

**RESTATED**

**DECLARATION OF CONDOMINIUM  
OF  
*VIVIENDA WEST, a Condominium***

**MADE BY** the undersigned Developers, for themselves, their successors, grantees and assigns.

The undersigned Developers, being the owners of fee simple title of record to those certain lands located and situate in Sarasota County, Florida, being more particularly described in an Exhibit "A" attached hereto, do hereby submit the said lands and improvements thereon to Condominium ownership pursuant to the presently existing provisions of Chapter 718 of the Florida Statutes

1. **Name.** The name by which this Condominium is to be identified is **VIVIENDA WEST, a Condominium.**

2. **Definitions.** The terms used in this Declaration and in its exhibits, including the Articles of Incorporation and Bylaws of **VIVIENDA WEST CONDOMINIUM ASSOCIATION, INC.**, shall be defined in accordance with the provisions of the Condominium Act, and as follows, unless the context otherwise requires:

2.1 **Unit** means Unit as defined by the Condominium Act.

2.2 **Unit Owner** means Unit Owner as defined by the Condominium Act.

2.3 **Association** means **VIVIENDA WEST CONDOMINIUM ASSOCIATION, INC.**, and its successors.

2.4 **Condominium Unit Owner** means the Owner of a Condominium Unit.

2.5 **Common Elements** shall include: (a) All of those items stated in the Condominium Act; (b) Tangible personal property required for the maintenance and operation of the Condominium even though owned by the Association; (c) All Condominium Property not included in the Units; and (d) Easements as set forth herein.

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:

(b) Costs of management of the Condominium and administrative costs of the Association including professional fees and expenses;

- (c) Costs of water and sewerage service, electricity and other utilities which are not metered to the individual Condominium Units;
- (d) Labor, material and supplies used in conjunction with the Common Elements;
- (e) Damages to the Condominium property in excess of insurance coverage;
- (f) Salary of a general manager, if deemed desirable by the membership, and his assistants and agents;
- (g) Premium costs of fire, windstorm and other property insurance and liability insurance as provided herein.
- (h) All other expenses that may be duly incurred by the Association through its Board of Directors from time to time in operating, protecting, managing and conserving the Condominium property and in carrying out its duties and responsibilities as provided by the Condominium Act, this Declaration, the Articles of Incorporation or the Bylaws.
- (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.

2.7 **Utility Services** shall include, but not be limited to electric power, gas, water, air conditioning, and garbage and sewage disposal and cable television services

2.8 **Developers** mean McNEARY REALTY COMPANY, a Missouri corporation, and SCHWEIKERT HOMES, INC., a Florida corporation.

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. **Condominium Description:**

3.1 **Survey and Plot Plan**. A survey of the land subject to this Condominium and a graphic description of the improvements and a plot plan locating the improvements thereon, and identifying each Unit, and the Common Elements and their relative locations and approximate dimensions are attached hereto, incorporated herein and marked **Exhibit "A"**. The Condominium Units shall be known and numbered as described in said **Exhibit "A"**.

3.2 **Units**. A Unit shall consist of a numbered lot shown on the plot plan in **Exhibit "A"** together with all improvements located thereon. Units shall each be given the same number as the particular lot upon which the improvements are located. All Units, as defined in this Declaration, shall be the subject of private ownership. Ownership of a Unit extends between the planes of the parametrical boundaries shown for the respective lots shown in **Exhibit "A"** and from the plane of the ground surface of said particular lot to a horizontal plane located 25 feet above and directly over said ground surface. In the event that the actual physical location of any improvement at any time does not precisely coincide with **Exhibit "A"** and subsequent

amendments, the actual physical locations shall control over the locations, dimensions and descriptions contained in **Exhibit "A"** and subsequent amendments. Thus, where there is a wall on a parametrical boundary, the boundary shall extend to the centerline of said wall. Where a wall, overhang or part of a dwelling encroaches on to the Common Elements, the boundary of the Unit shall be such as to include such structure.

