

OR. 1369 PG 1293

DECLARATION OF CONDOMINIUM

OF

ORCHID OAKS

(A PHASED CONDOMINIUM)

ARTICLE I

SUBMISSION STATEMENT

ORCHID OAKS DEVELOPMENT COMPANY, a Florida corporation, the Developer of ORCHID OAKS, a Phased Condominium and the owner and holder of the fee simple title in and to the real property hereinafter described in Article IV hereof, entitled "Land". Phase I of ORCHID OAKS consists of 30 units and Phase II of 27 units. Developer hereby submits the land to condominium ownership pursuant to Chapter 718, Florida Statutes, upon the terms, conditions, restrictions, reservations and limitations hereinafter set forth. Except where variances permitted by law appear in this Declaration or in the attached By-Laws or in lawful amendments to either of them, the provisions of Chapter 718, Florida Statutes as presently constituted, including the definitions therein contained, are adopted and included herein by express reference.

ARTICLE II

NAME

The name by which this condominium is to be known and is identified is ORCHID OAKS - a Condominium.

ARTICLE III

PHASES OF CONDOMINIUM

1. ORCHID OAKS is a phased condominium consisting of Phases I and II. A total of thirty units shall be constructed in Phase I, and twenty-seven units in Phase II. Phase I will be constructed on the land described in Article IV hereof as Parcel I, which parcel is submitted to condominium ownership under Article I hereof. Phase II shall be constructed on the property described in Article IV as Parcel II, which land includes the land upon which the two buildings in Phase II are to be built, adjacent parking areas and other common elements. The land is described on the plot plans and surveys attached hereto as being "Phase II -- not submitted to condominium at this time."

PREPARED BY:  
WILLIAM R. KARP ATTY.

RETURN TO:  
ISPHORDING, PAYNE & MUIRHEAD, P.A.  
P.O. BOX 1614  
VENICE, FLORIDA 33595

OR 1369 PG 1294

Twenty-seven units of Phase II shall be built in buildings similar to those in Phase I and the general size of the units shall be similar to the units in Phase I.

Each unit in Phase I will own one fifty-seventh (1/57) of the common elements as will each unit in Phase II.

The recreation areas and other facilities to be owned as common elements by all unit owners and all personal property to be provided are:

- (1) Recreation building including recreation room, office, bottle storage area and rest room facilities for both men and women.
- (2) A fifteen by thirty foot swimming pool, together with an adjoining veranda deck and jacuzzi whirlpool.
- (3) Driveways and parking areas, together with street lighting shall be provided for each phase with 1 1/2 spaces being provided for each unit, one of which will be an illuminated carport. Carports will be assigned to each unit and contain a private storage locker.
- (4) A nature park area of approximately two acres containing a fishing dock approximately fifty feet long by six feet wide. The park area will also contain two picnic areas with wood tables and benches and two barbeque grills of the post type. There will be a meadow area in the nature park and a foot path from the condominium buildings to the fishing dock.
- (5) Modest landscaping will be provided around the condominium buildings, recreation area and entrance to the condominium which will be provided with an identification sign.

All of the foregoing except for driveway, street lighting and parking spaces for Phase II will be constructed and provided in connection with the development of Phase I.

At the time of development of Phase II, recreation areas and other facilities to be owned as common elements by all unit owners and all personal property to be provided are:

- (1) The nature park area will be completed by the addition of approximately four more acres with a foot-bridge from the initial park area to the addition.
- (2) Approximately 600 feet of cleared nature paths will be included, one gazebo with benches provided near the boat dock, which is to be built in Phase I and one gazebo with benches in the addition to the nature park.

(3) A footpath across the condominium property to the security fence at a convenient location for access to the shopping center adjoining the condominium property shall also be provided.

The units in Phase II together with the recreation areas and other facilities to be owned as common elements by all unit owners shall be submitted to condominium ownership not later than January 1, 1985. Developer, its successors and assigns may make such submission at any time prior to such date.

Orchid Oaks Condominium Association, Inc. will be the association that will operate the condominium. The membership vote and ownership in the association attributable to each unit shall be one fifty-seventh (1/57) in Phase I and one fifty-seventh (1/57) in Phase II, except that should Phase II not be developed and added as a part of the condominium within the time hereinafter provided, then the owners of Phase I will each own one thirtieth (1/30) of the common elements and be responsible for one thirtieth of the common expenses.

There will not be time share estates created in any phase of ORCHID OAKS.

#### ARTICLE IV

##### LAND

The legal description of the real property to be included in Phase I of ORCHID OAKS CONDOMINIUM (the condominium) and submitted to condominium ownership is:

Phase I included by this Declaration and submitted to condominium at this time: Parcel #1.

