

DECLARATION OF PROTECTIVE  
COVENANTS AND RESTRICTIONS,  
CUMBERLAND CIRCLE

This Declaration of Protective Covenants and Restrictions of CUMBERLAND CIRCLE (herein referred to as the "Protective Covenants") is made this 17<sup>th</sup> day of March, 1977 by G. G. KIRKPATRICK, JAMES H. GREENE, and ROBERT R. ROWE, their heirs, personal representatives, successors and assigns (the "Developer").

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HAMILTON COUNTY, FLA.

W I T N E S S E T H:

WHEREAS, Developer is the owner of the real property described in Article III of this Declaration and desires to create thereon a residential community with recreation facilities, street, open spaces, and other common facilities for the benefit of the said community; and,

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said recreation facilities, streets, open spaces and other common facilities; and, to this end, desires to subject the real property described in Article III, together with such additions as may hereinafter be made thereto (as provided in Article III), to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Developer has incorporated under the laws of the State of Florida, as a non-profit corporation, Cumberland Circle Community Association, Inc. for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Article III, and such additions thereto as may hereafter be made pursuant to Article III hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which shall be binding upon the Developer and subsequent owners of lots, parcels, or units in the property, and which shall run with the land.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplementary Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Community Association" shall mean and refer to the Cumberland Circle Community Association, Inc.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplementary Declaration under the provisions of Article III hereof.

(c) "Common Properties" shall mean and refer to those areas of land, including streets, and the recreational property, shown on any recorded plot plan or subdivision plat of The Properties, intended to be devoted to the common use and enjoyment of the owners of The Properties, title to which is held by the Community Association. Common Properties shall include all parts of The Properties which are not otherwise designated as Units or Special Unit.

(d) "Unit" shall mean and refer to any residential unit, lot or parcel of land shown upon any recorded plot plan, subdivision plat, or condominium or cooperative plat of The Properties, or any portion thereof, with the exception of Common Properties, as heretofore defined. Whenever a Unit consists of a portion of a larger building, plus the land under the Unit as designated on the plot plan or subdivision plat, the boundary of the Unit shall run to the middle of the common or party wall which separates one Unit from another.

(e) "Special Unit" shall mean and refer to that certain real property identified and described in Article XII hereof. Unless the context requires to the contrary, reference to Unit and Owner herein shall include the Special Unit and the owner of the Special Unit, respectively.

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Unit situated upon The Properties but notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(g) "Member" shall mean and refer to all those Owners who are members of the Community Association as provided in Article V hereof.

(h) "Existing Property" shall mean and refer to all those lands located in Alachua County, Florida, more particularly described in Article III, Section 1, hereinbelow.

(i) "Additions to Existing Property" shall mean and refer to real property, other than the Existing Property, which shall become subject to this Declaration pursuant to the provisions of Article III hereof.

(j) "Limited Common Properties" shall mean and refer to those areas of Common Property appurtenant to a Unit, such as patios, balconies, decks, and porches, and which are initially constructed by the Developer before conveyance of title to a Unit by the Developer has been made.

(k) "Cumberland Circle" shall mean and refer to the name of and the residential community project to be built and developed upon the Existing Property and any Additions to Existing Property which may hereafter become subject to this Declaration of Protective Covenants and Restrictions, hereinafter sometimes called "Declaration".

(l) "Transfer Date" shall mean and refer to that certain date when management and control of the Community Association will be turned over to the Board of Directors thereof by Developer, which date shall be April 1, 1979, or sooner, at the discretion of Developer.

## ARTICLE II

### GENERAL PLAN OF DEVELOPMENT OF CUMBERLAND CIRCLE

Section 1. General Nature of Development. The purpose of this Article is to generally describe the plan, manner, and method of development of Cumberland Circle. Therefore, the provisions and statements contained in this Article will necessarily be general in nature, and any conflict between them and more specific statements found hereafter in the remaining Articles of this Declaration shall be resolved in favor of such more specific statements.

Section 2. Development. Although Developer has acquired fee simple title to the lands described in Exhibits A and B, attached hereto, Developer is submitting only the land described in Exhibit A to the covenants and restrictions of this Declaration at this time. Such land is referred to as Existing Property, and Developer may later on submit other lands to the terms of the Declaration, which other lands shall be referred to as Additions to Existing Property. All of such land has been rezoned under and pursuant to the provisions of the City of Gainesville Planned Unit Development Ordinance, and Developer has filed with the City of Gainesville a conceptual plan of development for all of The Properties. Notwithstanding the depiction of the proposed development on such plan, the plot plans and/or plats to be filed and recorded from time to time, which will show the exact location of the Unit buildings and common facilities, shall control the exact manner of development.

Developer may, in its sole discretion, construct Unit buildings as duplexes, quadriplexes, single detached units, or in rows, and the same may be either single story or two story. Likewise, the form of ownership may include condominium or cooperative, as well as each Owner actually owning the portion of land lying beneath his Unit. If condominium or cooperative form of ownership is used, then appropriate documents for implementing same shall be used, in accordance with the provisions of Section 3, hereof. In any event, the total number of residential units to be built on the Existing Property shall not exceed thirty-two (32).

Attached hereto as Exhibit C is a surveyor's plat of the lands described in Exhibit A, and such land has been divided into six (6) lots designated as Lots A, B, C, D, E and F. Lot A shall have a total of four (4) Units located thereon; Lot B shall

have a total of four (4) Units located thereon; Lot C shall have a total of four (4) Units located thereon; Lot D shall have a total of four (4) Units located thereon; Lot E shall have a total of sixteen (16) Units located thereon; and Lot F shall have no Units, but shall have constructed thereon the bathhouse and dressing room facility, swimming pool, tennis court, and other recreational facilities to be developed by Developer. In addition, Lot F shall include the paved road to be constructed by Developer, which, in this phase of development, shall constitute a portion of the generally circular road to serve as a means of ingress and egress throughout the whole of Cumberland Circle. Such enumerated recreational amenities and paved road shall be substantially completed by Developer prior to the conveyance of the first Unit to the ultimate purchaser from Developer or a sub-developer.

After the foundations for the Units to be located in each Lot have been constructed, a survey plat or plot plan showing the actual locations of the Units to be placed upon such Lot shall be recorded and properly identified so as to describe the Units by number. Thereafter title to such Units will be conveyed by reference to a particular Unit number within a particular Lot, as by example: Unit One (1) of Lot A, Cumberland Circle.

The land described in Exhibit A is presently encumbered by a first mortgage held by an institutional mortgagee. At the time of recording of this Declaration, Lot F, which contains the recreational amenities and the roadway, will be released from the lien of such mortgage, and title thereto shall be conveyed to the Community Association. Thereafter, as each Lot is developed, that portion of such Lot which is not included within a Unit as shown on the plot plan or survey plat, and which therefore constitutes a portion of the Common Properties, will also be conveyed to the Community Association, free and clear of the lien of any mortgage. Thus, after development of Lots A, B, C, D and E has taken place, all lands lying within the legal description of Exhibit A, and which are not Units, shall have been conveyed to the Community Association, which shall hold title thereto free and clear of the liens of any mortgages.

Section 3. Additions to Existing Property. As more particularly provided hereafter, Developer may subject that certain land, or a portion thereof, described in Exhibit B to the terms of this Declaration. Developer reserves the right to develop such property as it, in its discretion, deems advisable, recognizing that under the existing Planned Unit Development zoning classification of the City of Gainesville for such land, there cannot be included thereon more than a total of fifty (50) residential units. The nature of the development of such residential units may be the same as provided for in the Existing Property, including detached single family residences, or condominium or cooperative form of ownership. In such latter event, the government, management, and operation of that development shall be administered by appropriate associations in the manner set forth in Chapters 718 and 719, Florida Statutes, and in the applicable condominium or cooperative documents. Notwithstanding such fact, the owners of residential units shall become Members in the Community Association, subject to their paying the appropriate maintenance charges and fees as provided in Article VII, and being subjected to all rules, regulations and policies of the Community Association. The condominium or cooperative association, while it shall not become a Member of the Community Association, shall enter into working arrangements with the Community Association for close cooperation in regard to budgetary, assessment, collection, contractual, and other matters.

Section 4. Community Association. The Developer has delegated to the Community Association the responsibility and duty of (a) owning, operating, administering and maintaining the Common Properties, and (b) administering and maintaining certain portions of the Units, including the carrying of hazard insurance coverage thereon, all as set forth herein, and (c) assessing and collecting the assessment charges necessary to pay the common expenses. Each owner of a Unit shall automatically be a Member of the Community Association and as such shall be entitled to the rights and privileges of such membership and be responsible for the duties of such membership, including the duties to pay assessment charges and comply with all rules and regulations of the Community Association and the terms of this Declaration.