3.3 *[Intentionally left blank]*

3.4 **Easements** are expressly provided for and reserved as follows:

(a) **Utility Easements.** Developers hereby reserve for and on behalf of itself and **VIVIENDA WEST CONDOMINIUM ASSOCIATION, INC.**, perpetual easements for the installation, construction, repair, maintenance and replacement of private and public utility lines and services of all kinds under and over the surface of the Condominium lands which are not occupied by buildings or other structures. Utility easements may be granted by the Developers or **VIVIENDA WEST CONDOMINIUM ASSOCIATION, INC.**, to any public or private utilities as may be necessary or desirable to provide utility services to any of the foregoing. All public and private utility companies rendering utility services to this Condominium shall have a perpetual nonexclusive easement over, across, under and through all of the common land areas of the Condominium for the purpose of construction, installation, maintenance, repair and replacement of the utilities servicing this Condominium and for the purpose of reading meters in connection therewith.

(b) **Encroachments.** In the event that any Unit shall encroach upon any of the Common Elements or upon any other Unit for any reason other than the intentional or negligent act of the Unit Owner, or in the event any Common Element shall encroach upon any Unit, then an easement shall exist to the extent of such an encroachment so long as the same shall exist.

(c) **Traffic.** An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, and other portions of the Common Elements as may be from time to time intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes, and such easement shall be for the use and benefit of the Unit Owners, Developers, and all those claiming by, through or under the aforesaid; provided, however, nothing herein shall be construed to give or create in any person the right to park upon any portion of the Condominium property except to the extent that space may be specifically designated and assigned for parking purposes.

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

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 pipes not within the Unit.
- (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.

5. **Liability for Common Expenses.** Each Condominium 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 Condominium Unit.

6. **Membership in Association.** Membership of each Condominium Unit Owner in the Association shall be acquired pursuant to the provisions of the Articles of Incorporation and Bylaws of the Association. The interest of each Condominium Unit Owner in the funds and assets of the Condominium held by the Association shall be in the same proportion as the liability of each Owner for Common Expense.

7. **Maintenance, Repair and Replacement.** Responsibility for the maintenance, repair and replacement regarding the Condominium property is as follows:

7.1 **By the Association.** The Association shall maintain, repair and replace as part of the Common Expense all of the Common Elements as defined herein, all exterior portions of improvements located within each Unit except for these portions to be maintained by the Unit Owner(s) as set forth in Section 7.2 hereof, and all Unit roofs and roof assemblies, and the grounds located within each Unit but outside the improvements, including but not limited to the lawn, shrubbery, landscaping and sidewalks.

The Association shall have the irrevocable right to have access to each Condominium Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement provided for herein, and during any hours for performing such emergency repairs or procedures therein as may be necessary to prevent damage to the Common Elements or to another Condominium Unit.

Damages caused to a Condominium Unit or its contents due to known and unknown defects in the Common Elements, or resulting from casualty loss, or due to water, heat, steam, smoke or other intrusion into the Unit from or through the Common Elements to another Unit shall be repaired, replaced or compensated for by the Association as part of the Common Expense, except to the extent such damage is covered by insurance maintained by the Condominium Unit Owner. The Condominium Unit Owner's insurer shall not have a right of subrogation for such damages against the Association.

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

(a) Paint, finish, covering, wallpaper and decoration of all interior walls, floors and ceiling;

(b) All built-in shelves, cabinets, counters, storage areas, and closets and all other interior fixtures;

(c) All mechanical, ventilating, heating and air conditioning equipment serving the individual Condominium Unit; any refrigerators, stoves, ovens, disposals, dishwashers and other kitchen equipment; all bathroom fixtures, equipment and apparatus;

(d) All electrical, plumbing, telephone and television fixtures, apparatus, equipment, outlets, switches, wires, pipes and conduits serving only the respective Condominium Unit; all electric lines between the Condominium Unit and its individual service panel or meter, and all water and waste lines between the Condominium Unit and the main distribution lines;

(e) All interior doors, walls (both load bearing walls and non-load bearing walls), partitions, and room dividers;

(f) All furniture, furnishings and personal property contained within the respective Condominium Unit; and

(g) All exterior doors, including the entrance doors, sliding glass doors, the door leading into the garage, the main garage door, windows, 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.

(i) All improvements to a Unit which were altered or added by or at the direction of a Unit Owner after the completion of the initial construction of the Unit.