Commence at the S.E. corner of Sec. 32, Twp. 36 S., Rge. 18 E., Sarasota County, Florida; thence S 89°52'23" W along the south line of said Sec. 32, 27.0'; thence N 0°09'16" E along the westerly R/W of Tuttle Ave., 1415.48' for a point of beginning; thence N 89°58'44" W, 80.0'; thence S 57°31'56" W, 154.34'; thence S 0°09'16" W, 62.0'; thence N 89°50'44" W, 140.0'; thence N 54°20'44" W, 160.0'; thence S 35°39'16" W, 205.0'; thence S 54°20'44" E, 145.0'; thence S 24°50'44" E, 216.0'; thence S 52°54'16" W, 182.0'; thence S 81°01'35" W, 381.05' more or less to the waters of Phillippi Creek; thence northerly along the waters of said creek the following courses; N 32°03'43" E, 231.98'; thence N 28°48'48" E, 145.5'; thence N 13°16'48" E, 87.25'; thence N 29°18'48" E, 164.25';

thence N 42°16'48" E, 296.75'; thence N 45°46'48" E, 107.5'; thence N 66°14'48" E, 51.5'; thence N 47°39'48" E, 120.0'; thence N 67°01'48" E, 76.5'; thence N 60°56'48" E, 66.7' to the westerly R/W of Tuttle Ave.; thence S 7°54'55" E along said R/W 184.03'; thence S 0°09'16" W, 210.33' to the P.O.B.

The legal description of the real property to be included in Phase II which shall be submitted to condominium as herein elsewhere set forth is:

Phase II not submitted to condominium at this time:  
Parcel #2.

Commence at the S.E corner of Sec. 32, Twp. 36 S., Rge. 18 E., Sarasota County, Florida; thence S 89°52'23" W along the south line of said Sec. 32, 27.0'; thence N 0°09'16" E along the westerly R/W of Tuttle Ave. 1415.48'; thence N 89°58'44" W, 80.0'; thence S 57°31'56" W, 154.34'; thence S 0°09'16" W, 52.0' for a point of beginning; thence continue S 0°09'16" W, 290.25'; thence N 89°58'07" W, 110.0'; thence S 35°27'05" W, 665.61'; thence S 70°00'45" W, 169.09'; thence S 77°52'23" W, 279.91'; thence N 58°21'12" W, 34.0' more or less to the waters of Phillippi Creek; thence N 32°03'48" E along the waters of said creek 482.02'; thence N 81°01'35" E, 381.05'; thence N 52°54'16" E, 182.0'; thence N 24°50'44" W, 216.0'; thence N 54°20'44" W, 145.0'; thence N 35°39'16" E, 205.0'; thence S 54°20'44" E, 160.0'; thence S 89°50'44" E, 140.0' to the P.O.B.

ARTICLE V

DEFINITIONS

In addition to the terms defined in Chapter 718, Florida Statutes as presently constituted, the following terms used in this Declaration and in the exhibits shall mean:

1. MORTGAGEE shall be construed to include but not be limited to banks, savings and loan associations, service corporations of savings and loan associations, insurance companies, Massachusetts business trusts, real estate investment trusts, mortgage bankers, mortgage brokers and agencies of the United States government.
2. OCCUPANT means a person or persons in lawful possession of a unit other than the owner or owners thereof.

ARTICLE VI

DESCRIPTION OF THE CONDOMINIUM

The condominium property when submitted to condominium ownership consists of the land described in Article IV hereof as Phase I and Phase II, and all easements and rights appurtenant thereto, together with the buildings and other improvements constructed thereon, which includes the units, common elements and limited common elements.

A survey of the land submitted and to be submitted to condominium ownership and a graphic description of the improvements in which the units in this phase are located and the identification of each unit by number so that no unit bears the same designation as any other unit, and the plot plan thereof, all in sufficient detail to identify the common elements and each unit and their respective locations and approximate dimensions is included in Exhibit "A".

The following non-exclusive easements are expressly granted and/or reserved to the owners and occupants of each condominium unit, their guests and invitees:

- (1) Utilities: Non-exclusive easements are reserved throughout the condominium property and improvements as may be required for utility services in order to adequately serve the condominium area. In the event any unit, common or limited common element encroaches upon any utility easement either granted or reserved hereby by plat or otherwise, such encroachment shall entitle the owner or owners of such encroaching property and their mortgagees, if any, to an automatic non-exclusive easement on said utility easement for as long as such encroachment shall continue.
- (2) Encroachments: All the condominium units and the common elements and the limited common elements are singly and collectively subject to easements for encroachments which now or hereafter exist or come into being for any reason other than the intentional act of a unit owner, which easements shall permit the encroachments to remain undisturbed and shall endure for so long as such encroachments exist. There shall also be a valid easement appurtenant for the maintenance of such encroachments.
- (3) Traffic: An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, halls, driveways, parking areas and lawns and other portions of the common elements as may be from time to time intended and designated for such purpose and use; 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 the space may be specifically designated and assigned for parking purposes under the rules and regulations of the association.
- (4) Maintenance: Non-exclusive easements are reserved throughout the common and limited common areas of the condominium property for maintenance purposes in order to adequately maintain the condominium.
- (5) Access: Each unit owner and guests and invitees and any officer, agent, employee or designee of the association shall have

OR 1359 PG 1298

access across any limited common elements for the purpose of ingress and egress.

