

SECTION VIII
INSURANCE TRUST AGREEMENT

INSURANCE TRUST AGREEMENT

Made this 3rd day of October, 1977, between HATHAWAY ASSOCIATION, INC., a Virginia corporation not for profit, whose address is 2956 Hathaway Road, Richmond, Virginia, herein called Association, and VIRGINIA NATIONAL BANK/RICHMOND, Richmond, Virginia, a Virginia corporation, as Trustee, herein called Trustee.

WHEREIN IT IS AGREED AS FOLLOWS:

1. Hathaway Tower, the Declaration of Condominium dated February 1, 1972, and recorded in Deed Book 424, at page 455, of the Clerk's Office, Circuit Court, City of Richmond, Division II, Virginia, as amended by Amendment Number 1 to Declaration of Condominium of Hathaway Tower dated as of February 25, 1976, and recorded in the aforesaid Clerk's Office in Deed Book 484 at page 540, and as further amended by Amendment Number 2 to Declaration of Condominium of Hathaway Tower dated as of October 19, 1976, and recorded in the aforesaid Clerk's Office in Deed Book 498, page 594, created Hathaway Tower, which is a condominium of residential apartments upon the following described lands in Richmond, Virginia:

ALL that certain lot, piece or parcel of land, lying and being in the City of Richmond, Virginia, containing 4.00 acres, as is more particularly shown on the plat of survey entitled, "4.00 Acre Parcel of Land on West Line of Hathaway Road, Richmond, Va.", dated February 21, 1972, made by Bremner, Youngblood, Sharp, Inc., Consulting Engineers.

Such Declaration of Condominium and Amendments thereto are incorporated herein by reference and certified copies have been filed with the Insurance Trustee. Such instrument is herein called the Declaration.

2. PROVISIONS OF DECLARATION. The Declaration provides that certain insurance shall be purchased by the Association and that the policies and endorsements thereon shall be deposited with the Insurance Trustee and that payment for losses thereunder shall be made to the Insurance Trustee. The Declaration also makes provision for the receipt and disbursement of proceeds of such policies. This Insurance Trust Agreement is made in order to state the insurance provisions of the Declaration in an agreement with the Insurance Trustee.

3. INSURANCE TRUSTEE: SHARES OF PROCEEDS. All insurance policies purchased by the Association shall be for the benefit of the Association and the apartment owners as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to Insurance Trustee. Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the apartment owners and their mortgagees in the following shares, but which shares need not be set forth on the records of Insurance Trustee:

(a) Apartment owners. An undivided share for each apartment owner, such share being the same as the undivided share in the common elements appurtenant to his apartment.

(b) Mortgagees. In the event a mortgagee endorsement has been issued as to an apartment, the share of the apartment owner shall be held in trust for the mortgagee and the apartment owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have the right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the apartment owner and mortgagee pursuant to the provisions of the Declaration.

4. DISTRIBUTION OF PROCEEDS. Proceeds of insurance policies received by Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

(a) Expense of the trust. All expenses of Insurance Trustee shall be first paid or provisions made therefor.

(b) Reconstruction or repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to apartment owners and their mortgagees being payable jointly to them.

(c) 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 reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to apartment owners and the mortgagees being payable jointly to them.

(d) Certificate. In making distribution to apartment owners and their mortgagees, Insurance Trustee

may rely upon a certificate of Association made by its president and secretary as to the names of the apartment owners and their mortgagees, if any, and their respective shares of the distribution.

5. **ASSOCIATION AS AGENT.** By the Declaration the Association is irrevocably appointed agent for each apartment owner and for each owner of a mortgage or other lien upon an apartment and for each owner of any other interest in the condominium property to adjust all claims arising under insurance policies purchased by Association and to execute and deliver releases upon the payment of claims.

6. **BENEFIT OF MORTGAGEES.** Certain provisions of this agreement are for the benefit of mortgagees of condominium parcels, and all of such provisions are covenants for the benefit of any mortgagee of an apartment and may be enforced by such mortgagee.