In the event a Condominium Unit Owner fails to properly maintain and repair his Condominium Unit, the Association, at the discretion of the Board of Directors, may make such repairs as the Board may deem necessary and the cost thereof shall be assessed against such defaulting Condominium Unit Owner. The Association shall have a lien against a Condominium Unit for the cost of any repairs it shall make thereto, to the same extent as is provided by the Condominium Act for unpaid assessments, plus interest at the highest rate allowed by law and reasonable attorneys' fees incurred by the Association in the collection thereof including fees at trial and appellate levels.

7.3 **Alteration and Improvement to a Unit.** 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 work is to be done and the approval of the Board of Directors of the Association; except the Board of Directors of the Association may alter, by a majority vote of the Unit Owners, at a properly called Members' meeting, the exterior color of Units as to those portions of the Units the Association maintains. 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 alterations, substantial additions or further improvements 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. **Assessments.** The Association shall fix and determine from time to time the sum or sums of money necessary and adequate to provide for the Common Expenses and shall assess the Members for said sums. If possible, the amount of said expenses will be fixed and determined in advance for each fiscal year. The procedure for the determination of such assessments shall be set forth in the Bylaws of the Association. The Association, from time to time, shall be obligated to assess Condominium Unit Owners and/or Condominium Units in amounts no less than are required to provide funds in advance for the payment of all Common Expenses and other expenses of the Association and the Condominium, as and when due, and to enforce collection of same so that at all times the solvency of the Association, under any definition, is maintained and assured.

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 allowed by law per annum from the date when due until paid. All payments on account shall be first applied to interest, 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.

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 and enforcing said 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 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 a 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, shall 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 mortgagee 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 foreclosure. 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.

8.3 **Notification to Mortgage Holder.** The Association shall notify, in writing, the holder of a first mortgage encumbering a Condominium Unit of any default in the payment of any assessments against said Condominium Unit where said default shall continue for a period of thirty (30) days after the date upon which it was due and payable; provided, however, notice of such default need only be given where the holder of a first mortgage has notified the Association, in writing, of the existence thereof, such notice to include the name and address of the mortgagee.

8.4 *[Intentionally left blank]*

8.5 **Where a First Mortgagee** of record or other purchaser of a Condominium parcel obtains title thereto as a result of the foreclosure of a first mortgage or where said first mortgagee, such acquirer of the title, his heirs, legal representatives and assigns, shall 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. 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 first mortgagee.

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.



9. **Association.** The operation of the Condominium shall be by **VIVIENDA WEST CONDOMINIUM ASSOCIATION, INC.**, a corporation not for profit under the laws of the state of Florida, which shall fulfill its functions pursuant to the following provisions:

9.1 **Articles of Incorporation.** A copy of the Articles of Incorporation of the Association, which sets forth its powers and duties, is attached as an **Exhibit "B"**.

9.2 **Bylaws.** A copy of the Bylaws of the Association is attached as an **Exhibit "C"**.

9.3 **Limitation Upon Liability of Association.** Notwithstanding the duty of the Association to maintain and repair portions of the Condominium property, the Association shall not be liable to Condominium Unit Owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other Owners or persons.

9.4 **Restraint Upon Assignment of Shares and Assets.** The share of a Member in the funds and assets of the Association cannot and shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his Condominium Unit.

9.5 **Approval or Disapproval of Matters.** Whenever the decision of a Condominium 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 Condominium Unit Owner if in an Association meeting, unless the joinder of record Owners is specifically required by this Declaration.

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.

10. **Insurance.** The insurance other than title insurance that shall be carried upon the Condominium property and the property of the Unit Owners shall be governed by the following the provisions:

## 10.1 **Coverage.**

(a) Each Unit Owner shall, at his expense, cause the floor coverings, ceiling coverings, and wall coverings within his particular Unit to be insured in an amount equal to the maximum insurable replacement value of said improvements. Nothing herein shall be construed as prohibiting a Unit Owner from obtaining additional insurance coverage on personal property located with his particular Unit, liability coverage or such other insurance as the Unit Owner may select to the extent permitted by law.

(b) The Association shall purchase public liability insurance in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including but not limited to hired automobile and non-owned automobile coverage, and with cross liability endorsement to cover liabilities of the Unit Owners as a group to an Unit Owner.

(c) The Association shall purchase workmen's compensation policy to meet the requirements of law.