(6) Construction: Developer reserves to itself its contractors, subcontractors, utility companies, agents and any other persons designated by Developer an easement for ingress and egress over the condominium property for the purpose of constructing and maintaining insofar as required by this Declaration and the Florida Statutes the condominium units and appurtenances. Developer reserves the right to construct and maintain a sign advertising the sale of units in both Phase I and Phase II of the condominium for so long as desired to sell all 57 units of both phases of the condominium.

(7) Mortgages: In the event any easement herein referred to is encumbered by the lien of a mortgage such mortgage lien shall be subordinate to the use rights of any condominium unit owner or owners whose condominium parcel is not also encumbered by said mortgage lien. In the alternative an appropriate nondisturbance agreement may be executed and recorded providing at least in part that the use rights shall not be terminated with respect to any unit owner or owners whose units have not been foreclosed for default of the mortgage.

(8) Unit Boundaries: The upper boundary and lower boundary of each unit in this phase shall be the following, extended to the perimeter boundaries:

(a) Upper Boundary: The upper boundary of units on the first and second floors of the condominium buildings shall be the bare surface of the concrete slab forming the ceiling of the unit. The upper boundary of units on the third floor shall be the back surface of the drywall forming the ceiling of the unit.

(b) Lower Boundary: Down to and including the horizontal plane of the bare surface of the structural slab which serves as such unit's floor.

(c) Perimeter Boundary: The perimeter boundary of each unit in this phase shall be up to and including the vertical plane of the back surface of the drywall serving as a perimeter wall which plane shall be extended to each level's upper and lower boundary. The units shall also include all perimeter windows, screens, doors and balconies.

ARTICLE VII

OWNERSHIP OF THE COMMON ELEMENTS  
AND SHARE IN THE COMMON EXPENSES AND SURPLUS  
APPURTENANT TO EACH UNIT

Each unit including those in Phase I and Phase II, shall have as an appurtenance thereto an undivided equal share in the common elements.

O.P. 1369 PG 1299

The common expenses shall be equally borne by the condominium unit owners in both phases and such unit owners shall share in the common surplus in equal proportions.

In the event of the termination of the condominium, the condominium property shall be owned in common by the unit owners in accordance with the provisions contained in Article XX, entitled Termination of Condominium.

#### ARTICLE VIII

##### THE CONDOMINIUM PARCEL; APPURTENANCES, POSSESSION AND ENJOYMENT

The condominium parcel is a separate parcel of real property owned in fee simple. The unit shall not be separable from the parcel and there shall pass with each unit as appurtenances thereto an undivided share in the common elements, the right to use such portion of the common elements as provided for herein and an exclusive easement for the use of the air space occupied by the unit as it now exists and as it may exist after having been lawfully altered or reconstructed from time to time, and an undivided share of the common surplus.

The owner is entitled to the exclusive possession of his unit. He shall be entitled to use the common elements in accordance with the purposes for which they are intended and no such use shall hinder or encroach upon the lawful rights of the owners of other units.

#### ARTICLE IX

##### THE CONDOMINIUM ASSOCIATION

The association responsible for the operation of this condominium is ORCHID OAKS CONDOMINIUM ASSOCIATION, INC., a Florida corporation, not for profit. The association shall have all the powers, rights and duties set forth in this Declaration, the By-Laws and the rules and regulations enacted pursuant to such By-Laws and the statutes of the State of Florida. A copy of the Articles of Incorporation of the association are appended hereto as Exhibit "B".

Amendment to the Articles of Incorporation may be made when adopted in accordance with the Articles and filed with the Secretary of State of Florida or as otherwise required by Florida Statutes. No amendment to the Articles shall change or in any way affect the phasing of this condominium or any condominium parcel or the share of the common elements, common expenses or common surplus attri-

O.R. 1369 PG 1300

butable to a parcel nor the voting rights appurtenant to a parcel without the express written consent of the owner thereof and all holders of liens upon such parcel or parcels.

#### ARTICLE X

##### OPERATION OF THE CONDOMINIUM

The operation of the condominium shall be governed by the By-Laws of the condominium association which are annexed to this Declaration as Exhibit "C" and made a part hereof. Said By-Laws may be amended in the same manner and with the same vote required as for amendments to this Declaration.

#### ARTICLE XI

##### MEMBERSHIP IN THE ASSOCIATION AND VOTING RIGHTS OF UNIT OWNERS

Every unit owner in Phase I and Phase II shall be a member in the condominium association and shall be bound by this Declaration, the Articles of Incorporation and By-Laws of the condominium association and the rules and regulations enacted pursuant thereto and also all of the provisions and requirements of the Florida Statutes and lawful amendments thereto. Membership is automatic upon acquisition of ownership of a unit and may not be transferred apart and separate from a transfer of the unit. Membership shall likewise terminate upon sale or transfer of the last unit owned whether voluntary or involuntary.

