Sarasota County, Florida. The following amendments to the Declaration of Condominium were submitted to the entire membership of the Association at its meeting called and held on the 16th day of November, 1993, and approved by affirmative vote of not less than 66 2/3% of the entire membership of the Board of Directors and by not less than 51% of the votes of the members of the Association as required by the Declaration of Condominium.

1. Article 2.6, Definition, Common Expenses, is hereby amended by amending the initial paragraph, the initial paragraph of subparagraph (a), and by adding subparagraphs (i) and (j), to read as follows:

2.6 Common Expenses. The common expenses mean all expenses and assessments properly incurred by the Association for the condominium and all the expenses for which unit owners are liable to the Association and shall include:

(a) Costs and expenses of operation, maintenance, repair and replacement of the common elements and limited common elements; and of the portions of Units to be maintained by the Association, including but not limited to:

(i) Any valid charge against the Condominium property as a whole.

(j) The cost of master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract shall be deemed a common expense.

13
60.00

✓ 180 KANETSKY

2. Article 2, Definitions, is hereby amended by adding paragraph 2.9 to read as follows:

2.9 Singular, Plural, Gender. Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

3. Article 3.3, Proviso, is deleted in its entirety.

~~3.3 Proviso. Provided, all persons acting with reference to this condominium, whether as contract purchasers, grantees, mortgagees, lienors or otherwise, understand that at the time of the execution and recording of this Declaration and the plat attached as Exhibit "A", all of the improvements described thereon may not have been completed, and they agree for themselves, their heirs, successors and assigns, that Developer reserves the right to amend this Declaration and said plat as may be necessary or desirable from time to time to identify, locate and dimension said improvements as and when they are actually constructed. Such amendments shall not require the joinder or further consent of any unit owners or holders of liens thereon and shall be effective upon recordation in the public records of Sarasota County, Florida.~~

4. Article 3.4, Easements, is hereby amended by adding subparagraph (d), to read as follows:

3.4 Easements are expressly provided for and reserved as follows:

(d) Other Easements. Other easements, if any, as may be set forth in Exhibit "A".

5. Article 4, Appurtenances to Condominium Units, is hereby amended to read as follows:

4. Common Elements, Improvements, Unit Boundaries and Appurtenances to Condominium Units are as follows:

a. Improvements. The Condominium includes fifty (50) Residential Units. The common elements include open parking areas, driveways, lawn and landscaping and other improvements and facilities as shown on Exhibit "A". The Units, Buildings and other improvements and facilities are located substantially as shown in the plans attached hereto as Exhibit "A".

b. Unit Boundaries. Each Unit shall include that part of the Building containing the Unit which lies within the boundaries of the Unit, which boundaries shall be determined in accordance with the measurements as shown on Exhibit "A".

c. Appurtenances to Condominium Units. The owner of each condominium unit shall own an undivided share and certain interest in the

condominium property, which share and interest shall be appurtenant to the condominium unit, said undivided interest in the condominium property and common elements being as follows: an undivided 1/50th share or 2% to each condominium unit.

d. Common Elements. The common elements of the Condominium include the land and all other parts of the Condominium not within the Units and include, but are not limited to the following items:

(1) All utility areas and installations of all utility services which are available to more than one Unit or to the common elements.

(2) All planting areas (outside of Units), lawns, trees, grass and shrubs.

(3) All driveways and sidewalks and other means of ingress and egress to the Units.

(4) Other recreation facilities, if any.

(5) All mechanical equipment outside the respective Condominium Units, but not the heating and air-conditioning equipment serving each Unit.

(6) All electrical apparatus and wiring, television cables, plumbing pipes and apparatus, telephone wires, communication system and all other ducts, conduits, cables, wires or pipe not within the Units.

(7) The common elements include parking spaces as shown on Exhibit "A" for the automobiles of the Unit Owners and lawful occupants as hereinafter set forth. The exclusive use of at least one such parking space was assigned by the Developer to the owner of each Unit. An owner receiving such an assignment and the lawful occupants of such Units shall thereafter have the exclusive right to the use of such space, which shall thereafter be appurtenant to the Unit and may be transferred and reassigned only in connection with the sale, lease or transfer of the Unit. A sale or transfer of a Unit shall automatically, without further documents being filed, transfer the exclusive right to use such space to the new owner.

(8) The forgoing and all other common elements shall be available for use by all Unit Owners without discrimination except as herein set forth. Such use will be without charge except as authorized by this Declaration.