(d) The Association shall purchase and maintain adequate insurance to protect the Association, the Association property and the Condominium property to the extent required by law including but not limited to hazard insurance on all Condominium Units and buildings, and such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

10.2 **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

10.3 **Rebuild.** In the event of damage by fire or other hazards, the individual Unit Owner shall be obligated to rebuild his particular Condominium Unit in conformance to the size and exterior elevation as it was prior to destruction.

## 11. **Reconstruction or Repair after Casualty.**

11.1 **Reconstruction and Repair.** If any part of the Condominium property shall be damaged by casualty, it shall be reconstructed or repaired immediately unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

11.2 **Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the original plans and specifications for such improvements, or if not, then according to plans and specifications approved by the Board of Directors of the Association and institutional first mortgages holding mortgages on the Units involved.

11.3 **Responsibility.** If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner, the then Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility for reconstruction and repair after casualty shall be that of the Association.

11.4 **Estimates of Costs.** Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

11.5 **Assessments.** In the case of damage or destruction to property for which the Association has the responsibility for maintenance and repair, 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, the funds for the payment of the costs thereof are insufficient, the Association shall pay over sufficient amounts to provide funds to pay the estimated costs, as part of the Common Expenses of the Association to be assessed against Unit Owners.

11.6 **Construction Funds.** In the case of damage or destruction to property for which the Association has the responsibility for maintenance and repair, the funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance and funds collected by the Association from assessments against Unit Owners, if any, shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association. In such instance, the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds, and if there is a balance in the construction fund after payment of all costs of reconstruction and repair for which the fund is established, such balance shall be distributed to the Association as common surplus.

12. **Use Restrictions.** The use of the Condominium property shall be in accordance with the following provisions so long as the Condominium exists:

12.1 **Specific Use Restrictions.** No Owner, tenant or other occupant shall:

(a) Use a Unit for any purpose other than single family residential purposes. No more than four (4) people shall reside in one Unit.

(b) Make any structural additions or alterations (except the erection or removal of non-support carrying interior partitions wholly within the Unit) to any Unit or to the Common Elements;

(c) Permit loud and objectionable noises or obnoxious odors to emanate from the Unit, nor play any organ or electronically amplified musical instruments or devices which may cause a nuisance to the occupants of other Units in the sole opinion of the Board;

(d) Except for maintenance performed by a Unit Owner in accordance with Article 7.2 hereof, paint or otherwise change the appearance of any exterior wall, door, window, patio, or any exterior surface; place any sunscreen, blind or awning on any or exterior opening; place any draperies or curtains at the windows of any Unit facing the exterior of the Unit without a solid, light color liner acceptable in color to the Board of Directors; tint, color or otherwise treat or apply anything to any window which will adversely affect the uniform exterior appearance of the building in the opinion of the Board; plant any planting outside of a Unit except upon written approval of the landscaping plan by the Board of Directors of the Association; erect any exterior

lights or signs; place any signs or symbols in windows; erect or attach any structures or fixtures within the Common Elements; nor any of the foregoing without the prior written consent of the Board of Directors;

(e) Erect, construct or maintain any wire, antennas, garbage or refuse receptacles, or other equipment or structures on the exterior of the building or on or in any of the Common Elements, except with the written consent of the Board of Directors;

(f) Make any use of a Unit which violates any laws, ordinances or regulations of any governmental body;

(g) Fail to conform to and abide by the Bylaws and the uniform rules and regulations in regard to the use of the Units and the Common Elements which may be adopted from time to time by the Board of Directors or fail to allow the Board of Directors or its designated agent to enter the Unit at any reasonable time to determine compliance with the Condominium Act, this Declaration, or the Bylaws and regulations of the Association;

(h) Permit or suffer anything to be done or kept in his Condominium Unit or in the Common Elements which will increase insurance rates on any Unit or on the common property;

(i) Divide or subdivide a Unit for purpose of sale or lease;

(j) Commit or permit any nuisance immoral or illegal act in his Unit or in or on the Common Elements;

(k) Hang any laundry, garments or other unsightly objects which are visible outside of the Unit;

(l) Obstruct the common way of ingress or egress to the other Units or the Common Elements;

(m) Allow anything to remain in the common areas which would be unsightly or hazardous;

(n) Allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles (garbage cans) provided therefor, and each Unit and the Common Elements shall at all times be kept in a clean and sanitary condition;

(o) Allow any fire or health hazard to exist;