Each of the units shall be entitled to one vote at meetings of the association. In the event of joint ownership of a unit said vote shall be apportioned among the owners or exercised by one of them by agreement filed with the secretary of the association prior to the meeting at which the vote is to be cast.

#### ARTICLE XII

##### AMENDMENT OF DECLARATION

This Declaration may be amended by the approval of a resolution adopting such amendment by not less than seventy-five (75%) percent of the members of the association. Amendments may be proposed by either the Board of Directors or by not less than fifty (50%) percent of the members of the association.

Notice of the intention to propose an amendment together with the text of the proposed amendment shall be included in the notice



OR 1369 PG 1301

...amendment to be considered. Appointing a member of such meeting for the purpose of voting at any such meeting.

No amendment shall change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to such unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus unless the record owner thereof and all lianors of record thereon shall join in the execution of the amendment.

No amendment shall be effective which shall impair or prejudice the rights or priorities of any mortgages or change the provisions of this Declaration with respect to institutional mortgagees without the written approval of all institutional mortgagees of record.

No amendment shall effect the rights of the Developer without the Developer's prior approval.

No amendment shall affect the phasing into the condominium of Phase II of ORCHID OAKS.

An amendment of the Declaration will become effective when recorded in accordance with Florida Statutes.

ARTICLE XIII

RESTRICTIONS ON USE OF CONDOMINIUM PROPERTY

The following restrictions shall apply to and bind the condominium, condominium property, unit, units and parcels, to wit:

- (a) All condominium units shall be and remain of like exterior design, shape, color and appearance as the original construction.
- (b) That occupants of condominium units shall not suffer, permit or maintain in or on their premises conditions or activities which interfere with peaceful and quiet occupancy by other unit owners of their units.
- (c) No obnoxious or offensive pets shall be permitted or maintained in a unit or on the common elements. All pets shall be subject to rules and regulations of the association concerning their care and maintenance.
- (d) No unit owner nor his guests, licensees or invitees shall keep or park on the condominium property any trailer, camper, boat, motorhome, mobile home, truck or other similar vehicle.

(e) Each condominium unit shall be used exclusively for residential purpose by one family with no more than five permanent residents and no business or trade shall be permitted to be conducted therein or thereon, except for units used by the Developer for models, sales offices, construction offices, storage or related use.

(f) The occupants and owners of each unit shall keep and obey all laws, ordinances, regulations, requirements and rules of all governmental bodies, divisions or subdivisions, insofar as the same pertain to the control or use of such unit, and shall promptly pay each unit's share of all common expenses.

(g) No condominium parcel or unit shall be divided or subdivided or severed from the realty. No structural alterations or changes shall be made within said unit without prior approval of the Board of Directors of the association. With consent of the Board, two or more adjoining units may be combined into one apartment by the owners thereof, provided that such combined units will continue to bear all obligations and receive all benefits of the individual units which are the improvements thereof. For example, such combined unit shall pay the shares of common expenses allocated to each of the component units and shall be able to vote for each of the component units. Every such combined unit may later be re-separated into the original component units, with consent of the Board of Directors. Unit owners so combining or separating units shall do so at their sole expense, in a matter so as to create the least possible amount of construction activity disturbance to other unit owners and only pursuant to plans and specifications approved by the Board of Directors.

(h) Each unit owner, lessee or occupant shall maintain at all times in good condition and repair, subject to regulations by the association, all portions of such unit, including interior walls, floors, ceilings, screens, water, electric and plumbing systems and parts and components thereof, sanitary facilities, fixtures, and equipment.

(i) No wires, TV antennae, air conditioners, aerials or structures of any sort shall be erected, constructed or maintained on the exterior of the improvements to any unit, and no unit owner shall permit or maintain any exposed or outside storage or storage containers.

(j) No clothes lines, hangers or drying facilities shall be permitted or maintained on the exterior of any unit or in or on any part of the common elements, and no clothes, rugs, drapes, spreads or household articles or goods of any sort shall be dried, aired, beaten, cleaned or dusted by hanging or extending the same from any window or door.

(k) No unit owner may dispose of or keep refuse, trash or garbage in or on any exterior area of the owner's unit or on the common elements, except in those receptacles approved by the association.

O.R. 1369 Pa 1303

(l) No unit or its appurtenances shall be the subject of a partition action in any Court of the State of Florida, and all unit owners do by the acceptance of a conveyance of such unit, waive any right to maintain or bring such action.

(m) No machine or apparatus of any sort shall be used or maintained in any unit which causes interference with the television or radio reception in other units.

(n) The occupants of units shall abide by all the Uniform Rules and Regulations promulgated by the association concerning occupancy and use of the condominium units and common elements and areas, which rules and regulations shall not discriminate against any unit owner or class of unit owners.