7. **DETERMINATION TO RECONSTRUCT OR REPAIR AFTER CASUALTY.**

(a) **Determination.** If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the manner provided by the Declaration.

(b) **Certificate.** Insurance Trustee may rely upon certificate of Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.

8. **DISBURSEMENTS FOR RECONSTRUCTION AND REPAIR.** The proceeds of insurance collected on account of a casualty, and the sums deposited with Insurance Trustee by Association from collections of assessments against apartment owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(1) **Association — lesser damage.** If the amount of the estimated costs of reconstruction and repair is less than \$10,000.00, the construction fund shall be disbursed in payment of such costs upon the order of Association; provided, however, such funds shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage upon request to Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, or if the damaged property includes structural parts of the building.

(2) **Association — major damage.** If the amount of the estimated costs of reconstruction and repair is more than \$10,000.00, the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of Association and upon approval of an architect qualified to practice in Virginia and employed by Association to supervise the work.

(3) **Apartment owner.** If any disbursement is made to an apartment owner from insurance proceeds, and if there is a mortgagee endorsement as to such apartment, the disbursement shall be made payable to the apartment owner and mortgagee jointly.

(4) **Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner that is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

(5) **Certificate.** Notwithstanding the provisions of this instrument, Insurance Trustee shall not be required to determine whether or not sums paid by apartment owners upon assessments shall be deposited by Association with Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid. Instead, Insurance Trustee may rely upon a certificate of Association made by its president and secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is herein required to be named as payee, Insurance Trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to a unit owner; and further provided that under the following circumstances the approval of an architect named by Association shall be first obtained by Association upon disbursements in payment of costs of reconstruction and repair:

(i) Upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, or of Association.

(ii) When the report of loss made by Association to Insurance Trustee shows that the damage to property includes structural parts of the building.

(iii) When the report of loss made by Association to Insurance Trustee shows that the estimated costs of construction and repair are in excess of \$10,000.00.

9. **EMINENT DOMAIN.** Proceeds of taking of the condominium property by eminent domain may be deposited with Insurance Trustee. When directed by a certificate of Association made by its president or

secretary, such proceeds shall be disbursed in payment of the costs of repair, restoration or construction of improvements upon the condominium property in the manner provided for disbursement of insurance proceeds. The disbursement of remaining proceeds shall be in accordance with a certificate of Association made by its president and secretary, except that any disbursement to an apartment owner shall be made jointly to the owner and to each mortgagee of the apartment as to which a mortgagee endorsement of an insurance policy has been issued and is held by Insurance Trustee.

10. PROCEDURE. The funds which will be held by Insurance Trustee under this agreement will be trust funds which can be disbursed by Insurance Trustee only in strict compliance with foregoing provisions of this agreement and pursuant to the following procedural requirements in the order stated:

(a) Compensation of Insurance Trustee. After receipt of insurance proceeds or deposit of assessments by Association and prior to making any other disbursement, Insurance Trustee shall pay to itself the agreed compensation for receipt and disbursement of funds.

(b) Report of loss. Prior to further disbursement of funds Association shall report the loss to Insurance Trustee, which report shall be in the form of a certificate made by the president and secretary of Association and which shall furnish the following information:

- (1) Date of damage.
- (2) Description of cause of damage, such as by fire or windstorm.
- (3) Whether damage is to be repaired or the condominium terminated.
- (4) If to be repaired, description of damage and estimated cost to reconstruct or repair. The description of the damage shall indicate whether it is to structural parts of the building.
- (5) The report shall certify that the report has been approved by the Board of Directors of Association.

(6) The names of the officers of Association and the dates of their election. Insurance Trustee shall mail a copy of the report of loss by registered or certified mail to the following mortgagees which are named in mortgagee endorsements of insurance policies held by Insurance Trustee:

- (i) If the damage is to the common elements, to all mortgagees;
- (ii) If the damage is only to apartments, to the mortgagees of the damaged apartments.