Section 5. Special Unit. Contrary to other Units to be established in Existing Property, the boundaries of which other Units shall substantially include only that portion of land on which is actually situate the building itself, the building and land so described thereby constituting a Unit (unless the condominium or cooperative form of ownership is used), a Special Unit has been designated as provided for in Article XII hereof. Such Special Unit consists of approximately 2.78 acres, more or less, and on which is already located an existing single family residence. The Special Unit may, at some future time, be submitted to all of the covenants and restrictions of this Declaration, except that the Owner thereof shall not be required to pay Category One (1) maintenance assessments to the Community Association, even though he becomes a Member thereof. Consequently, the Owner shall be required to maintain and repair his own Unit, including lawn and grounds, and take out and maintain his own hazard insurance covering such Special Unit.

### ARTICLE III

#### PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS TO EXISTING PROPERTY

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Alachua County, Florida, and is more particularly described on the attached Exhibit A.

Section 2. Additions to Existing Property. The Developer, from time to time, may, in its discretion, cause additional portions of the surrounding lands to become subject to the Declaration which additional lands have been hereinabove defined as Additions to Existing Property. The legal description of such surrounding lands presently owned by Developer from which such Additions to Existing Property shall come is more particularly set forth on the attached Exhibit B.

(a) Supplementary Declarations. The additions authorized under this subsection shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the Additions of Existing Property, which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Any such Supplementary Declarations of Covenants and Restrictions shall interlock all rights of Members to the Community Association to the end that all rights and obligations resulting to Members of the Community Association shall be uniform as between all Units of Cumberland Circle, whether such Units are located in Existing Property or in Additions to Existing Property to the end that Owners of Units in Additions to Existing Property shall become Members in the Community Association. The real property to be added to the Existing Property and to become

subject to this Declaration shall be developed in such a manner as to provide for the preservation of the values and amenities of the Existing Property, with reasonable portions of said real property set aside for roads, open spaces, and other recreation and common facilities. Such Supplementary Declarations may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additions to Existing Property and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declarations revoke, modify or add to the covenants established by this Declaration within the Existing Property, nor will they in any way affect or impair the liens of any existing institutional first mortgages nor change or alter any of the rights of such institutional first mortgagees existing at that time without the prior written consent of such mortgagees. It shall not be necessary for anyone other than Developer, its successors and assigns, to execute the Supplementary Declaration in order to subject the surrounding lands to the provisions of this Declaration and thereby cause them to become Additions to Existing Property.

Section 3. General Provisions Regarding Additional Property. No such Additions to Existing Property may be made unless the improvements to be constructed thereon are of compatible style and quality with the Existing Property, such as will serve to preserve or enhance the values and amenities of the Existing Property. Developer may cause the development of Additions to Existing Property to be in the form of condominium or cooperative ownership, and such development may be made in accordance with the provisions of Sections 2 and 3 of Article II. No additions shall revoke or diminish the rights of the Owners of The Properties to the utilization of the Common Properties as established hereunder, except to grant to the owners of the properties being added the right to use the Common Properties as established hereunder, and to likewise grant to Unit Owners in the Existing Property the right to use the Common Properties to be established by any such Supplementary Declarations. Such Additions to Existing Property shall be made subject to and upon the following terms and conditions:

(a) Maximum Property and Units. The maximum total property which may be included within The Properties shall not be more than thirty (30.0) acres, more or less, and the maximum number of Units which may be included within The Properties shall not be more than eighty-two (82). As provided in Article XII however, the Special Unit shall be in addition to such totals of both acreage and Units.

(b) Common Properties. The Developer of such Additions to Existing Property shall be required to complete construction of reasonable additional recreational facilities and to convey legal title to the lands and improvements thereon upon which such additional recreational facilities may be located to the Community Association, prior to the sale and conveyance of any Units to ultimate purchasers within such Additions to Existing Property, which lands shall be held by the Community Association as Common Properties as described herein to the use and benefit of all Members of the Community Association. Provided, however, the Developer may cause the conveyance of such lands to the Community Association to be generally made in accordance with the provisions of Article II, Section 2 on a Lot by Lot basis. Such conveyance to the Community Association shall be by general warranty deed, free and clear of any and all easements, restrictions or encumbrances other than utility easements of record, this Declaration, the Supplementary Declaration, and condominium or cooperative documents, if appropriate.

## ARTICLE IV

### PROHIBITION OF SUBDIVISION AND PARTITION

Section 1. Prohibition of Further Subdivision. The space within any of the Units and the Common Properties shall not be further subdivided. All easements and other rights herein given to Owners of Units, including the right to be Members in the Community Association, are hereby declared to be appurtenant to such Units and shall not be separately conveyed, encumbered or otherwise dealt with separately from the Units. Any instrument, whether a deed, mortgage, or otherwise, which purports to transfer or convey a Unit, shall also transfer and convey all of the Owner's rights and easements hereunder, whether specifically mentioned or not. Once an Owner conveys title to his Unit to some other person, he shall automatically lose his rights and easements hereunder, and the grantee of the Owner shall automatically become the new Owner subject to all rights, duties and obligations hereof.

Section 2. Waiver of Partition. The Developer hereby, and each subsequent Owner of any interest in a Unit and in the Common Properties, by acceptance of a conveyance or any instrument transferring an interest, waives the right of partition of any interest in the Common Properties under the laws of the State of Florida as it exists now or hereinafter until this residential community project of Cumberland Circle is terminated according to the provisions hereof or by law. Any Owner may freely convey an interest in a Unit subject to the provisions of this Declaration. The Developer hereby reserves the right to remove any party walls between any Units in order that the said Units may be used together as one integral unit. All assessments and voting rights, however, shall be calculated as if such Units were as originally designated on the Exhibits attached to this Declaration, notwithstanding the fact that the several Units are used as one.

## ARTICLE V

### COMMUNITY ASSOCIATION

Section 1. Non-Profit Corporation. A Charter for Incorporation of CUMBERLAND CIRCLE COMMUNITY ASSOCIATION, INC., a Florida corporation not for profit, has been filed with the office of the Secretary of State of the State of Florida, and duly processed in said office to the end that said Charter has been granted. The principal purpose of the Community Association is to perform the acts and duties desirable for residential community living as provided for in this Declaration, to own and hold title to all of the Common Properties, to administer and manage Cumberland Circle in accordance with the terms and conditions hereof and subject to its Articles of Incorporation and By-Laws, and to levy and enforce collection of assessments as are necessary to perform all of said acts, duties, and obligations, and all other duties herein expressly or impliedly imposed upon the Community Association.

Section 2. Membership. Every person or entity, including Developer, who owns a vested present interest in the fee title to any one of the Units which is subject by covenants of record to



assessment by the Community Association, or any person owning a vested present interest in the fee title in any acreage which has been included within The Properties as an Addition to Existing Property, as provided herein, shall automatically be a Member of the Community Association, provided that any such person or entity who holds such interest merely as a security for the performance of any obligation shall not be a Member. Such membership shall continue for so long as such ownership continues, and shall automatically terminate when such person or entity no longer owns such interest.

Section 3. Voting Rights. The Owners of each Unit shall be entitled to cast one (1) vote for such Unit. Where a Unit is owned by more than one person or entity, all the Owners thereof shall be collectively entitled to the vote assigned to such Unit, and such Owners shall, in writing, designate an individual who shall be entitled to cast a vote for the Owners of that Unit. Additionally, the Developer, its successors and assigns, shall be entitled to cast one (1) vote for each Unit space which may be permitted upon the Properties under the terms of the Planned Unit Development Zoning Ordinance of the City of Gainesville, and which is not then developed or constructed at the time of the vote, so long as the lands on which such Unit spaces are located have been submitted to the terms of this Declaration as Existing Property or become Additions to Existing Property by recordation of the appropriate Supplementary Declaration. The Developer does hereby affirm that the total number of Units which may be developed and constructed in accordance with the provisions of such Ordinance is as follows:

(1) as to the lands described in  
Exhibit A---32;

(2) as to the lands described in  
Exhibit B---50.

The voting rights attributable to such acreage, based upon the permitted Unit spaces which are not then developed and constructed, shall terminate and be extinguished if the lands are used for other than single family residential purposes or, even though so used, are not first submitted to the covenants and restrictions of this Declaration by the proper recordation of a Supplementary Declaration.