(o) No signs of any type shall be maintained, kept or permitted on any part of the common elements or in or on any unit where the same may be viewed from the common elements, except for an entrance sign of Developer.

See Amendment dated June 7, 2007 for new Article XXIII which replaces Article XIII(p).

OR 1369 PG 1304

ARTICLE XIV

INSURANCE, REPAIR AND RECONSTRUCTION

A. LIABILITY INSURANCE:

The association shall obtain public liability and property damage insurance covering all of the common elements of the condominium and insuring the association and the unit owners, as its and their interest appear, in such amounts and providing such coverage as the membership of the association may determine from time to time. Premiums for the payment of such insurance shall be paid by the association, and such premiums shall be charged as a common expense.

B. CASUALTY INSURANCE:

1. Purchase of Insurance: The association shall obtain fire and extended coverage insurance including vandalism and malicious mischief insurance, insuring all of the insurable improvements (both common elements and units) within the condominium, including personal property owned by the association, in and for the interest of the association, all unit owners and their mortgagees, as their interest may appear, in a company acceptable to the standards set by the association, in an amount equal to the maximum insurable replacement value, as determined annually by the association. The premiums for such coverage and other expenses in connection with said insurance shall be paid by the association, and shall be charged as a common expense. The company or companies with whom the association shall place its insurance coverage, as provided in this Declaration, must be good and responsible companies authorized to do business in the State of Florida.

The institutional first mortgagee owning and holding the first recorded mortgage encumbering a condominium unit shall have the right for so long as it owns and holds any mortgage encumbering a condominium unit, to approve the policies and the company or companies who are the insurers under the insurance placed by the association, as herein provided, and the amount thereof. At such times as the aforesaid institutional first mortgagee is not the holder of a mortgage on a unit, then these rights of approval and designation shall pass to the institutional first mortgagee having the highest dollar indebtedness on units in the condominium property, and in the absence of the action of said mortgagee, the association shall have said right without qualification.

2. Loss Payable Provisions - Insurance Trustee: All policies purchased by the association, shall be for the benefit of the association, and all unit owners, and their mortgagees, as their interests may appear. Said policies shall provide that all insur-

OR 1389 PG 1305

Insurance proceeds payable on account of loss or damage shall be payable to the association. The association shall hold such policies and the proceeds in trust for the benefit of the association and the unit owners and their respective mortgagees.

3. Distribution of Proceeds: Proceeds of insurance policies received by the association shall be distributed to or for the benefit of the beneficial owners, and expended or disbursed after first paying or making provision for the payment of the expenses of the association in the following manner:

(a) Reconstruction or Repair: If the damage for which the proceeds were paid is to be repaired and restored, the proceeds shall be paid to defray the cost thereof, as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all remittance to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by said mortgagee. Said remittance shall be made solely to an institutional first mortgagee when requested by such institutional first mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt.

(b) Failure to Reconstruct or Repair: If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be repaired and restored, the proceeds shall be disbursed to the beneficial owners; remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by such mortgagee. Said remittances shall be made solely to an institutional first mortgagee when requested by such institutional first mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment of its mortgage debt. In the event of loss or damage to personal property belonging to the association, and should the Board of Directors of the association determine not to replace such personal property as may be lost or damaged, the proceeds shall be disbursed to the beneficial owners as surplus, in the manner elsewhere stated herein.

4. Construction and Repair: Where a loss is less than "very substantial", (as hereinafter defined), it shall be obligatory upon the association and the unit owner(s) to repair, restore and rebuild the damage caused by said loss in accordance with subparagraphs (a) through (f) below.

(a) The board of Directors of the association shall promptly obtain reliable and detailed estimates of the cost of repairing and restoration.

O.P. 1369 PG 1306

(b) If a damage or loss is less than \$3,000.00 and is incurred solely within a unit, the insurance proceeds shall be endorsed by the association to the affected unit owner who shall promptly contract for and repair and restore said damage.

(c) If the damage or loss is in excess of \$3,000.00 the insurance proceeds shall be disbursed in accordance with the following provisions: provided, however, that upon request of an institutional first mortgagee holding a mortgage on a damaged unit, the written approval as to the intended repair or restoration program shall be required of such mortgagee, which approval shall not be unreasonably withheld. All parties employed by the association to repair or rebuild shall deliver paid bills and waivers of mechanic's liens to the association and execute any affidavit required by law or by the association and deliver the same to the association. The institutional first mortgagee whose approval may be required, as aforescribed, shall have the right to require the association to obtain a completion, performance and payment bond in such form and amount, and with a bonding company authorized to do business in the State of Florida as are acceptable to the said mortgagee.

(d) Subject to the foregoing, the Board of Directors of the association shall have the right and obligation to negotiate and contract for such repair and restoration, and shall promptly proceed to do so and to pay the costs of such repair and restoration from the insurance proceeds and assessments, if any, made pursuant to the following provisions.