6. Article 7.2, Maintenance, Repair and Replacement by the Condominium Unit Owner, is hereby amended by amending subparagraph (g) and by adding subparagraph (h) to read as follows:

7.2 By the Condominium Unit Owner. Each condominium unit owner shall maintain, repair and replace the following portions of his condominium unit:

(g) All exterior doors, including the entrance doors, sliding glass doors, the door leading into the garage, the main garage door, windows, and screening, and screen supports which shall be maintained in such manner as to preserve a uniform appearance to the exterior of the building.

(h) All shrubs, flowers, plantings and planters which extend approximately two (2) feet from the outside wall of each unit shall be replaced by each unit owner. The Association shall maintain said area.

7. Article 7, is hereby amended by adding Articles 7.3, 7.4 and 7.5, to read as follows:

7.3 Alteration and Improvement. Neither a Unit Owner nor the Association shall make any alterations in the portions of a Unit 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, or impair any easement, without first obtaining the 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. A copy of plans for all such work prepared by an architect and/or contractor licensed to practice in this state, shall be filed with the Association prior to the start of the work.

7.4 Common Elements, By the Association. The maintenance, replacement, repair and operation of the common elements shall be the responsibility of the Association as a common expense.

7.5 Alteration and Improvements of Common Elements. After the completion of all the improvements included in the common elements which are contemplated by this Declaration, there shall be no material alteration, substantial additions or further improvement of common elements or to real property which is Association property without prior approval of two-thirds (2/3rds) of the total voting interest of the Association. There shall be no change in the shares and rights of a Unit Owner in the common elements which are altered or further improved.

8. Article 8.1, Interest; Application of Payments, is hereby amended to read as follows:

8.1 Interest; Application of Payments. Assessments and installments on such assessments paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before ten (10) days after the date when due shall bear interest at the highest rate of ~~ten percent (10%)~~ allowed by law per annum from the date when due until

paid. All payments on account shall be first applied to interest, then any administrative late fees, then to any costs and reasonable attorney's fees incurred in collection and then to the assessment payment first due. All interest collected shall be credited to the general expense account. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

9. Article 8.2, Lien for Assessments, is hereby amended to read as follows:

8.2 Lien for Assessments. The Association shall have a lien against each condominium unit for any unpaid assessments against the owner thereof, and for interest accruing thereon, which lien shall also secure reasonable attorneys' fees incurred by the Association incident to the collection of such assessment or enforcement of such lien, whether or not legal proceedings are initiated. The said lien may be recorded among the public records of Sarasota County, Florida by filing a claim therein which states the legal description of the condominium unit, and the amount claimed to be due, and said lien shall continue in effect until all sums secured by the lien, together with all costs incurred in recording and enforcing said lien, shall have been paid or until one (1) year from the date of recording the claim of lien, whichever occurs first. Such claims of lien may be signed and verified by an officer of the Association, or by a managing agent of the Association. Upon full payment the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared and recorded at his expense. All such liens shall be subordinate to the lien of ~~institutional~~ first mortgages recorded prior to the date of recording the claim of lien, and all such liens may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property. The Association may also, at its option, sue to recover a money judgment for unpaid assessments without thereby waiving the lien securing the same. In the event a mortgagee of a first mortgage of record shall obtain title to the condominium unit as a result of the foreclosure of a first mortgage, or in the event an ~~institutional~~ mortgagee as to a first mortgage of record shall obtain title to a condominium unit as the result of a conveyance in lieu of foreclosure of such first mortgage, such acquirer of title, ~~its successors and assigns,~~ shall not be liable in the amount required by law for that share of the common expenses or assessments by the Association chargeable to the condominium unit, or the owner thereof, which became due prior to the acquisition of title by such ~~institutional~~ mortgagee or ~~purchaser~~ at foreclosure sale, and any such unpaid share of common expenses, or assessments, chargeable against any such foreclosed condominium unit, or against a condominium unit transferred in lieu of fore-

closure. All monies not paid pursuant to the foreclosure or deed in lieu of foreclosure shall be deemed a common expense, to be paid in the same manner as other common expenses of the condominium by all of the condominium unit owners.

