

DECLARATION OF CONDOMINIUM

J. K. "BUDDY" IRBY  
CLERK OF CIRCUIT COURT  
ALACHUA COUNTY, FLORIDA  
CLERK12 Receipt#242406

OF

GARLAND CONDOMINIUM

GARLAND VENTURES, INC., being the owner of record of the fee simple title to the real property situate, lying and being in Alachua County, Florida, as more particularly described in Exhibit A, which is incorporated herein by reference, does hereby state and declare that the realty described on said Exhibit A together with improvements thereon, is submitted to condominium ownership pursuant to the Condominium Act of the State of Florida (F.S. 718 et seq.) and does hereby file this Declaration of Condominium.

**1. PURPOSE; NAME AND ADDRESS; LEGAL DESCRIPTION; EFFECT.**

1.1 **PURPOSE.** The purpose of this Declaration is to submit the lands and improvements herein described to condominium ownership and use in the manner prescribed by the Laws of the State of Florida.

1.2 **NAME AND ADDRESS.** The name of this Condominium is as specified in the title of this document. The address shall be the name of the Condominium together with 951 NW 21<sup>st</sup> Avenue, Gainesville, FL 32609

1.3 **THE LAND.** The real property described on Exhibit A, is the Condominium Property hereby submitted to condominium ownership. Such property is subject to such easements, restrictions, reservations and rights of way of record, together with those contained or provided for in this instrument and the exhibits attached hereto.

1.4 **THE EFFECT.** All of the provisions of this Declaration of Condominium and all Exhibits attached hereto shall be binding upon all Unit Owners and are enforceable equitable servitudes running with the Condominium Property and existing in perpetuity until this Declaration is revoked and the Condominium is terminated as provided herein. In consideration of receiving, and by acceptance of a grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through, or under such persons agree to be bound by the provisions hereof. Both the burdens imposed and the benefits granted by this instrument shall run with each Unit as herein defined.

**2. SURVEY AND DESCRIPTION OF IMPROVEMENTS.**

2.1 **SURVEY.** As described in Exhibit A is a survey of the land, graphic description, and plot plans of the improvements constituting the Condominium, identifying the Units, Common Elements and Limited Common Elements, and their respective locations and approximate dimensions. Each Unit is identified on Exhibit A by a specific number. No Unit bears the same number as any other Unit. The parking and storage areas are delineated thereon. The fractional share of ownership of undivided interests in the Common Elements appurtenant to each Unit is designated on Exhibit B.

2.2 **RIGHT TO ALTER.** Developer reserves the right to alter the interior design, boundaries and arrangements of all Units as long as Developer owns the Units so altered.

3. **DEFINITION OF TERMS.** The terms used in this Declaration and the Exhibits attached hereto shall have the meanings stated in the Condominium Act (Sec. 718.103, Fla. Stat.,) and as follows, unless the context otherwise requires.

3.1 "Condominium" means that form of ownership of real property which is created pursuant to the provisions of F.S. 718. and which is comprised of units that may be owned by one or more persons, and there is, appurtenant to each Unit an undivided share in Common Elements. The term shall also mean the Condominium established by this Declaration.



- 3.2 "Declaration", or "Declaration of Condominium" means this instrument.
- 3.3 "Unit" or "Condominium Unit" means a part of the Condominium Property which is to be subject to private ownership as specified in this Declaration.
- 3.4 "Common Elements" means the portions of the Condominium Property not included in the Units.
- 3.5 "Limited Common Elements" means those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units as specified in this Declaration.
- 3.6 "Association" means the non-profit Florida corporation whose name and seal appears at the end of this Declaration which is the entity responsible for the operation of the Condominium.
- 3.7 "Board" or "Board of Administration" means the Board of Directors of the Association responsible for the administration of the Association.
- 3.8 "By-Laws" means the By-Laws of the aforescribed Association (Exhibit D).
- 3.9 "Condominium Act" means the Condominium Act of the State of Florida (F.S. 718, et seq.) as it exists at the time of filing this Declaration.
- 3.10 "Common Expenses" means all expenses and assessments properly incurred by the Association for the Condominium as specified in F.S. 718.115 and all other expenses declared Common Expenses by provisions of this Declaration and its exhibits.
- 3.11 "Common Surplus" means the excess of all receipts of the Association, including but not limited to, assessments, rents, profits, and revenues on account of the Common Elements, over the amount of Common Expenses.
- 3.12 "Condominium Property" means and includes the lands hereby subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto.
- 3.13 "Assessment" means a share of the funds required for the payment of Common Expenses which is assessed against the Unit Owners from time to time.
- 3.14 "Unit Owner" means record owner of legal title to a condominium parcel.
- 3.15 "Institutional Mortgagee" means the State or Federal Bank, Savings and Loan Association, Insurance Company, Real Estate Investment Trust, Union Pension Fund, Mortgage banking firm or other lender authorized to make mortgage loans under Florida law, or an Agency of the United States Government, or like entity, being a mortgagee of a Unit, or the insurer or governmental guarantor of a mortgage loan made by such party.
- 3.16 "Occupant" means the person or persons other than the Unit Owner in actual possession of a Unit.
- 3.17 "Condominium Documents" means this Declaration, the Survey Exhibit, Articles of Incorporation of the Association, and By-Laws of the Association.
- 3.18 "Developer" means GARLAND VENTURES, INC., its successors and assigns which has created this Condominium in its capacity as developer.
- 3.19 "Eligible Mortgage Holder" means the holder of a first mortgage on a unit who has requested notice of certain matters from the Association in accordance with paragraph 24 hereof.
- 3.20 "Articles of Incorporation" means the Articles of Incorporation of the Association. (Exhibit C)