(e) If the net proceeds of the insurance are insufficient to pay for the estimated cost of restoration and repair (or for the actual cost thereof if the work has actually been done), the association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to the unit owner's share in the common elements for that portion of the deficiency as is attributable to the cost of restoration of the common elements, and against the individual owners for that portion of the deficiency as is attributable to his individual unit.

(f) In the event the insurance proceeds are sufficient to pay for the cost of restoration and repair, or in the event the insurance proceeds are insufficient but additional funds are raised by special assessment within ninety (90) days after the casualty, so that sufficient funds are on hand to fully pay for such restoration and repair, then no mortgagee shall have the right to require the application of insurance proceeds to the payment of its loan, provided however, that this provision may be waived by the Board of Directors in favor of any institutional first mortgagee, upon request therefor, at any time. To the extent that any insurance proceeds are required to be paid over to such mortgagee, the unit owner shall be obliged to replenish the funds so paid over, and said unit owner and his unit shall be subject to special assessment for such sum.

OR 1389 PG 1307

5. Very Substantial Damage: As used in this Declaration, the term "very substantial damage" shall mean loss or damage whereby three-fourths (3/4) or more of the total unit space in the condominium is rendered untenable, or loss or damage whereby seventy-five percent (75%) or more of the total amount of casualty insurance coverage relative to all units becomes payable. Should such "very substantial" damage occur, then:

(a) Any institutional first mortgagee shall have the right, if its mortgage so provides, to require application of the insurance proceeds relative to a damaged unit to the payment or reduction of its mortgage debt.

(b) The Board of Directors of the association, shall ascertain as promptly as possible, the net amount of insurance proceeds available for restoration and repair. The Board of Directors of the association shall also promptly obtain reliable and detailed estimates of the cost of repair and restoration thereof.

(c) Thereupon, a membership meeting shall be called by the Board of Directors of the association to be held not later than sixty (60) days after the casualty, to determine the wishes of the membership with reference to the abandonment of the condominium property, subject to the following:

(1) If the net insurance proceeds available for restoration and repair, together with the funds advanced by unit owners to replace insurance proceeds paid over to institutional first mortgagees, are sufficient to cover the cost thereof, so that no special assessment is required, then the condominium property shall be restored and repaired, unless two-thirds (2/3) of the unit owners of this condominium shall vote to abandon the condominium project, in which case the condominium property shall be removed from the provisions of the law by the recording of an instrument terminating this condominium, in the Public Records of the County in which this condominium is located, which said instrument shall further set forth the facts effecting the termination, certified by the association and executed by its president and secretary. The termination of the condominium shall become effective upon the recording of said instrument, and the unit owners shall, thereupon, become owners as tenants in common in the property i.e., the real, personal tangible and intangible personal property, and any remaining structures of the Condominium, and their undivided interests in the property shall be the same as their undivided interests before termination, and the mortgages and liens upon condominium parcels shall become mortgages and liens upon the undivided interests of such tenants in common with the same priority as existed prior to the termination of the condominium. Such tenancy in common property so created shall then be subject to disposition in accordance with the decisions of the holders in aggregate of not less than 2/3rds interest in such property and approval by the institutional first mortgagee, if any, then holding the largest dollar amount of

indebtedness on the property. In all events action shall be taken within a reasonable time to assure the removal of debris and remaining damaged improvements, where the same are not habitable, and all such tenants in common shall be assessed for their pro-rata share of such removal by the association, who shall be responsible for directing and arranging for the same, and shall promptly pay such share. In the event that any tenant in common fails to promptly pay any assessment so made, his interest in the common property shall be subject to a lien in favor of the association and the rights and remedies of the association relative to liens for assessments as otherwise set forth in this Declaration of Condominium and Exhibits hereto.

(2) If the net insurance proceeds available for restoration and repair, together with funds advanced by unit owners to replace insurance proceeds paid over to institutional first mortgagees, are not sufficient to cover the costs thereof, so that a special assessment will be required, and if a majority of the unit owners of this condominium vote against such special assessment and to abandon the condominium project, then it shall be so abandoned and the property removed from the provisions of the condominium law, and the condominium terminated, as set forth in subparagraph 5.(1) above, and the unit owners shall be tenants in common in the property in such undivided interests as before termination - and all mortgages and liens upon the condominium parcels shall encumber the undivided interests of such tenants in common, all as is provided in said subparagraph 5.(c)(1) above. In the event a majority of the unit owners of this condominium vote in favor of special assessments, the association shall immediately levy such assessment and, thereupon, the association shall proceed to negotiate and contract for such repairs and restoration, subject to the provisions of subparagraph 4.(c) and (d) above. To the extent that any insurance proceeds are paid over to a mortgagee, and in the event it is determined not to abandon the condominium project and to vote a special assessment, the unit owner shall be obliged to replenish the funds so paid over to his mortgagee, and said unit owner and his unit shall be subject to special assessment for such sum.