10. Article 8.4, Rights of Developers, is deleted in its entirety.

~~8.4 Rights of Developers. The Developers, pursuant to Florida Statutes 718.116(8)(b) shall be excused from paying their share of common expenses upon unsold condominium units during such period of time as they shall guarantee that the assessment for common expenses of the condominium imposed upon other condominium unit owners shall not increase over the dollar amount stated in the projected operating budget. Developers obligate themselves to pay any excess amount incurred during that period not produced by assessments at the guaranteed level receivable from other condominium unit owners. Developers have guaranteed unit assessments at the rate of \$62.00 per month per unit through the calendar year 1978.~~

11. Article 8.5, Institutional First Mortgagee, is hereby amended to read as follows:

8.5 Where an Institutional First Mortgagee of record or other purchaser of a condominium parcel obtains title thereto as a result of the foreclosure of an institutional first mortgage or where said institutional first mortgagee, such acquirer of the title, his heirs, legal representatives and assigns, shall not be liable in the amount required by law for the share of common expenses or assessments by the Association pertaining to such condominium parcel or chargeable to the former condominium unit owner of such parcel which became due prior to acquisition of title thereto as a result of the foreclosure or the acceptance of such deed in lieu of foreclosure. Such Any unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the condominium unit owners including such acquirer, his heirs, legal representatives, successors and assigns; or if there are sufficient funds then such common expenses and/or assessments shall be paid out of the proceeds of the foreclosure sale or sale pursuant to the acquisition by the institutional first mortgagee.

12. Article 8, Assessments, is hereby amended by adding Article 8.6, Late Fee, to read as follows:

8.6 Late Fee. The Association may charge an administrative late fee in addition to interest in an amount not to exceed the greater of \$25.00 or five percent (5%) of any installment of the assessment for each delinquent installment that the payment is late.

13. Article 9, Association, is hereby amended by adding Article 9.6 and 9.7 to read as follows:

9.6 Powers. The Association shall have all of the powers and duties reasonably necessary to operate the condominium property as set forth in the Condominium Act, this Declaration and the Articles of Incorporation and Bylaws of the Association, and as the same may be amended. It shall also have the power subsequent to the recording of this Declaration to acquire and enter into agreements whereby it acquires leaseholds, memberships and other possessory or use interest in real and personal property. The Association shall also have the power to contract for the management of the Condominium and to delegate to the contractor all of the powers and duties of the Association except such as are specifically required by this Declaration, the Bylaws or the Condominium Act to have the approval of the Board of Directors or the membership of the Association.

9.7 Membership and Voting Rights. All Unit Owners in the Condominium are and must be members of the Association. The owners of each Unit shall be entitled to cast one (1) vote for each Unit owned as provided in the Bylaws.

14. Article 12.1, Specific Use Restrictions, subparagraphs (a) and (i), is hereby amended to read as follows:

(a) Use a unit for any purpose other than single family residential purposes. ~~No use of the unit for single family residence purposes shall permit more than four (4) people to shall reside in one unit at a time. No one under the age of 16 years may permanently reside in a unit provided however, a person under the age of 16 years may visit and temporarily reside in a unit for 45 days or less in any calendar year.~~

(i) Divide or subdivide a unit for purpose of sale or lease ~~except to the owner of an adjacent unit, however a unit may be combined with an adjacent unit and occupied as one unit;~~

15. Article 12.1, Specific Use Restrictions, subparagraph (r), is hereby amended to read as follows:

(r) Lease less than an entire unit or lease an entire unit for a period of less than ~~thirty (30) days~~ twelve (12) months so that the high quality of this condominium shall be maintained and shall not become a lodging facilities for transients;

16. Article 12.1, Specific Use Restrictions, is hereby amended by adding subparagraph (u), to read as follows:

(u) Hold a garage, estate or similar sale within a unit or on the condominium property.

17. Article 12.2, Proviso, is deleted in its entirety.

~~12.2 Proviso. Provided, however, that until Developers have closed the sale of all of the condominium units of the condominium, neither the condominium unit owners nor the Association, nor the use of the condominium property shall interfere with the sale of the condominium units. Developers may make such use of the unsold units, common elements and common areas as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, showing of the property, and the display of signs.~~

18. Article 13.2, Approval by Association, the initial paragraph and subparagraphs (a)(2), is hereby amended to read as follows:

13.2 Approval by Association. The approval of the Association that is required for the transfer of ownership of condominium units, ~~or the leasing, or rental or occupancy in the absence of the units, owner~~ shall be obtained in the following manner:

(a) Notice to Association.