Section 4. Board of Directors; By-Laws; and Rules and Regulations. All of the affairs, policies, regulations and property of the Community Association shall be controlled and governed by the Board of Directors thereof, which Board shall consist of no fewer than five (5) nor more than nine (9) Members, the exact number to be determined by the Members of the Community Association prior to the vote therefor. Such directors shall be elected annually by all of the Members entitled to vote, and each director shall be the Owner of a Unit (or partial owner of a Unit where such Unit is owned by more than one individual), (or if a Unit is owned by a corporation, including Developer, any duly elected officer or director of an owner corporation may be elected a director or directors). The By-Laws which govern and control the Community Association are attached hereto and marked Exhibit D and by reference made a part hereof. Additionally, the Board of Directors may promulgate and enforce reasonable uniform rules and regulations which may be necessary or expedient for the general control, management, and operation of Cumberland Circle in accordance with the purposes



and objectives of a planned residential community association and subject to the provisions hereof.

## ARTICLE VI

### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 hereof, every Member shall have a perpetual non-exclusive right and easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Unit.

Section 2. Title to Common Properties. The Developer shall complete all planned improvements upon the Common Properties and shall convey legal title to that portion of same on which the improvements are located to the Community Association on a Lot by Lot basis as provided in Article II, Section 2. Such improvements to be completed by Developer shall include the street and roadway which will allow Unit Owners a means of ingress and egress to and from a public right-of-way which lies contiguous to the Existing Property on the east side thereof, as well as recreational facilities and other amenities. The Community Association shall hold title to such Common Properties for the use and benefit of all Members of the Community Association and shall not alienate such title without the approval of all holders of institutional first mortgages upon the Units contained within The Properties.

Section 3. Condemnation of Common Properties; The Application of Condemnation Proceeds. In the event all or any portion of the Common Properties should be condemned and taken by public authority having the power of eminent domain, all proceeds as a result of such condemnation shall be paid to and held by the Community Association for the use and benefit of the Members of the Community Association. All such condemnation proceeds shall be utilized to restore the Common Properties to the condition existing prior to such condemnation, insofar as may be possible; provided, in the event the Community Association should fail or be unable to so restore the Common Properties for whatever reason, such condemnation proceeds shall be distributed to all Unit Owners equally, but in the event a particular Unit is encumbered by any institutional first mortgage, then such equal payment shall be made to the Unit Owner and holder of such mortgage jointly, to be used to reduce the principal balance of the mortgage.

Section 4. Easements for Utilities and Services, Encroachments, and Maintenance by Community Association. The Developer hereby gives and grants the easements described below upon the Common Properties, and reserves unto itself, its heirs, personal representatives, successors and assigns, the right to grant further similar easements until the Transfer Date, and after the Transfer Date, the Community Association shall automatically succeed to the right to grant such easements:

(a) An easement or easements on, upon, across, through and under the Common Properties to provide, service, repair and maintain the equipment required to provide (which easement may include reasonable rights of access for persons and equipment necessary to accomplish such purposes) utility services, including, without limitation, power, electric, light, telephone, cable television, gas, water, sewer, drainage, and any other utility or service upon or for the benefit of any part of The Properties, provided, however, no such easements

will be granted with respect to any part of The Properties lying beneath a Unit after the construction thereof.

(b) An easement or easements in favor of Alachua County, or the City of Gainesville, Florida, or any agency thereof, or any franchised, private or public utility thereof, for access and for the providing and maintaining of any municipal services to The Properties, including, without limitation, garbage and trash collection, police, fire protection, etc. In addition, an easement is granted to the City of Gainesville for the purpose of allowing it to exercise its rights of maintenance of the common spaces and grounds in the event of default of same by the Community Association in accordance with Article VII, Section 3, the same being a requirement of the Planned Unit Development Ordinance of the City of Gainesville. No such easements hereby given and granted in this Section 4 shall be construed as permitting the public to come upon The Properties, and the same shall be used only for the purpose of furnishing such services by the duly designated employees of those governmental authorities or other suppliers providing same.

(c) An easement for encroachment in the event that any improvements upon the Common Properties now or hereafter encroach upon any of the Units, and in the event that any Unit not or hereafter encroaches upon the Common Properties as a result of a surveying error or inaccuracies in construction or reconstruction, or due to settlement or movement of any of such improvements so that the encroaching improvements shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance of the encroaching improvements in favor of the owner of such improvements.

(d) An easement or easements in favor of the Community Association to enter in and upon the Units as may be necessary to perform its responsibilities and duties of maintaining, painting, staining, and repairing such Units as set forth herein.

5. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Community Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties, which shall not include the right to mortgage real property, but may include the right to mortgage or pledge personal property.

(b) The right of the Community Association, as provided in its Articles and By-Laws, to suspend the enjoyment right of any Member for any period not to exceed thirty (30) days, for any infraction of its published rules and regulations.

(c) The rights of Members of the Community Association shall in no wise be altered or restricted because of the location of a portion of the Common Properties in either Existing Property or in Additions to Existing Property. Common Properties belonging to the Community Association shall result in membership use entitlement, notwithstanding the particular section of Cumberland Circle in which the Unit is acquired and owned.

## ARTICLE VII

### ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments; Claim of Lien. The Developer, for each Unit owned within The Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Community Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and emergency requirements, such assessments to be established and collected in the manner hereinafter provided. The annual and special assessments, together with interest and cost of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made. Each such assessment, together with interest, cost of collection, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due. The personal obligation for such delinquent assessments shall also pass to his successors in title, provided the Community Association has caused a claim of lien to be recorded in the Public Records of Alachua County giving notice to all persons that the Community Association is asserting a claim of lien upon the Unit prior to the conveyance of title to the Unit. Said claim of lien shall state the description of the Unit, the name of the record owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by an officer of the Community Association or by a managing agent of the Community Association. Upon full payment of the total amount due, the party making payment shall be entitled to a recordable satisfaction of such lien. Liens for assessment may be foreclosed by suit brought in the name of the Community Association in like manner as a foreclosure of a mortgage on real property. In such foreclosure, the Owner of a Unit shall be required to pay a reasonable rental for the Unit, and the Community Association shall be entitled as a matter of law to the appointment of a receiver to collect same.

Section 2. Purpose of Assessments. The assessments levied by the Community Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners of Units in The Properties, and in particular for the improvement and maintenance of properties, services, and facilities devoted to the purpose and related to the use and enjoyment of the Common Properties and of the Units situated upon The Properties, including, but not limited to the following:

(a) Payment of operating expenses of said Community Association, including management fee and manager's salary, if any, and legal and accounting fees;

(b) Lighting, improvement, maintenance, and beautification of access ways, streets, and easement areas, and the acquisition, maintenance, repair and replacement of directional markers and signs and traffic control devices, and costs of controlling and regulating traffic on the access ways, which are the responsibility of the Community Association;

(c) Maintenance, improvement, and operation of drainage easements and systems;

(d) Management, maintenance, improvement, and beautification of recreation areas and facilities, the Common Properties, and all common open spaces, including the landscaping and maintenance thereof in a neat and orderly fashion;

(e) The maintenance, repair, and replacement of all portions of a Unit, except interior surfaces, which contribute to the support of the Unit and the building of which it is a part, which portions shall include but not be limited to load bearing columns, load bearing walls, roofs, outside walls, stairways, and all Limited Common Properties.

(f) Maintenance, repair, and replacement of all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the portions of a Unit maintained by the Community Association, and all such facilities contained within a Unit which service a part or parts of the building in which they are located other than the Unit within which contained. This provision specifically excludes from its coverage any air conditioning and heating compressor facility, and also any other facility for the furnishing of utility services, now or hereafter installed outside any of the buildings, and which is intended only for the purpose of furnishing such utility service to an individual Unit, which facility shall be owned by each Unit Owner.

(g) All incidental damage caused to a Unit by reason of the maintenance, repair, and/or replacement which is the responsibility of the Community Association, and such damage shall be promptly repaired by the Community Association;

(h) Garbage collection and trash and rubbish removal;

(i) Providing police protection, night watchmen, guard and gate services, but only when and to the extent specifically authorized by said Community Association;

(j) Repayment of funds and interest thereon borrowed by the Community Association, if any;

(k) Payment of premiums for both hazard and liability insurance required to be kept and maintained by the Community Association;

(l) Payment of real and tangible personal property taxes, if any there be, assessed against properties, title to which is owned and held by the Community Association;

(m) Doing any other thing necessary or desirable, in the judgment of said Community Association, to keep Cumberland Circle neat and attractive or to preserve or enhance the value of the properties therein, or to eliminate fire, health, or safety hazards, or, which in the judgment of said Community Association, may be of general benefit to the owners or occupants of lands included in The Properties;

(n) Doing any and all other things which may be required by the Community Association to do, or which may be necessarily implied, by any other provision of this Declaration.