(d) In the event any dispute shall arise as to whether or not "very substantial" damage has occurred, it is agreed that such a finding made by the Board of Directors of the association shall be binding upon all unit owners.

6. Surplus: If there is a balance in the funds held by the association after the payment of all costs of the repair and restoration, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere provided herein.



OR 1369 PG 1309

7. Certificate: The association may rely upon a certificate of the association certifying as to whether or not the damaged property is repaired and restored.

8. Plans and Specifications: Any repair and restoration must be substantially in accordance with the plans and specifications for the original building, or as the building was last constructed, or according to the plans approved by the Board of Directors of the association, which approval shall not be unreasonably withheld. If any material or substantial change is contemplated, the approval of all institutional first mortgagees shall also be required.

9. Association's Power to Compromise Claim: The association is hereby irrevocably appointed agent for each unit owner for the purpose of compromising and settling claims arising under insurance policies purchased by the association, and to execute and deliver releases therefor upon the payment of claims.

10. Institutional Mortgagee's Right to Advance Premiums: Should the association fail to pay such premiums when due, or should the association fail to comply with other insurance requirements of the institutional mortgagee holding the greatest dollar volume of unit mortgages, said institutional mortgagee(s) shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance, and to the extent of the money so advanced, said mortgagee shall be subrogated to the assessment and lien rights of the association as against the individual unit owners for the payment of such item of common expense.

C. WORKMEN'S COMPENSATION POLICY:

The association shall obtain such workmen's compensation coverage as shall meet the requirements of law.

D. OTHER INSURANCE:

The association shall procure such other insurance as the Board of Directors of the association shall determine from time to time to be desirable.

ARTICLE XV

PHASING IN PHASE II

Phase II of Orchid Oaks shall become subject to all of the terms, covenants and conditions of this Declaration and all the exhibits hereto and in accordance with all of the conditions thereof upon the occurrence of the following events:

OR 1369 PG 1310

(1) The Developer, its successors or assigns, shall submit the lands described in Article IV as Parcel II to condominium as Phase II Orchid Oaks Condominium and shall file a Declaration thereof in the public records of Sarasota County, Florida.

(2) A plot plan and survey of the land submitted to Condominium and a graphic description of the improvements as required by law together with the required surveyor's certificate shall be placed of public record in Sarasota County, Florida.

Thereafter Phase I and Phase II Orchid Oaks shall be one condominium and the owners of all units in Phase I and Phase II shall be members of Orchid Oaks Condominium Association, Inc. and shall have the rights, duties and obligations as herein set forth.

#### ARTICLE XVI

##### EXPENSES OF MAINTENANCE AND REPAIR OF AIR CONDITIONING UNITS AND OTHER EQUIPMENT

Expenses of maintenance and repair of air conditioning units and other equipment shall be borne by the unit owner whether located inside the unit or in the common elements.

#### ARTICLE XVII

##### MORTGAGES SUBJECT TO APPROVAL

No unit owner may mortgage his unit nor any interest therein without the prior approval of the Association, except to a bank, life insurance company or savings and loan association, or to his vendor to secure a portion, or all, of the purchase price. Such approval may not be arbitrarily withheld.

#### ARTICLE XVIII

##### ASSESSMENTS

Common expenses shall be assessed against each unit owner by the Association as provided herein. All such assessments, including reasonable attorneys' fees and other costs of collection of the same, shall be secured by lien against the unit against which it is made and such lien shall arise in favor of the Association and shall come into effect upon recordation of this Declaration. Any such lien shall date back to the date of this Declaration and shall be prior to the creation of any homestead status or any subsequent lien or encumbrance, except that such lien shall be subordinate and inferior to that of any institutional first mort-

OR 1369 PG 1311

pages. It is specifically provided that the right to collect the common expenses, to make assessments and to enforce liens against units for collection of such common expenses may be delegated in accordance with the terms of the Association's corporate charter and its By-Laws.

In the event an institutional mortgagee obtains title to a unit as the result of foreclosure of a first mortgage thereon, or by voluntary conveying in lieu thereof, such mortgagee shall not be liable for the share of common expenses or assessments due and owing by the former unit owner which became due prior to the acquisition of title by said mortgagee. Any such unpaid share of common expenses or assessments shall be deemed to be common expenses and collectible from all unit owners in the condominium.

Notwithstanding anything to the contrary contained herein, a mortgagee of record shall be entitled to written notice from the condominium Association of any default by the mortgagor of such unit in the payment of assessments due the Association or any other default in the mortgagor's obligations under the Declaration or its Exhibits and attachments which is not cured within thirty (30) days after default.