(p) Allow any animals to be kept in the Unit other than one cat or one small dog as defined by the rules and regulations of the Board of Directors of the Association, and birds and fish, provided that in the event any become a nuisance to the other Unit Owners in the sole opinion of the Board of Directors, such animals shall be removed from the Unit immediately; or allow any authorized pets to use the common areas except when on a leash accompanied by its owner and then only so long as the pet does not make a mess or otherwise disturb the common areas;

(q) Enclose the entranceway, patio, porch or interior garden except with the written consent of the Board of Directors;

(r) Lease less than an entire Unit or lease an entire Unit for a period of less than twelve (12) months so that the high quality of this Condominium shall be maintained and shall not become a lodging facility for transients;

(s) Park other than non-commercial vehicles in any parking area except service vehicles during the time they are actually serving the Unit or Common Elements; all recreational vehicles, trucks, golf carts, boats and/or boat trailers, motorcycles, motor scooters, all-terrain vehicles, motor homes, home trailers, buses, or any other vehicles found to be not acceptable by the Board, are prohibited from parking on the Condominium property, including the Common Elements or Unit areas, unless parked in a completely enclosed garage;

(t) Make use of the Common Elements in such a manner as to abridge the equal rights of the other Unit Owners to their use and enjoyment.

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

13. **Maintenance of Community Interests.** In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the Condominium Units, the transfer of Condominium Units by any Owner other than the Developers shall be subject to the following provisions as long as the Condominium exists:

13.1 **Transfers Subject to Approval.**

(a) **Sale.** No Condominium Unit Owner may dispose of a Unit or any interest in a Condominium Unit by sale without approval of the Association.

(b) **Lease.** No Condominium Unit Owner may lease a Condominium Unit without the written approval of the Association.

(c) **Gift.** If any Condominium Unit Owner shall acquire title by gift, the continuance of his ownership of his Condominium Unit shall be subject to the approval of the Association.

(d) **Devise or Inheritance.** If any Condominium Unit Owner shall acquire his title by devise or inheritance, the continuance of his ownership of his Condominium Unit shall be subject to the approval of the Association.

(e) **Other Transfers.** If any Condominium Unit Owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of his Condominium Unit shall be subject to the approval of the Association.

13.2 **Approval by Association.** The approval of the Association that is required for the transfer of ownership of Condominium Units, leasing, rental or occupy in the absence of the Unit's Owner shall be obtained in the following manner:

(a) **Notice to Association.**

(1) **Sale.** A Condominium Unit Owner intending to make a bona fide sale of his Condominium Unit or any interest in it shall give to the Association notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require. Such notice, at the Condominium Unit Owner's option, may include a demand by the Condominium Unit Owner that the Association furnish a purchaser of the Condominium Unit if the proposed purchaser is not approved and if such demand is made, the notice shall be accompanied by a copy of the proposed contract of sale signed by the proposed purchaser.

(2) **Lease.** A Condominium Unit Owner intending to lease, rent or allow his Unit to be used in his absence shall give to the Association notice of such intention, (30) thirty days prior to such rental, lease or occupancy together with such other information 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 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, Bylaws, 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.

(3) **Gift, Devise or Inheritance, Other Transfers.** A Condominium Unit Owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Association notice of the acquiring of his title, together with such information concerning the Condominium Unit Owner as the Association may reasonably require, and a certified copy of the instrument evidencing the Owner's title.

(4) **Failure to Give Notice.** If the above required notice to the Association is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of the Condominium Unit, the Association, at its election and without notice, may approve or disapprove the transaction or ownership. If the Association disapproves the transaction or ownership, the Association shall proceed as if it had received the required notice on the date of such disapproval.

(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.

(3) **Gift, Devise or Inheritance; Other Transfers.** If the Condominium Unit Owner giving notice has acquired his title by gift, devise or inheritance or in any other manner, then within thirty (30) days after receipt of such notice and information the Association must either approve or disapprove the continuance of the Condominium Unit Owner's ownership of his Condominium Unit. If approved, the approval shall be stated in a certificate executed by any Officer of the Association in recordable form.

(c) **Approval of Corporate Owner or Purchaser.** In as much as the Condominium may be used only for residential purposes and a corporation cannot occupy a Condominium Unit for such use, if the Condominium Unit Owner, purchaser or lessee of a Condominium Unit is a corporation, the approval of ownership or lease by the corporation may be conditioned by requiring that all persons occupying the Condominium Unit be approved by the Association.