3.21 "Surface Water or Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

The definitions herein contained shall prevail as the context requires whether or not the same are capitalized in their usage herein.

#### 4. THE UNIT AND COMMON ELEMENTS.

4.1 **INTEREST IN COMMON ELEMENTS.** Each Unit Owner shall own, as an appurtenance to his Unit, a one-thirty seventh (1/37) interest in the Common Elements as shown on Exhibit B. The undivided interest of each Unit shall not be changed without the unanimous consent of all owners of all of the Units. No owner of any Unit shall bring an action for partition or division of his undivided interest in the Common Elements.

4.2 **BOUNDARIES.** A unit consists of an individual unit lying within the following boundaries:

##### 4.2.1 **HORIZONTAL BOUNDARY:**

**UPPER AND LOWER BOUNDARIES.** The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(1) **UPPER BOUNDARY** - The horizontal plane of undecorated finished ceiling.

(2) **LOWER BOUNDARY** - The horizontal plane of the undecorated finished floor.

##### 4.2.2. **PERIMETRICAL BOUNDARIES:**

The perimetrical boundaries of the Unit shall be the vertical planes of the undecorated finished interior walls extended to intersections with each other and with the Upper and Lower Boundaries.

(1) Where there is an aperture in any perimetrical boundary, including, but not limited to, windows and doors, the vertical boundary shall be extended at all such places, at right angles, to the dimension of such aperture, so that the perimetrical boundary at such places shall be coincident with the exterior unfinished surface of such aperture, including the framework thereto. Exterior walls made of glass or glass fired to metal framing, exterior windows and frames, exterior glass sliding doors, frames and casings, shall be included within the Unit and shall not be deemed a Common Element.

(2) Where a balcony, loggia, terrace, porch, stairway, or other portion of the building or any fixture attached to the building serves only the Unit, the perimetrical boundary shall vary with exterior unfinished surface of any such structure extended in a vertical plane, where necessary, to the horizontal boundary, making said portion part of the condominium unit.

(3) The interior partitions within a Unit are part of said Unit.

4.3 **WEIGHT BEARING STRUCTURES.** The area beneath the unfinished surface of any weight bearing structure which is otherwise within the horizontal and perimetrical boundaries of a Unit is a Common Element not a part of the Unit.

4.4 **MAINTENANCE EASEMENT.** There shall exist as a Common Element, an easement through each Unit for ducts, pipes, conduits, plumbing, wiring, or other facilities for the furnishing of utility services to Units and the Common Elements. Any pipes, ducts,

wires, conduits, electrical panels, plumbing, drains, or any utility services serving only one Unit are part of such Unit and are not Common Elements.

**4.5 AIR CONDITIONING.** Notwithstanding any of the provisions of this Paragraph 4 to the contrary, the air conditioning compressor serving a Unit and the refrigerant and electrical lines running from such compressors to, and air handler within, the individual Units are part of such Unit and are not Common Elements.

**4.6 AUTOMOBILE PARKING AREAS.** Use of the parking spaces shall be as provided in the By-Laws. Parking spaces shall be Common Elements.