#### ARTICLE XIX

##### TRANSFER OF ASSOCIATION CONTROL

(1) When unit owners other than the Developer own fifteen percent (15%) or more of the units in a Condominium that will be operated ultimately by an Association, the unit owners other than the Developer shall be entitled to elect no less than one-third (1/3) of the members of the Board of Administration of the Association. Unit owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Administration of an Association:

(a) Three years after fifty percent (50%) of the units that will be operated ultimately by the Association have been conveyed to purchasers;

(b) Three months after ninety percent (90%) of the units that will be operated ultimately by the Association have been conveyed to purchasers;

(c) When all units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; or

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, whichever occurs first.

(2) Within sixty (60) days after unit owners other than the Developer are entitled to elect a member or members of the Board of the Association, the Association shall call, and give no less than thirty (30) days or more than forty (40) days notice of, a meeting of the unit owners for this purpose. Such meeting may be called and the notice given by any unit owner if the Association fails to do so.

(3) If the Developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

(a) Assessment of the Developer as a unit owner for capital improvements.

(b) Any action by the Association that would be detrimental to the sales of units by the Developer; however, an increase in assessments for common expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of units.

(4) Prior to, or not more than sixty (60) days after, the time that unit owners other than the Developer, elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control to the Association, and the unit owners shall accept control. Simultaneously, the Developer shall deliver to the Association all property of the unit owners and the Association held or controlled by the Developer.

#### ARTICLE XX

#### TERMINATION

The condominium project shall continue, unless terminated by casualty loss or condemnation, until there is a voluntary termination in the manner provided for in Section 718 of the Florida Statutes as amended. In addition thereto, the condominium may be terminated by the affirmative vote of one hundred (100%) percent of the condominium unit owners in the development and further provided that the holders of all liens affecting any of the condominium units consents thereto.

#### ARTICLE XXI

#### RESERVED RIGHTS OF DEVELOPER

The Developer, its successors and assigns have hereinabove reserved certain rights to facilitate the sale of its unsold units. In addition, the reserved rights include, but are not

OR 1369 PG 1313

limited to the right to use any unsold unit or units as model units for promoting sales and related uses; the right to use the common areas for sales promotion; access, ingress and egress; and the right to maintain appropriate signs, in Developer's opinion, on the common areas relating to the development and the sale of units. Developer shall have the rights retained in this Declaration for so long as it retains one or more units for sale and this provision shall not be amended without the unanimous vote of all unit owners.

ARTICLE XXII

MISCELLANEOUS PROVISIONS

(a) The invalidity in whole or in part of any covenant or restriction of any section, sub-section, sentence, clause, phrase or word, or other provision of this Declaration of Condominium and the By-Laws and regulations of the Association shall not affect the validity of the remaining portions thereof.

(b) The common elements shall remain undivided and no owner shall bring any action for a partition, so long as the structure in question shall be utilized as a residential, non-profit, condominium apartment building.

(c) No owner of a condominium apartment unit may exempt himself from liability for his contribution towards the common expenses by waiver of the use and enjoyment of any of the common elements, limited common elements or by the abandonment of his unit.

(d) That all rights heretofore reserved for the Developer shall inure to the benefit of the existing lenders in the event the same shall come into its possession as a result of foreclosure, voluntary deed or otherwise.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this 2<sup>nd</sup> day of July, 1980.

ORCHID OAKS DEVELOPMENT COMPANY

ATTEST:

Lloyd Hill  
Secretary

By Frank E. Brown  
President

OR 1369 PG 1314

STATE OF FLORIDA )  
COUNTY OF SARASOTA )

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared of ORCHID OAKS DEVELOPMENT COMPANY, a corporation under the laws of the State of Florida to me known to be the persons described in and who executed the foregoing instrument and acknowledged before me that they executed the same as such corporate officers and affixed thereto the seal of said corporation and that said instrument is the act and deed of said corporation.

WITNESS my hand and official seal in the County and State aforesaid this 2<sup>nd</sup> day of May, 1980.

My Commission Expires:

*Sandra R...*  
Notary Public  
NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JULY 25, 1980

CONSENT TO DECLARATION

GOLDEN EAGLE SERVICE CORPORATION, as Mortgagee, by joining herein hereby consents to the foregoing Declaration of Condominium.

GOLDEN EAGLE SERVICE CORPORATION

(CORPORATE SEAL)

By *J. E. Roberts*

JAMES E. ROBERTS  
VICE PRESIDENT/TREASURER

STATE OF FLORIDA )  
COUNTY OF SARASOTA )

I HEREBY CERTIFY that on this day before me, an officer duly authorized to take acknowledgments, personally appeared

James E. Roberts, of GOLDEN EAGLE SERVICE CORPORATION, a corporation under the laws of the State of Florida to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same as such corporate officer and affixed thereto the seal of said corporation and that said instrument is the act and deed of said corporation.

WITNESS my hand and official seal in the County and State aforesaid this 2nd day of May, 1980.

My Commission Expires:

*Sandra R...*  
Notary Public

Notary Public, State of Florida at Large  
My Commission Expires Aug. 30, 1983  
Bonded by American Life & Casualty Company