(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 One Hundred Dollars (\$100.00).

13.3 **Disapproval by Association.** If the Association shall disapprove a transfer of ownership of a Condominium Unit, the matter shall be disposed of in the following manner:

(a) **Sale.** If the proposed transaction is a sale and if the notice of sale given by the Condominium Unit Owner shall so demand, then within thirty (30) days after receipt of such notice and information the Association shall deliver or shall send by registered mail to the Condominium Unit Owner an agreement to purchase the Condominium Unit signed by a purchaser approved by the Association, or an agreement to purchase signed in behalf of the Association by its President and attested by its Secretary, in which event the Condominium Unit Owner shall sell the Condominium Unit to the named purchaser at the price and upon the terms stated in the disapproved contract to sell, excepting that at the option of the named purchaser the purchase price may be in cash at closing.

(1) The sale shall be closed within thirty (30) days after delivery or mailing of the agreement to purchase or upon the date designated in the disapproved contract, whichever date shall be later.

(2) A certificate of the Association executed by any of its Officers in recordable form shall be delivered to the purchaser.

(3) If the Association shall fail to purchase or provide a purchaser upon demand of the Condominium Unit Owner in the manner provided, or if the purchaser furnished by the Association shall default in his agreement to purchase, the proposed transaction shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, in recordable form.

(b) **Lease.** If the proposed transaction is a lease, the Condominium Unit Owner shall be advised of the disapproval in writing, and the lease shall not be made.

(c) **Gift, Devise or inheritance; Other Transfers.** If the Condominium Unit Owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt from the Condominium Unit Owner of the notice and information required to be furnished the Association shall deliver or mail by registered mail to the Condominium Unit Owner an agreement to purchase the Condominium Unit concerned by a purchaser approved by the Association who will purchase and to whom the Condominium Unit Owner must sell the Condominium Unit upon the following terms:

(1) The sale price shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Condominium Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser. In any such action for specific performance the prevailing party shall be entitled to recover his reasonable attorneys' fees and court costs incurred.

(2) The purchase price shall be paid in cash.

(3) The sale shall be closed within thirty (30) days following determination of the sale price.

(4) A certificate of the Association executed by any of its Officers in recordable form shall be delivered to the purchaser.

(5) If the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding disapproval such ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, in recordable form, to the Condominium Unit Owner.

13.4 **Mortgage.** No Condominium Unit Owner may mortgage his Condominium Unit nor any interest in it without approval of the Association except to a bank, life insurance company or a savings and loan association, or to a seller to secure a portion or all of the purchase price.



The approval of any other mortgage may be upon conditions determined by the Association or may be arbitrarily withheld.

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.

13.6 **Unauthorized Transactions.** Any sale, mortgage or lease not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association, subject to the provisions of paragraph 13.9 hereof.

13.7 **Recording Approval.** Whenever in this section an approval in recordable form is required of the Association in connection with the sale, transfer or pledging of a Condominium Unit, it is understood and agreed that the said approval shall not be recorded except at the same time and simultaneously with the recording of the deed or mortgage, as appropriate, and at the option of the Owner of the Unit affected.

13.8 **Notice of Lien or Suit.**

(a) **Notice of Lien.** A Condominium Unit Owner shall give notice in writing to the Association of every lien upon his Condominium Unit other than authorized mortgages, taxes and special assessments within five (5) days after attaching of the lien.

(b) **Notice of Suit.** A Condominium Unit Owner shall give notice in writing to the Association of every suit or other proceeding which may affect the title to his Condominium Unit, such notice to be given within five (5) days after the Condominium Unit Owner shall receive notice thereof.

(c) **Failure to Comply.** Failure to comply with this sub-section concerning liens will not affect the validity of any judicial sale.

13.9 **Failure to Act.** Whenever in this section an approval is required of the Association in connection with the sale, transferring, leasing or pledging of any Condominium Unit, and such approval shall not have been obtained pursuant to the provisions hereof, failure upon the part of the Association to object in writing to such sale, transfer, leasing or pledging within ninety (90) days after the date thereof, or within thirty (30) days of the date upon which the purchaser, transferee or lessee shall take possession of the premises, whichever date shall be later, shall constitute waiver by the Association of the written consent otherwise required by this section.