Section 3. Rights of City of Gainesville. The Developer hereby acknowledges and declares that The Properties which are more particularly identified and described in the attached Exhibits A and B have been rezoned by the City of Gainesville under its Planned Unit Development Ordinance, the same being Section 29-35.1.04 of the Gainesville Code of Ordinances. In accordance with said Ordinance, the Developer hereby agrees, and each subsequent Owner of a Unit in The Properties, by acceptance of his deed, likewise agrees that the City of Gainesville shall have the right, if it so chooses, but not the obligation, to enter in and upon all of the Common Properties and thereby perform such necessary maintenance on all of such common open spaces to reasonably keep such land in a proper manner upon default of the Community Association to do so under its obligations set forth in Article IX, Section 1. In such event, each Unit Owner shall be responsible for an equal share of any costs incurred by the City as if the same constituted a Category Two (2) assessment under the provisions of Section 6 hereof. The costs incurred by the City shall constitute a lien on all of The Properties, enforceable as other public improvement liens, and shall bear interest at the rate of 8% per annum until paid.

Section 4. Annual Assessments. The Board of Directors of the Community Association shall approve annual budgets in advance for each fiscal year, and the budgets shall project anticipated income and estimated expenses in sufficient detail to show separate estimates for fire and extended coverage and vandalism and malicious mischief insurance for the Units and the Common Properties, public liability insurance for the Common Properties, operating expenses, maintenance expenses, repairs, utilities, replacement reserve, and reasonable operating reserve, and any other items which the Board deems proper. Failure of the Board to include any item in the annual budget shall not preclude the Board from levying an additional assessment in any fiscal year for which the budget has been projected. Likewise, any provision to the contrary herein contained notwithstanding, the Board may increase the amount of levy during a fiscal year after the budget has been adopted and the assessment been made if the Board determines that additional monies will be required in order to fund and pay for any expenses otherwise properly included within the annual assessment. Such annual assessment shall be separated into two categories, known as Category One (1) and Category Two (2). Category One (1) shall be limited to the amount estimated by the Board to be sufficient for the fulfilling of the Community Association's obligation for maintaining and repairing of Units, plus a reasonable reserve for such purpose. Category Two (2) shall include sums estimated by the Board to be sufficient to pay for all other expenses and obligations of the Community Association.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 4 hereof, the Community Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto. Provided, however, that no such special assessment shall

be levied when the amount thereof shall exceed one-half (1/2) of the current regular annual assessment, unless prior written consent is received from all voting Members. Notwithstanding any other provision to the contrary herein contained, the Community Association shall have the right to levy a special assessment for the purpose of defraying the costs of any construction or reconstruction, repair, or replacement of any part of the Units in the event that damage or destruction occurs to same, and the insurance proceeds received by it, as provided in Article X, shall not be sufficient to pay the total costs thereof. The total amount which may be so assessed and levied shall not exceed the amount necessary to pay for such costs, reduced by the amount of insurance proceeds actually received.

Section 6. Rate of Assessment. The rate of assessment for annual and special assessments shall be as follows:

(1) For annual assessments, Category Two (2), and for special assessments, the rate shall be equal and uniform for all Units;

(2) For annual assessments, Category One (1), the rate shall be prorated among all of the Units on the basis of Unit size, nature and character of construction, and other similar criteria, all as may be determined by the Board of Directors.

Section 7. Notice of Assessment. After adoption of a budget and determination of the annual assessment per Unit, the Community Association shall assess such sum by promptly notifying all Owners of Units by delivering or mailing notice thereof to the Member representing each Unit at such Member's most recent address as shown on the books and records of the Community Association. One-twelfth (1/12) of the annual assessment so levied shall be due and payable in advance to the Community Association on the first day of each month regardless of whether or not Members are sent or actually receive a written notice thereof.

Section 8. Delinquent Assessments. If the assessment is not paid on or before fifteen (15) days after the date when due, then such assessment shall become delinquent and shall, together with interest thereon at the rate of Ten Percent (10%) per annum and costs of collection thereof, thereupon become a continuing lien on the Unit as provided in Section 1 hereof. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period, notwithstanding that title to the Unit may be transferred to another with the lien still remaining thereon.

If a monthly installment upon the annual assessment is not paid within thirty (30) days after the date when due, the Community Association shall have the right at any time thereafter to accelerate and declare the entire balance of the annual assessment for that year immediately due and payable, and the assessment shall bear interest from the date of delinquency at the rate aforesaid. The Community Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against the Unit in the manner and method provided in Section 1. The Board of Directors shall have the authority to take such action as it deems necessary in order to collect the assessments, and it may settle and compromise the same if in the best interests of the Community Association.

Section 9. Certificate of Payment. The Community Association shall, upon demand at any time, furnish to any Owner liable for any assessment a certificate in writing in recordable form, signed by an officer of the Community Association, setting forth whether such assessment has been paid, and if not, the amount thereof. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for shall be junior and subordinate to the lien of any institutional first mortgage (whenever used herein, the term "institutional first mortgage" shall include mortgages held by banks, life insurance companies, savings and loan associations, mortgage companies, real estate investment trusts, and other similar lending institutions) now or hereafter placed upon any portion of The Properties subject to assessment. Sale or transfer of any Unit shall not affect the assessment lien. Provided, however, that upon the sale or transfer of title to a Unit pursuant to the foreclosure of an institutional first mortgage, or any proceeding or conveyance in lieu of the foreclosure of such an institutional first mortgage, the person who acquires title to the Unit shall not be liable for the share of assessments which became due prior to such acquisition of title as a result of foreclosure. Such unpaid assessment shall be deemed to be a common expense of the Community Association, collectible from all other Unit Owners, including the person who acquired title to the Unit. Such acquirer of title to the Unit, including the holder of the institutional first mortgage, shall be fully responsible for all assessments which become due subsequent to the acquisition of the title to the Unit.

Section 11. Guarantee and Date of Commencement of Annual Assessments. The management control and operation of Cumberland Circle and the Community Association, including the levying and collection of assessments, shall remain in Developer until actual management of Cumberland Circle is delivered and turned over by Developer to the Community Association, which turnover shall be on the Transfer Date, April 1, 1979. Provided, however, that Developer, in its sole discretion, may determine to turn over such control and management to the Community Association before the Transfer Date. Until such a turnover occurs, Developer shall collect all assessments, the same being payable to Developer during this interim period, and Developer shall reasonably perform the duties and obligations of the Community Association as herein provided.

The annual assessments provided for herein shall commence on the date of conveyance by Developer or a sub-developer (a sub-developer being a person, firm, or corporation who has purchased a Unit space from Developer and who has constructed thereon a Unit, and who thereafter holds the same for sale in the normal course of business) of title to a Unit within The Properties to a third party purchaser for residential use, and shall be pro-rated for the year of closing. The Developer or a sub-developer shall not be responsible for payment of such assessments to the Community Association or to the Developer, as the case may be, for Units to which the Developer or sub-developer holds title during the period of time until the turnover occurs, but Developer hereby guarantees that the monthly maintenance assessment while it is managing the development shall be as follows:

- Each two (2) bedroom Unit . . . . . \$67.50
- Each three (3) bedroom Unit . . . . . \$75.00
- Each four (4) bedroom Unit . . . . . \$80.00

The determination of the Developer as to which Unit falls into each of the classes stated above shall be conclusive. Developer



further obligates itself to pay any amount of expenses incurred during the interim period, and prior to turnover, which would ordinarily be the obligation of the Community Association, in excess of the amounts actually collected as annual assessments from the other Unit Owners. During the interim period, Developer shall maintain an accurate accounting concerning the assessment funds or their use or application, but may use any portion of the same for capital improvements, so long as said improvements are to the Common Properties of Cumberland Circle. The Developer shall, during the interim period, have a lien on each Unit for any unpaid assessments, together with interest thereon and costs of collection, including attorney's fees, and shall have the same remedies of personal action against the Unit Owner and/or foreclosure of said lien to perfect collection as given the Community Association above.

Upon turning over the management and operation of Cumberland Circle to the Community Association at the Transfer Date, or prior thereto, the Developer shall render an accounting to the Community Association and deposit with it any remaining unspent sums and prepaid deposits, and shall then automatically be released of any and all types of liability to Unit Owners and the Community Association. After such turnover occurs, the Developer and any sub-developer shall be liable for the payment of assessment charges on all Units to which they have title, and which are fully completed, in the same fashion as any other Unit Owner, but there shall be no obligation on the part of Developer or sub-developer to pay any assessment charges based upon any Unit spaces which do not have fully completed Units located upon them.

Even though management, operation, and control of Cumberland Circle and the Community Association shall remain in the Developer and shall not be turned over solely to the Board of Directors, the said Board of Directors shall function, although subject to control of the Developer. Nevertheless, when Unit Owners other than the Developer or a sub-developer own Fifteen Percent (15%) or more of the total thirty-two (32) units to be built in the Existing Property, such Unit Owners shall be entitled to elect at least one-third (1/3) of the Members of the Board of Directors. Notwithstanding any provision to the contrary herein contained, Developer shall not be entitled to vote on any special assessment as provided in Section 5 of this Article until Unit Owners other than Developer own a majority of the total votes to be cast; however, until such time, a majority of Unit Owners other than Developer shall have the right to vote such a special assessment.