(2) Lease. A condominium unit owner intending to ~~make a bona fide lease, rent or allow his unit to be used in his absence of his condominium unit or any interest in it~~ shall give to the Association notice of such intention, (30) thirty days prior to such rental, lease or occupancy together with the ~~name and address of the intended lessee,~~ such other information concerning the intended lessee as the Association may reasonably require, including the completion and submission of an application for approval on forms adopted by the Association and if applicable a copy of the proposed lease signed by the proposed lessee. Unless the proposed lessee is a prior owner or tenant in the condominium or the geographic residence of the proposed lessee makes it unreasonable, in the Association's sole discretion, the proposed lessee must appear in person before the Board of Directors of the Association, or its agent or duly authorized committee, for a personal interview and to sign a statement that the proposed lessee will abide by the Declaration of Condominium, By-Laws, Articles of Incorporation and Rules and Regulations of the Association. The meeting shall be scheduled by the Board of Directors within 10 days from receipt of a properly completed application.

19. Article 13.2(b), Certificate of Approval, subparagraphs (1) and (2), is hereby amended to read as follows:

(b) Certificate of Approval.

(1) Sale. If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by any officer of the Association, in recordable form and shall be delivered to the purchaser or Unit owner and shall be recorded in the Public Records of Sarasota County, Florida, at the expense of the Purchaser or Unit Owner.

(2) Lease, Rental or Occupancy. If the proposed transaction is a lease, rental or occupancy in the absence of the unit owner, then within thirty (30) days after receipt of such notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by any officer of the Association, ~~in non-recordable form.~~

20. Article 13.2(d), Screening Fees, is hereby amended to read as follows:

(d) Screening Fees. The Association may require the deposit of a reasonable screening fee simultaneously with the giving of notice of intention to sell or lease, or of transfer by gift, devise or inheritance, said screening fee to be a sum not to exceed fifty One Hundred Dollars (\$50.00 100.00).

21. Article 13.5, Exceptions, is hereby amended to read as follows:

13.5 Exceptions. The foregoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to or purchase by a bank, life insurance company, savings and loan association or other institution that acquires its title as a result of owning a mortgage loan upon the condominium unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such provisions apply to transfer, sale or lease by a bank, life insurance company, savings and loan association or other institution that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires title to a condominium unit at a duly advertised public sale with open bidding as provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale or tax sale. ~~Neither shall such provisions apply to the Developers, who shall have the right to freely sell, lease, transfer or~~

~~otherwise deal with the title possession of a condominium unit without complying with the provisions of this section, and without approval of the Association.~~

22. Article 13.10, is hereby amended to read as follows:

13.10 Anything herein to the contrary notwithstanding, ~~at such time as the Developer no longer has the right to designate any member of the Board of Directors,~~ the approval or disapproval of the Association to a proposed sale, lease or other transfer shall ~~may~~ be determined by a committee of the board of directors and the action of such committee shall, for the purposes of this article, constitute the action of the Association.

23. Article 15, Developers' Right of First Refusal, is deleted in its entirety.

~~15. Developers' Right of First Refusal. Notwithstanding anything herein to the contrary, the Developers shall have the right of first refusal to purchase any condominium unit which the Association shall have the right to purchase upon the same price and at the same terms available to the Association, such right of first refusal to continue until such time as the Developers shall have completed, sold and closed on the sale of all condominium units in the condominium, or until three (3) years after the recordation of this Declaration, whichever shall first occur.~~

24. Article 16.2, Costs and Attorneys' Fees, is hereby amended to read as follows:

16.2 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a condominium unit owner or the Association to comply with the terms of the Declaration, Articles of Incorporation of the Association, the Bylaws, or the rules and regulations adopted pursuant to them, as they may be amended from time to time, the prevailing party shall be entitled to recover reasonable attorney fees and the costs of the proceeding, ~~and the Association, if it shall prevail, shall further be entitled to recover such reasonable attorneys' fees as may be awarded by the Court or the arbitrator, provided, however, no attorneys' fees shall be recovered against the Association in any such action.~~

25. Article 16, Compliance with Default, is hereby amended by adding Article 16.4, Enforcement, to read as follows:

16.4 Enforcement. The Association and its directors, officers and agents are hereby empowered to enforce this Declaration and the Bylaws and Rules and Regulations of the Association. The Association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements

or as necessary to prevent damage to the common elements or to another unit or units.