13.10 **Delegation of Authority.** Anything herein to the contrary notwithstanding, the approval or disapproval of the Association to a proposed sale, lease or other transfer 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.

14. **Purchase of Condominium Units by Association.** The Association shall have the power to purchase Condominium Units subject to the following provisions:

14.1 **Decision.** The decision of the Association to purchase a Condominium Unit shall be made by its Directors, without the necessity of approval by its membership, except as is hereinafter expressly provided for.

14.2 **Limitation.** If at any time the Association shall be the owner or agreed purchaser of three (3) or more Condominium Units in the Condominium, it may not purchase any additional Condominium Units therein without the prior written approval of seventy-five percent (75%) of the Members eligible to vote. A member whose Condominium Unit is the subject matter of the proposed purchase shall be ineligible to vote thereon, provided, however, that the limitations hereof shall not apply to Condominium Units to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent assessments where the bid of the Association did not exceed the aggregate of the amounts due by virtue of any and all senior or superior liens against the Condominium Unit plus the amount due the Association, nor shall the limitation of this paragraph apply to Condominium Units to be acquired by the Association in lieu of foreclosure of such liens if the consideration therefor does not exceed the cancellation of such lien and the assumption of any existing mortgage indebtedness on the Condominium Unit.

15. *[Intentionally left blank]*

16. **Compliance with Default.** Each Condominium Unit Owner shall be governed by and shall comply with the terms of the Declaration of Condominium, Articles of Incorporation, Bylaws, and the rules and regulations adopted pursuant to those documents, as they may be amended from time to time. Failure of a Condominium Unit Owner to comply with such documents and regulations shall entitle the Association or any aggrieved Condominium Unit Owner to the following relief in addition to remedies provided by the Condominium Act.

16.1 **Negligence.** A Condominium 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 guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. A Condominium Unit Owner shall pay the Association the amount of any increase in its insurance premiums occasioned by use, misuse, occupancy or abandonment of a Condominium Unit or its appurtenances, or of the Common Elements by the Condominium Unit Owner.

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, 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.

16.3 **No Waiver of Rights.** The failure of the Association or any Condominium Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation of the Association, the Bylaws or the rules and regulations shall not constitute a waiver of the right to do so thereafter.

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.

17. **Amendments.** Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

17.1 **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.

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 fourteen (14) days nor later than sixty (60) days thereafter for the purpose of considering said amendment. Directors and Members not present in person at the meeting considering the amendment may express their approval by proxy, provided such 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 fifty-one (51%) percent of the votes of the entire membership; or

(b) 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.

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.

17.4 **Execution and Recording.** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, and the said certificate shall be executed by the President of the Association and attested by the Secretary with the formalities of a deed and shall be effective upon recordation thereof in the Public Records of Sarasota County, Florida.

18. **Termination.**

18.1 **Termination.** The Condominium may be terminated only in the manner provided in the Condominium Act.

18.2 *[Intentionally left blank]*

18.3 **Amendment.** The section concerning termination cannot be amended without consent of all unit owners and of all record owners of mortgages upon units.

19. **Severability.** The invalidity in whole or in part of any covenant or restriction or any section, sub-section, sentence, clause, phrase or word, or other provisions of this Declaration of Condominium and the Articles of Incorporation, Bylaws and rules and regulations of the Association shall not affect the validity of the remaining portions.

20. **55 + Restriction.** From and after the effective date hereof, occupancy of all Units within Vivienda West shall be by at least one person 55 years of age or older, provided, however, that any Unit currently occupied exclusively by persons less than 55 years of age or older shall be exempt from this requirement until such time as the current occupants no longer occupy the Unit. All other occupants of the Unit must be at least eighteen (18) years of age. In the event that all occupants of a Unit who are fifty-five (55) years of age or older shall die or otherwise terminate occupancy of the Unit, then the Board of Directors reserves the right to terminate the occupancy of the Unit by all persons under fifty-five (55) years of age if continued occupancy would result in less than eighty percent (80%) of the Units in the Condominium being occupied by at least one person fifty-five (55) years of age or older as of the effective date. The foregoing shall amend and supersede any provisions contained in the Declaration of Condominium to the contrary.