#### ARTICLE VIII

##### MAINTENANCE ENFORCEMENT

Section 1. Non-Compliance by Owners. In the event the Owner of a Unit fails to maintain it as required herein, or makes any structural addition or alteration without the required written consent, the Community Association or an Owner with an interest in any Unit shall have the right to proceed in a court of equity to seek compliance with the provisions hereof. The Community Association shall have the right to levy at any time a special assessment against the Owner of a Unit and the Unit itself for the necessary sums to put the improvements within the Unit in good condition and repair or to remove any unauthorized structural addition or alteration. After making such assessment, the Community Association shall have the right to have its employees and agents enter the Unit at any time to do such work as deemed necessary by the Board of Directors in order to enforce compliance with the provisions hereof.

Section 2. Non-Compliance by Community Association. In the event the Community Association fails to maintain the Common Properties or any Unit in accordance with its obligations hereunder, any Owner of any interest in a Unit, or holder of an institutional first mortgage on a Unit shall have the right to seek specific performance in a court of equity to compel the Community Association to do so, or in the event of emergency repairs needed to utilities, walls, etc., the Owner of an interest in any Unit may give the Community Association twenty-four (24) hours' notice to repair same, and if it is not done, said Owner may proceed to contract in his own name to make such repairs, and the Community Association shall be obligated to reimburse said Owner for the reasonable value of the repairs which were necessary and for which the Community Association shall be obligated to reimburse said Owner for the reasonable value of the repairs which were necessary and for which the Community Association has financial responsibility.

Section 3. Contracts for Maintenance. The Board of Directors of the Community Association may enter into a contract with any firm, person, or corporation for the maintenance and repair of the Common Properties and the Units, in order to fulfill and complete its obligations and duties hereunder. In so doing, however, it shall not be personally relieved of such obligation. Developer shall not enter into any contract for maintenance and repair of the Common Properties and Units, the term of which shall extend beyond the time when the turnover to the Community Association occurs.

## ARTICLE IX

### OBLIGATIONS OF COMMUNITY ASSOCIATION AND OWNERS

Section 1. Obligations of Community Association. The Community Association shall have the power and authority to, and shall promptly perform all of the matters set forth in Article VII, Section 2, all of which shall become duties and obligations of the Community Association.

Section 2. Obligations of Owners. Every Owner of an interest in a Unit shall (in addition to other obligations and duties set out herein):

(a) Promptly pay all assessments levied by the Community Association.

(b) Maintain in good condition and repair his Unit and all interior surfaces within or surrounding his Unit (such as the surfaces of the walls, ceilings, and floors) and maintain and repair the fixtures therein and pay for any utilities which are separately metered to his Unit. Said Unit shall be maintained in accordance with this Declaration and exhibits hereto, except for changes or alterations approved in writing by the Community Association.

(c) Not use or permit the use of his Unit for any purpose other than as a single family residence and maintain his Unit in a clean and sanitary manner.

(d) Not make or cause to be made any structural addition or alteration to his Unit or to the Common Properties without prior written consent of the Developer, or, if management of Cumberland Circle has been turned over to the Community Association, its Board of Directors. Additionally, the exterior of the Unit and all other outside areas appurtenant to a Unit, including Limited Common Properties, shall not be painted, decorated or modified by any Owner except Developer or a sub-developer, in any manner without the prior written consent of the Board of Directors, which consent may be withheld for purely esthetic reasons within the sole discretion of the board.

(e) Not permit or suffer anything to be done or kept in his Unit which will increase the insurance rates on his Unit or the Common Properties, or which will obstruct or interfere with the rights of other Members or annoy them by unreasonable noises or otherwise; nor shall a Member commit or permit any nuisance, immoral or illegal act in his Unit or in or on the Common Properties.

(f) Conform to and abide by the By-Laws and uniform rules and regulations in regard to the use of Units and the Common Properties which may be adopted in writing from time to time by the Board of Directors of the Community Association, and to see that all persons using Owner's property by, through, or under him, do likewise.

(g) Allow the Board of Directors or the agents and employees of the Community Association to enter any Unit for the purpose of maintenance, inspection, repair, or replacement of the improvements within the Unit or the Common Properties or in case of an emergency threatening Units or the Common Properties, to determine compliance with these covenants and restrictions and the By-Laws of the Community Association.

(h) Pay for all plumbing and electrical repairs within a Unit and for the maintenance, repair, and replacement of any air conditioning and heating compressor facility, and any other facility for the furnishing of the utility services, presently or hereafter installed outside of any Unit, and which is intended only for the purpose of furnishing such utility service to an individual Unit.

(i) Not permit or suffer anything to be done or kept in his Unit which will cause structural stress or danger to his Unit or any other Unit.

#### ARTICLE X

##### DESTRUCTION OF IMPROVEMENTS AND INSURANCE

Section 1. Ownership and Maintenance of Insurance by Community Association. It is hereby declared to be reasonable, desirable, and necessary for the proper preservation and enforcement of the values and amenities in Cumberland Circle to make certain that proper insurance is carried and maintained at all times as hereinafter stated. In other provisions of this Declaration, the Community Association is charged with the obligation and duty of maintaining, repairing, and replacing the Common Properties and the Units, and it is therefore proper and acceptable that the Community Association own and maintain insurance covering not only the improvements on the Common Properties, but also the Units themselves. The Community Association shall therefore obtain fire and extended coverage insurance and vandalism and malicious mischief insurance with a reputable insurance company authorized to do business in the State of Florida having a Best's rating of "A" or better, insuring all the insurable improvements erected within Cumberland Circle, thereby including both improvements owned by the Community Association and all Units which may be owned by Owners. Such insurance shall be for the full replacement value of such improvements, and the premium for such coverage and all other insurance deemed desirable by the Community Association shall

be assessed against the Owners of such Units as part of the annual assessment, Category Two (2). The Community Association shall annually make survey and thereby determine replacement costs for insurance purposes for all then existing improvements for the ensuing year. On the basis of said survey, or if none is made, then on the basis of the preceding year's insurance coverage, increased or decreased as the case may be by inflation or deflation and other criteria, the Community Association shall continue to maintain the necessary fire and extended coverage and vandalism and malicious mischief insurance to assure complete replacement or repair to damaged improvements as herein set forth. The original policy of insurance shall be held by the Community Association, with holders of institutional first mortgages to be named in the policy as their interests may appear, and certification of such insurance shall be furnished to them.

Section 2. Occurrence of Loss. In the event a loss occurs to any improvements within any of the Units alone, or in the event that a loss occurs to improvements within the Units and Common Properties or to improvements within the Common Properties alone, payments under the policy shall be made to the Community Association, which shall hold such proceeds as trustee for the benefit of the appropriate Unit Owners and holders of institutional first mortgages on such Units in accordance with the terms hereof.

(a) All Community Association officers and employees handling funds shall be bonded at least to the full extent of the insurance proceeds and other funds on hand, and all payees on the insurance check shall endorse the same over to the Community Association, and the Community Association will promptly contract for the necessary repairs to the improvements within the Common Properties and within the damaged Units.

(b) The improvements shall be completely restored and repaired. The Community Association shall negotiate and obtain a contractor willing to do the work on a fixed price basis and shall disburse the insurance proceeds and other funds in accordance with the progress payments contained in the contract between the Community Association and the contractor, which construction contract shall be subject to written approval of the holders of institutional first mortgages when such mortgages encumber any damaged individual Unit or Units. However, where the Cumberland Circle residential community project has been abandoned, as hereinafter provided, the insurance proceeds shall be disbursed by the Community Association to the Owners of the Units and all mortgagees of the Units as their interests appear. Under all circumstances the Community Association shall have the authority to act as the agent for all Owners of Units for the purpose of compromising or settling insurance claims for damage to improvements within the Units, the Units themselves, or the Common Properties arising out of the master policy herein required to be maintained by the Community Association.

Section 3. Liability Insurance. The Community Association shall also obtain full and complete public liability insurance covering all of the Common Properties and insuring the Community Association and all of the Owners as its and their interests may appear in the minimum amounts of \$500,000.00 for injury to one person, \$1,000,000.00 for injury to all persons arising out a single incident, and \$100,000.00 property damage.