26. Article 17.2, Amendments, Resolutions, is hereby amended to read as follows:

17.2 A Resolution for the adoption of a proposed amendment may be proposed by the board of directors of the Association or by those members of the Association owning condominium units in the condominium. Owners may propose such an amendment by instrument in writing directed to the president or secretary of the board signed by persons owning not less than ten percent (10%) of the condominium units in the condominium. Amendments may be proposed by the board of directors by action of a majority of the board at any regularly constituted meeting thereof. Upon an amendment being proposed as herein provided the president or, in the event of his refusal or failure to act, the vice president elected by the directors from the condominium, or, in the event of his refusal or failure to act, then the board of directors shall call a meeting of those members of the Association owning condominium units in the condominium to be held not sooner than ~~fifteen~~ fourteen (14) days nor later than sixty (60) days thereafter for the purpose of considering said amendment. Directors and members not present in person ~~or by proxy~~ at the meeting considering the amendment may express their approval ~~in writing by proxy~~, provided such approval ~~proxy~~ is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

~~(a) Not less than sixty-six and two-third (66 2/3%) percent of the entire membership of the Board of Directors and by not less than fifty-one (51%) percent of the votes of the entire membership, or~~

~~(b) Until such time as a majority of the members of the Board of Directors of the Association shall be elected by unit owners other than the Developers, all amendments to the Bylaws shall be approved as set forth in sub-paragraph 17(a) or (d); and~~

~~(cb) In the alternative, an amendment may be made by an agreement signed and acknowledged by all condominium owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Sarasota County, Florida. Provided, however, that until such time as a majority of the members of the Board of Directors of the Association shall be elected by unit owners other than the Developers, all amendments to the Bylaws shall be approved as set forth in paragraph 17(a) or (d).~~

~~(d) Until the first election of Directors, by unit owners other than the Developers, and so long as the Developers shall have the right to fill vacancies existing in the~~

~~original Board of Directors, proposal of an amendment and approval thereof shall require only the affirmative action of all of the Directors, and no meeting of the condominium unit owners nor any approval thereof need be had.~~

27. Amend Article 17.3, Proviso, to read as follows:

17.3 Proviso. Provided, however, that no amendment shall discriminate against any condominium unit owner nor against any unit or class or group of units, unless the condominium unit owners so affected shall consent; and no amendment shall change any condominium unit nor the share in the common elements appurtenant to it, nor increase the condominium unit owner's share of the common expenses, unless the record owner of the condominium unit concerned and all record owners of mortgages on such condominium unit shall join in the execution of the amendment. ~~Neither shall an amendment make any change in the section entitled "Insurance" nor in the section entitled "Reconstruction of Repair after Casualty", unless the record owners of all mortgages upon the condominium shall join in the execution of such amendment. No amendment shall be adopted without the consent and approval of the Developers, so long as they shall own two (2) or more condominium units in VIVIENDA WEST.~~

28. Article 18.1, Termination, is hereby amended to read as follows:

18.1 Termination. The condominium may be terminated only in the manner provided in the Condominium Act, ~~except as provided in Section 18.2.~~

29. Article 18.2, Termination by Developers, is deleted in its entirety.

~~18.2 Termination by Developers. Notwithstanding anything herein contained to the contrary, the Developers may terminate this condominium at any time prior to the conveyance of the first unit by filing and recording an instrument in the Public Records of Sarasota County, Florida, specifying that the condominium is terminated, in which event this Declaration and all Exhibits hereto and all plats thereof shall be automatically canceled, vacated and terminated and of no further force and effect.~~

IN WITNESS WHEREOF, said Association has caused this Certificate to be signed in its name by its President, this 2nd day of December, 1993.

ATTEST:

VIVIENDA WEST CONDOMINIUM
ASSOCIATION, INC.

By: Phyllis J. Reil
Secretary

By: Ruth L. Bechtel
President

WITNESSES:

Rebekah E. Link

Patricia C. Fenderson

STATE OF FLORIDA
COUNTY OF SARASOTA

I HEREBY CERTIFY that on this day before me, a Notary Public in and for the State of Florida at large, personally appeared Ruth L. Bechtel, as President and Phyllis J. Reil, as Secretary, of VIVIENDA WEST CONDOMINIUM ASSOCIATION, INC., and they acknowledged before me that they are such officers of said corporation; and they executed the foregoing Certificate of Amendment of Declaration of Condominium on behalf of said corporation, and affixed thereto the corporate seal of said corporation; that they are authorized to execute said Certificate of Amendment to the Declaration of Condominium and that the execution thereof is the free act and deed of said corporation. They are personally known to me or have produced their driver's licenses as identification.

WITNESS my hand and official seal at Venice, Sarasota County, Florida this 2nd day of ~~November~~, 1993.
December

Patricia C. Fenderson
Printed Name of Notary:
PATRICIA C. FENDERSON
Notary Public
Commission # AA 246562

My Commission Expires:



RECORDED IN OFFICIAL
RECORDS
RECORD VERIFIED
93 DEC - 8 PM 4: 55
CLERK OF DISTRICT COURT
SARASOTA COUNTY, FL