(c) Direction of disbursement for reconstruction and repair. No disbursement for reconstruction and repair shall be made unless it is first directed by a certificate of Association made by its president and secretary stating that the sums to be paid are due and properly payable for reconstruction or repair, and stating the following information as to each disbursement:

- (1) Name and mailing address of payee.
- (2) Amount of payment.
- (3) Whether the payment is to an apartment owner.
- (4) If the total estimated cost of reconstruction or repair as shown by the report of loss is more than \$10,000.00, the certificate shall recite that the requested payment has been approved for payment in the manner authorized by the Board of Directors of the Association.

(5) The names of the officers of the Association and the dates of their election.

(d) Approval by architect of disbursement. A disbursement for reconstruction or repair shall be approved by a supervising architect employed by Association in the following instances:

- (1) If the damage as described in the report of loss is to structural parts of the building.
- (2) If the estimated cost of reconstruction or repair as shown by the report of loss is \$10,000.00 or more.

(3) If a mortgagee which is the beneficiary of an insurance policy the proceeds of which are included in the construction fund so requests in writing delivered to Insurance Trustee prior to the disbursement, or if such is requested by Association.

(e) Direction of disbursement of surplus funds after reconstruction and repair. If there is a balance of funds after payment of all costs of reconstruction and repair, the disbursement of such balance shall be authorized by a certificate of Association made by its president and secretary stating the following information:

(1) That all damaged property has been reconstructed and repaired and the costs thereof paid in full.

(2) The total amount to be disbursed, a list of all apartments in the condominium, the owner of each apartment, his mailing address and the share of the common elements appurtenant to each apartment.

(3) The names of the officers of the Association and the dates of their election.

(f) Direction of disbursement of insurance proceeds on termination of condominium. If the damaged property is not to be reconstructed or repaired, in which event the condominium will be terminated, the

disbursement of insurance proceeds shall be authorized by a certificate of Association, made by its president and secretary, stating the following information:

(1) That the damaged property is not to be reconstructed or repaired and the condominium has been terminated.

(2) A list of all apartments in the condominium indicating the owner of each apartment, his mailing address and the share of the common elements appurtenant to each apartment.

(3) The names of the officers of the Association and the dates of their election.

(g) Disbursements. When Insurance Trustee has been furnished with the certificates required by the foregoing provisions, disbursements will be made in the following manner:

(1) If a mortgagee is named in a mortgagee endorsement of an insurance policy held by Insurance Trustee and proceeds of the policy are included in the construction fund, no disbursement for reconstruction or repair shall be made until 15 days after the mailing to such mortgagees of the report of loss for the casualty concerned unless such mortgagees shall first consent.

(2) When a disbursement is made of insurance proceeds to an apartment owner, the check will be made payable jointly to the apartment owner and the mortgagee of the owner's apartment which are named in mortgagee endorsements of insurance policies held by Insurance Trustee. In all other instances, disbursements will be made to the payees named in certificates by Association authorizing disbursements.

11. TERM. This agreement shall continue as long as the members of the Association have an insurable interest in the improvements upon said lands unless sooner terminated upon reasonable notice by either party and the payment of all costs of Insurance Trustee to the date of the termination; provided that if notice of termination is given prior to the appointment of a successor Insurance Trustee, a copy of such notice shall be mailed by registered or certified mail by the party giving the notice to each record owner of a mortgage upon an apartment of the condominium.

12. INTERPLEADER. In the event of disagreement between the parties or with any of the beneficiaries or their mortgagees concerning the subject matter of this agreement, Insurance Trustee in its discretion may withhold action on its part until directed to proceed by agreement of the parties to any such dispute or by an order of a court of competent jurisdiction. Or Insurance Trustee in its discretion may deposit the subject matter of the dispute in the registry of a court of competent jurisdiction and interplead the other parties to such dispute.

EXECUTED by the parties the date above written.

HATHAWAY ASSOCIATION, INC.
By LEWIS W. MARTIN

President

ATTEST:

BILLY S. BRAY

Secretary

VIRGINIA NATIONAL BANK/RICHMOND

By _____

Senior Vice-President and Trust Officer

ATTEST:

JOHN K. BURKE

Assistant Secretary