ARTICLE XI

TERMINATION OF CUMBERLAND CIRCLE  
RESIDENTIAL COMMUNITY PROJECT

Section 1. Termination and Abandonment Due to Loss or Consent of Members. At any time when there has been total loss of the Units and the improvements on the Common Properties, and the Members by majority vote, vote to abandon the community project, said project shall be abandoned. Additionally, at any time upon the written unanimous consent of all Members and all holders of institutional first mortgage liens on any Units, the community project may be abandoned for any reason whatsoever, whether or not any destruction to property has occurred.

Section 2. Method of Abandonment and Termination. Immediately after the required vote or consent to terminate has taken place, each and every Unit Owner shall immediately convey by Warranty Deed to the Community Association all of said Unit Owner's right, title, and interest to the Unit which he owns, provided that the Community Association's officers and employees handling funds have been adequately bonded. The Community Association or any Member shall have the right to enforce such conveyance by all Unit Owners by resort to a suit for specific performance in the appropriate court of law. The Board of Directors of the Community Association shall then sell all of The Properties at public or private sale upon terms approved in writing by holders of all the institutional first mortgages. Upon the sale of The Properties, the costs, fees and charges for effecting said sale, the cost of liquidation and dissolution of the Community Association, and all obligations incurred by the Community Association in connection with the management and operation of the property up to and including the time when distribution of the sale proceeds is to be made to the Unit Owners, shall be paid out of the proceeds of said sale, and the remaining balance, hereinafter referred to as "Net Proceeds of Sale", shall be distributed to the Unit Owners in the manner set forth in Section 3 below.

Section 3. Distribution of Net Proceeds of Sale. The distributive share of each Unit Owner in the Net Proceeds of Sale, though subject to the provisions hereinafter contained, shall be the same as that prorata share of the annual assessments, Category One (1), as provided in Article VII, Section 6, which is attributable to each Unit. The prorata shares for all Units as so determined shall equal the total amount of the Net Proceeds of Sale.

Upon the determination of each Unit Owner's share, as above provided, the Community Association shall pay out of each Unit Owner's share sums sufficient to satisfy all mortgages and other liens encumbering said Unit in accordance with their priority, and upon such payment being made, all mortgagees and lienors shall execute and record satisfactions or releases of their liens against said Unit or Units, regardless of whether the same are paid in full. The execution of such satisfaction or release of lien against the Unit or Units shall not, however, release any personal obligation of the Unit Owner. Thereupon, the Board of Directors of the Community Association shall proceed to liquidate and dissolve the Community Association, and they shall distribute the remaining portion of each distributive share, if any, to the Owner or Owners entitled thereto. If more than

one person has an interest in a Unit, the Community Association shall pay the remaining distributive share allocable to said Unit to the various Owners of such Unit, excepting that if there is a dispute as to the validity, priority or amount of mortgages or liens encumbering a Unit, then payment shall be made to the Owner and/or Owners of such Unit and to the Owners and holders of all of such mortgages and liens encumbering said Unit, who shall thereupon execute and record the proper satisfactions and releases as aforesaid.

Section 4. Evidence of Termination and Abandonment. As evidence of the Members' resolution to abandon passed by the required vote or written consent of the Members, the president and secretary of the Community Association shall effect and place in the public records of Alachua County, Florida, an affidavit stating that such resolution was properly passed or approved by the Members and shall also record the written consent to such abandonment, if any, of the holders of all institutional first mortgages. After such an affidavit has been recorded and all Owners have conveyed their interests in The Properties to the Community Association and the Community Association to the purchaser, the title to said property thereafter shall be free and clear from all of the restrictions, reservations, covenants, conditions and easements of every kind and sort set forth in this Declaration, and the purchaser and subsequent grantees of any of said property shall receive title to said lands free and clear thereof. Provided, however, that the rights of the City of Gainesville under the Planned Unit Development Ordinance shall still apply to The Properties if such zoning classification still applies thereto.

## ARTICLE XII

### SPECIAL UNIT

Section 1. Designation of Special Unit. There presently exists a parcel of land contiguous to the Existing Property on the southwest corner thereof, which parcel of land is legally described as follows, to-wit:

Beginning at the N.E. corner of Lot 6 of Glenbrook, as recorded in Plat Book "F", page 30, Alachua County, Florida, and run N. 12°13'17" E, along the Westerly R/W of N.W. 17th Terrace, 37.33 feet (11.378m); thence N 57°25'55" W, 246.55 feet (75.189m); thence S 52°16'17" W, 37.18 feet (11.332m) to the centerline of Hogtown Creek; thence continuing along aforesaid centerline the following distances and bearings: S 52°16'17" W, 178.75 feet (54.483m); N 56°02'43" W, 75.93 feet (21.144m); S 15°58'17" W, 50.76 feet (15.472m); S 42°14'43" E, 70.80 feet (21.580m); S 44°40'17" W, 58.85 feet (17.938m); S 15°18'43" E, 53.95 feet (16.444m); S 56°48'17" W, 24.14 feet (7.358m); thence from the centerline S 67°15'00" E, 342.28 feet (104.327m) to the Westerly R/W of aforesaid N.W. 17th Terrace; thence Northerly along a curve of radius 162 feet (49.378m) with a delta angle of 7°08'16" being concave to the

Southeast 20.18 feet (6.151m);  
thence N 33°43'17" E, along  
aforesaid R/W line 90.0 feet  
(27.432m); thence Northerly along  
a curve on aforesaid R/W of radius  
491.72 feet (149.877m) with a  
delta angle of 21°27'48" being  
concave to the Northwest, 184.20  
feet (56.144m) to the Point of  
Beginning. All being and lying  
in the North 1/2 of Section 31,  
Township 9 South, Range 20 East,  
Alachua County, Florida.

Said property contains approximately 2.78 acres, and its location between the Existing Property and the creek which generally constitutes the northerly and westerly boundaries of Cumberland Circle makes it logical to be included in the planned residential community development of Cumberland Circle. Therefore, the owners of such real property, which will hereinafter be referred to as the Special Unit, and on which is already located an existing single family detached residence, are hereby given the absolute and unilateral right, at any time in the future, to submit and subject the Special Unit to the terms and provisions of this Declaration, subject, however, to the terms and provisions of Sections 3, 4, 5, and 6 of this Article XII. Such Sections shall not be binding on the Special Unit, or the owners thereof, until such submission occurs, which shall be accomplished by the recording of an appropriate instrument which states the intention of the owners and otherwise makes reference to this Article XII with particularity. An executed copy of such instrument shall likewise be furnished to the Community Association. This right of submission shall run with the title to the Special Unit, and inure to the benefit of subsequent owners thereof, but shall terminate and expire if not exercised prior to termination or abandonment of Cumberland Circle as elsewhere provided herein. Once the submission of the Special Unit occurs, the owners thereof shall be liable for an equal share of any special assessment made pursuant to Section 5 of Article VII, which may have been levied against Unit Owners prior to the submission date.

Section 2. Easement for Ingress and Egress. Developer, by execution of this Declaration, does hereby give, grant, transfer and convey unto C. ADDISON POUND, JR. and ANNE R. POUND, his wife, the present owners of the Special Unit, their heirs, personal representatives, successors and assigns, a non-exclusive perpetual easement for purposes of ingress and egress over and across that portion of the Common Properties on which is presently located a paved road, and that portion on which will be located the paved road to be constructed by Developer for use by Unit Owners. The purpose of such easement is to provide the owners of the Special Unit with a means of access from the public right-of-way known as Northwest 16th Terrace over and across the Common Properties to said Special Unit. In the event the paved road to be constructed by Developer does not sufficiently abut the Special Unit so as to give the owners complete access to same, the easement hereby granted shall nevertheless run over and across the Common Properties from the paved road to the driveway of the Special Unit so as to adequately facilitate such complete and continuous access thereto. In the event the Special Unit is ever submitted to the terms of this Declaration, then the easement hereby given in this Section 2 shall thereupon automatically terminate and become extinguished.

Section 3. Membership and Owner Rights. Once the Special Unit has been submitted and subjected to all of the terms and conditions of this Declaration, except as hereafter otherwise provided, and thereby becomes a part of The Properties, the Owners of the Special Unit shall also become Members in the Community Association, and shall have and enjoy all the rights, privileges, and easements given to Members thereof, and shall be subject to all the obligations and duties imposed upon such Members.



Section 4. Maintenance and Upkeep. Notwithstanding any provision to the contrary contained in this Declaration, the Owners of the Special Unit shall maintain and repair all of the improvements located thereon in the same as or better condition as the Units are maintained and repaired. Likewise, such Owners shall be responsible for the maintenance, improvement, and beautification of the yard, lawn, and open spaces of the Special Unit in a neat and orderly fashion. All costs of the maintenance and repair of the improvements and the yard and open spaces shall be borne and paid for by the Owners of the Special Unit and not the Community Association. The Community Association shall have the rights of enforcement provided in Article VIII, Section 1, in the event of the Owners' failure to properly maintain the Special Unit.

Section 5. Assessments. Because the Owners of the Special Unit are to provide their own maintenance and repair, they shall not be liable for the payment of Category One (1) annual assessments. They shall, however, be liable for the payment of Category Two (2) annual assessments and special assessments in like manner as other Owners of Units and shall be subject to all of the terms and conditions of this Declaration pertaining thereto.

Section 6. Insurance and Destruction. The Community Association shall not be required or obligated to provide any fire and extended coverage insurance and vandalism and malicious mischief insurance as described in Article X, Section 1, for coverage of the Special Unit. Instead, the Owners thereof shall provide and maintain such insurance, and may designate themselves as the beneficiaries under the insurance policy. In the event of damage or destruction to the Special Unit, the Owners thereof shall have the right to receive the proceeds from the insurance policy, if any, and either: (1) completely repair and replace the damaged improvements, or (2) completely raze the improvements located thereon, and then properly landscape and beautify the premises. In either event, the Owners shall continue to be liable for the payment of the maintenance assessments attributable to the Special Unit, and they shall continue to be responsible for the maintenance and beautification of the yard and open spaces in a neat and orderly fashion. In the event the improvements, including the single family residence, are completely destroyed, or damaged to such an extent that it is unfeasible to repair them, the Owners of the Special Unit shall have the right to construct new improvements thereon, but the plans and specifications thereof shall be approved by the Community Association, which approval shall not be unreasonably withheld. In no event, however, shall there ever be constructed thereon more than one single family residential unit.

#### ARTICLE XIII

##### AMENDMENTS AND MODIFICATIONS

Section 1. Amendments by Developer. Prior to the time the Developer has sold and conveyed the last Unit or Unit space located within The Properties, the Developer reserves and shall have the sole right (a) to amend these covenants and restrictions for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein or any scrivener's error; (b) to include in any contract or deed or other instrument hereafter made any additional covenants and restrictions applicable to the said land which do not lower standards of the covenants and restrictions herein contained; (c) to release any building plot from any part of the covenants and restrictions which have been violated (including, without limiting the foregoing, violations of building restriction lines and provisions hereof relating thereto) if the Developer, in its sole judgment, determines such violation to be a minor or insubstantial violation.

Section 2. Amendments by Owners. Except as to provisions relating to amendment and modification as set forth herein regarding certain specific items and the method of amending or altering same, which is set forth in connection with such particular item, any other provisions, covenants, or restrictions set forth herein may be amended in accordance with this provision. The Owners of at least eighty per cent (80%) of the Units or Unit spaces in The Properties, which are

subject to the terms of this Declaration or any Supplementary Declaration, may change or amend any provision hereof, except as above mentioned, in whole or in part, by executing a written instrument in recordable form setting forth such amendment and having the same duly recorded in the public records of Alachua County, Florida. Provided, however, that no amendment shall be made which changes the ratio of assessments against Units or which in any way changes the rights of the Owners of the Special Unit as provided in Article XII, hereof, or which in any way affects the rights of holders of institutional first mortgages, unless there is unanimous consent by Owners of all Units, including the Special Unit, and the holders of all institutional first mortgages located thereon. Provided further, that for so long as the Developer shall own any Units or Unit spaces within The Properties for sale in the ordinary course of business, or any acreage which may be included within The Properties as an Addition to Existing Property as provided herein, any such amendment shall require the approval and joinder of the Developer in order to become effective.

A proposed amendment may be instituted by the Developer, the Community Association, or by petition signed by a majority of the then Owners of the Units, or Unit spaces. A written copy of a proposed amendment shall be furnished to each Owner at least thirty (30) days but not more than sixty (60) days prior to a designated meeting to discuss and vote upon such particular amendment. Such notification shall contain a recitation that sufficient notice was given as above set forth, and said recitation shall be conclusive as to all parties, and all parties of any nature whatsoever shall have full right to rely upon said recitation and such recorded amendment.

#### ARTICLE XIV

##### REMEDIES FOR VIOLATIONS

If any person, firm or corporation, or other entity shall violate or attempt to violate any of these covenants or restrictions, it shall be lawful for the Developer or the Community Association (a) to prosecute proceedings for the recovery of damages against those so violating or attempting to violate any such covenants or restrictions, or (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting to violate any such covenants or restrictions, for the purpose of preventing or enjoining all or any such violations or attempted violations. The remedies contained in this provision shall be construed as cumulative to all other remedies now or hereafter provided by law. The failure of the Developer, its successors or assigns, or the Community Association, to enforce any covenant or restriction or any obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior to or subsequent thereto. In the event the Developer or the Community Association shall prevail upon such proceeding for recovery of damages or to enjoin violations, the Member shall be responsible for all costs and expenses incurred or paid by the Developer or the Community Association in the prosecution of such proceeding, including reasonable attorney's fees, and the Developer or Community Association shall be entitled to place a lien upon the property owned by such Member, as provided in Article VII hereof to secure payment of such sums, should the Member fail to pay such costs and expenses within thirty (30) days from the entry of the judgment or injunction.

#### ARTICLE XV

##### MISCELLANEOUS PROVISIONS

Section 1. Limited Common Properties. There are Limited Common Properties appurtenant to some of the Units, such as patios,

balconies, decks, and porches, all of which have been constructed by the Developer or a sub-developer before conveyance of the Unit to which they are appurtenant has been made. These Limited Common Properties are reserved for the use of the Units appurtenant thereto to the exclusion of other Units, and there shall pass with a Unit as appurtenant thereto, the exclusive right to use the Limited Common Properties so appurtenant. Expenses of maintenance and repair of such Limited Common Properties, but not landscaping or beautification, shall be borne by the Community Association, and it shall have control and management over Limited Common Properties, subject to the exclusive right of use given to the Owners of the Units to which they are appurtenant.

Section 2. Additional Covenants and Restrictions. No Unit Owner, other than the Developer, without the prior written approval of the Developer or the Community Association, once the turnover to it has occurred, may impose any additional covenants and restrictions upon any portion of The Properties.

Section 3. Invalidation. The invalidation of any provision or provisions of the covenants and restrictions set forth herein by judgment or court order shall not affect or modify any of the other provisions of said covenants and restrictions, which shall remain in full force and effect.

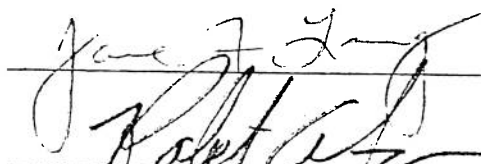
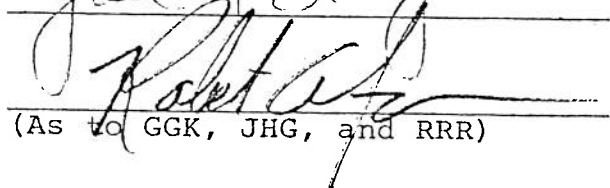
Section 4. Duration. The covenants, restrictions and provisions of this Declaration shall run with and bind the land in perpetuity and shall inure to the benefit of the Developer, the Owners, and their respective legal representatives, heirs, successors and assigns until amended, modified, or terminated in accordance with the terms hereof. Provided, however, that in the event that any court should hereafter determine that any provision as originally drafted herein violates the rule against perpetuities or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose the measuring of lives shall be those lives of the Developers.

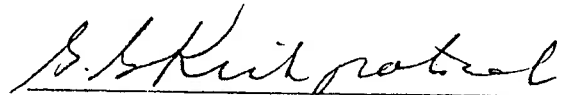
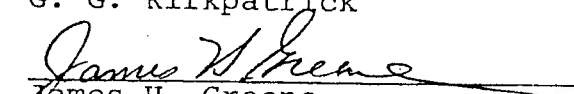
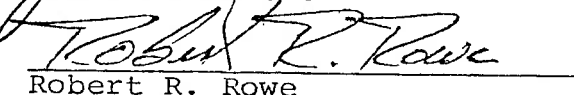
Section 5. Section Headings. The section headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning, content, or interpretation hereof.

Section 6. Construction and Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose and intent of creating a planned residential community. Whenever the context requires or 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.

IN WITNESS WHEREOF, the Developers have affixed their hands and seals the day and year first above written.

Signed, sealed and delivered in our presence as witnesses:

  
\_\_\_\_\_  
  
\_\_\_\_\_  
(As to GJK, JHG, and RRR)

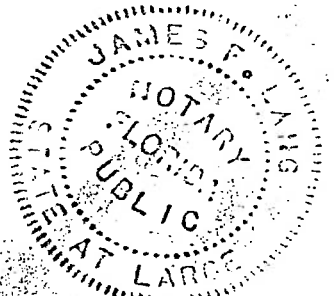
  
\_\_\_\_\_  
G. G. Kirkpatrick (SEAL)  
  
\_\_\_\_\_  
James H. Greene (SEAL)  
  
\_\_\_\_\_  
Robert R. Rowe (SEAL)

DEVELOPERS

STATE OF FLORIDA )  
COUNTY OF ALACHUA)

17<sup>th</sup> The foregoing instrument was acknowledged before me this  
day of March, 1977, by G. G. KIRKPATRICK,  
JAMES H. GREENE and ROBERT R. ROWE.

James F. Lang  
Notary Public  
State of Florida at Large  
My Commission Expires: July 20, 1977



**AMENDMENT TO THE DECLARATION OF  
PROTECTIVE COVENANTS AND RESTRICTIONS,  
CUMBERLAND CIRCLE.**



The undersigned, as President of CUMBERLAND CIRCLE COMMUNITY ASSOCIATION, INC. hereby certify that the following amendment to the Declaration of Protective Covenants and Restrictions, Cumberland Circle, were duly approved by the written signature of no less than 80% of all unit owners, as follows:

Current Article X, Insurance is deleted in its entirety and is replaced with the following:

**ARTICLE X  
INSURANCE**

Casualty. The Association's Board of Directors shall have the authority but not the duty to obtain insurance for insurable improvements on the common property, against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and to obtain public liability policies covering the Association, and its members for damage or injury caused by the negligence of the Association, or any of its members or agents, and if reasonably obtainable, Directors and Officers liability insurance, and to obtain any and all other types of insurance coverage with respect to such risks or persons as shall be deemed necessary or appropriate by the Board of Directors. Any insurance obtained shall include such coverage, contain such deductible provisions and be in such limits as shall be determined by the Board of Directors. The Association shall also have the discretion to self-insure against any risk. Premiums for insurance shall be a Common Expense if for the benefit of the association, (but see #9, below), its officer or directors, the entire membership as a group, or relate to the common property. AS OF APRIL 1, 2012, THE ASSOCIATION WILL NO LONGER PROVIDE INSURANCE COVERAGE FOR ANY INDIVIDUAL DWELLING UNIT. EACH DWELLING UNIT OWNER WILL BE RESPONSIBLE FOR PROVIDING INSURANCE COVERAGE FOR HIS/HER UNIT, AS PRESCRIBED BY THE BOARD OF DIRECTORS, PURSUANT TO "STANDARDS FOR HOMEOWNER INSURANCE POLICIES" WHICH STANDARDS MAY BE AMENDED BY A MAJORITY VOTE OF THE BOARD OF DIRECTORS; the initial Standards are attached to this proposed amendment and are a part hereof, for initial approval purposes only.

A. Unit Owners will be required to provide continuous coverage based on the Standards for Homeowner Insurance Policies

2. Reconstruction and Repair after Casualty.

A. Under ordinary circumstances Units, which are damaged by casualty, shall be reconstructed and repaired. If a dispute arises as to whether a Unit should be repaired or reconstructed, the Board of Directors with approval of the oldest unsatisfied mortgagee having an effective lien thereon, shall make the determination to repair or reconstruct. The adjoining owners shall be bound by this determination.

B. Although it is impossible to anticipate all problems which may arise from a casualty the intent is to try to assure that the overall plan of a quality development of Cumberland Circle is maintained by requiring damaged Units to be rebuilt or repaired and that unsightly and dangerous conditions are remedied as soon as possible. Any reconstruction and repair must be substantially in accordance with the plans and specifications for such property as originally constructed, or if none, then according to plans and specifications approved by the Board, and if the damaged property is a building containing more than one Unit, by the owners of not less than seventy-five percent (75%) of such building. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair for which the Unit Owner is responsible, or if at any time during that work or upon completion of the work the funds available for payment of the costs are insufficient, assessments shall be made by the Association against all Unit owners in sufficient amounts to provide funds for the payment of those costs. The Assessments shall be made as an Association Expense, except that the cost of construction, reconstruction and repair occasioned by special improvement made by the request of the owner and not common to other Units shall be assessed to such Unit owner.

3. Public Liability Coverage. The Association shall obtain comprehensive general liability coverage insuring the Association against any and all claims and demands made by any person or persons for injuries received in connection with the operation and maintenance of the Common Areas and improvements located thereon, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against. Each policy purchased by the Association shall have limits of not less than \$1,000,000.00 covering all claims for personal injury and property damage arising out of a single occurrence. The liability coverage shall include protection against liability for non-owned and hired automobiles, and liability of hazards related to usage. In addition, the coverage shall include protection against liability that results from actions related to employment contracts in which the Association is a party. All such policies will name the Association as an insured party under such policy or policies. The original of each policy shall be held by the Board or in the Office of the "Insurance Trustee" (as hereinafter defined).

4. Fidelity Bond Coverage. The Association shall obtain Fidelity Bonds covering officers, directors, employees and other persons who handle or are responsible for handling Association funds. Such bonds shall be in an amount equal to at least one hundred fifty percent (150%) of three months' operating expenses, and the amount in reserve as of the end of each fiscal year of the Association and shall contain waiver of any defense based upon the exclusion of persons serving without compensation.

5. Premiums on policies purchased by the Association shall be paid as an Association Expense. However, if the amount of a premium is increased because a Unit or its appurtenances is misused or abandoned then the owner of such Unit is liable for the amount of such increase. The Association will furnish evidence of premium payment to each mortgagee upon request.

6. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit owners and their mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association as trustee or to such institution in Florida with trust powers as may be designated as Insurance Trustee by the Board. The Trustee shall hold the proceeds for the benefit of the Unit owners and their mortgagees in the following shares:

A. An undivided share for each Unit owner, that share, being the same as such Unit owner's undivided share in the Association Expenses.

B. If a mortgagee endorsement of an insurance policy has been issued as to a Unit, the share of the Unit owner shall be held in trust for the mortgagee and such owner, as their interests may appear; however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any Unit shall be reconstructed or repaired, and unless provided by the terms of the mortgage no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distribution of proceeds made to the Unit owner and the mortgagee. Provided, however, the acquisition and development lender shall be exempt from the provisions of this paragraph B.

7. All insurance policies purchased by the Association shall require the insurer to notify in writing the Association or the designated Insurance Trustee and each first mortgagee named in any mortgage clause at least 10 days before it cancels or substantially changes the coverage.

8. The Association is irrevocably appointed agent for each Unit owner and for each mortgagee or other lienor of a Unit, and for each owner of any other interest in the property, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, except as to the original acquisition and development lender.

#### 9. Individual Assessment

The Association may levy an individual assessment upon any Owner to cover the costs incurred by the Association due to that Owner's failure, including without limitation, any owner's failure to maintain or pay for their unit's insurance (see Article X) to maintain its Lot or Dwelling Unit pursuant to the standards set forth in this Master Declaration, or to reimburse the Association for any damage to any Common Property caused by any Owner or its lessee or invitee, or for any other purpose permitted by this Declaration or any Supplemental Declaration.

Executed this \_\_20<sup>th</sup>\_\_ day of March, 2012.

  
\_\_\_\_\_  
President, Cumberland Circle Community Assoc., Inc.

  
\_\_\_\_\_  
Secretary, Cumberland Circle Community Assoc., Inc.



**Cumberland Circle Community Association, Inc.**  
**Standards for Homeowner Insurance Policies**

Each homeowner shall purchase insurance coverage for their home and supply the appropriate DEC (declaration of coverage) sheet, or policy, to the Association, on an annual basis.

Each policy must conform to the following standards:

1. **OWNERS MUST PROVIDE PROOF OF PROPER INSURANCE COVERAGE ON FOR THEIR UNIT ON OR BEFORE APRIL 15, 2012**
2. The issuing company must be a Florida approved insurance carrier, rated B or better by the insurance rating entity, AM Best, or comparable rating company.
3. Property coverage must be "Special Form" (HO3) or "All Risk"
4. A minimum of \$ 300,000 coverage for general liability. (This is often the lowest amount offered.)
5. For those that rent their homes, the owner must also purchase a DP-3, Special form, all-risk policy to cover the structure and interior permanent fixtures. The renter should purchase an HO-4 to cover personal contents such as furniture, TV's, stereos, and computers, including a minimum of \$300,000 coverage for general liability.
6. HO-3 and DP-3 must include cabinetry, flooring, and bathrooms as part of the structure.
7. Wind deductible must not be greater than 2%.
8. Property parameters from the Alachua County Property Appraiser's office (<http://www.acpafl.org>) must be used as these are the official record of square footage under heat/air and will include square footage for garages and porches.
9. These Standards for Homeowner Insurance Policies may be modified from time to time by a majority vote of the Board of Directors.