**5. INCREASES AND DECREASES IN SIZE AND NUMBER OF UNITS.** Subject to the provisions of this paragraph, any Unit Owner and Owners shall have the right to divide or combine units owned by such Unit Owner or Owners as long as the common interest appurtenant to such units after the division or combination shall equal in total the common interest applicable to the units or units divided or combined prior to the division or combination. Any such division or combination shall require the approval of not less than a majority of the total voting interests and shall be in compliance with all governmental laws, codes, ordinances and regulations. The cost of any division or combination shall be the responsibility of the Owner or Owners of the units being divided or combined. Any such division or combination shall become effective upon the recording in the Public Records of Alachua County, Florida, of an amendment to this Declaration executed by the unit owners and the record owners of liens on the unit or units so divided or combined together with the filing of the floor plans of the unit or units as divided or combined.

**6. EASEMENTS.**

**6.1 PERPETUAL NON-EXCLUSIVE EASEMENT.** The Common Elements are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Unit Owners in the Condominium for their use and the use of their immediate families, guests, and invitees, for all proper and normal purposes, including the providing of services for the benefit of all Units.

**6.2 EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS.** In the event that any Unit, Common Element or Limited Common Element shall encroach upon any other Unit, Common Element or Limited Common Element for any reason other than the purposeful or grossly negligent act of any person, than an easement appurtenant to such shall exist for so long as such encroachment shall naturally exist.

**6.3 UTILITY EASEMENTS.** Utility easements are reserved and/or may be granted, through the Condominium Property as may be required for utility service (including construction and maintenance) in order to adequately serve the Condominium.

**6.4 INGRESS AND EGRESS.** A non-exclusive easement for ingress and egress is hereby created for pedestrian traffic over, through and across sidewalks, paths, walks, driveways, passageways, and lanes as the same, from time to time, may exist upon the Common Elements; and for vehicular traffic over, through and across such portions of the Common Elements as, from time to time, may be paved and intended for such purposes.

**6.5 USE.** The use of any easement by a Unit Owner shall be subject to the provisions of this Declaration and of the document creating the easement.

**6.6 ACCESS.** Developer covenants to provide, either by way of easements or publicly dedicated right of way, reasonable access for ingress and egress from this Condominium to the public way. All easements so provided, shall be for the benefit of all persons residing on the Condominium Property.

**6.7 WATER, GARBAGE, AND SEWER SERVICE.** In order to provide the Unit Owners with adequate water, sewage and garbage disposal service the Association or its agent may contract for these services with the appropriate entities or they may be provided directly to each unit.

**6.8 EASEMENT FOR ACCESS AND DRAINAGE.** The Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall the right to enter upon any portion of any unit or common elements which is a part of the surface water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

**7. COMMON EXPENSE; COMMON SURPLUS.**

**7.1 LIABILITY AND METHOD OF SHARING.** Each Unit shall share in the Common Surplus and be liable for the Common Expenses in the same percentage as the percentage representing the undivided interest of each Unit in the Common Elements as it may exist at any time. The right to share in the Common Surplus does not include the right to withdraw, or to require payment or distribution thereof, except upon termination and dissolution of the Condominium.

**8. ADMINISTRATION OF THE CONDOMINIUM.**

**8.1 THE ASSOCIATION.** The Association shall administer the operation and management of the Condominium Property and undertake and perform all acts and duties incident thereto in accordance with this Declaration, its exhibits and the Condominium Act.

**8.2 MEMBERSHIP.** Each Unit Owner shall automatically become a member of the Association upon his acquisition of title to any Unit and said membership shall terminate automatically upon said Unit Owner being divested of title to such Unit, regardless of the means by which such ownership may be divested. No person holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue thereof, to membership in the Association or to any of the rights or privileges of such membership.

**8.3 POWERS OF THE ASSOCIATION.** In the administration of the Condominium, the Association shall have, and is hereby granted, the authority and power to enforce the provisions of this Declaration, levy and collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such Rules and Regulations governing the use of the Units, Elements and Limited Common Elements as the Board of the Association may deem to be in the best interest of the Condominium. The Association shall have all of the powers and duties set forth in the Condominium Act except where limited herein and where the exercise of such powers and duties will impair the rights of other parties.

**8.4 REPORTS TO MEMBERS.** The Association or its designees shall maintain such records as required by F.S. 718.111, and shall make them available for inspection during normal business hours by Unit Owners and lenders and by holders, insurers or guarantors of any first mortgage.

**8.5 REPORTS TO LENDERS.** So long as an Institutional Mortgagee of any Unit is the owner or holder of a mortgage encumbering a Unit in the Condominium, the Association shall furnish said Institutional Mortgagee with one (1) copy of the Annual Financial Statement and Report of the Association pertinent to the Unit upon which the mortgage is held, provided said Institutional Mortgagee requests same.

**8.6 INSURANCE REPORTING.** In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owner, the Association shall give notice of the exposure within a reasonable time to all Unit Owners who may be exposed to the liability and they shall have the right to intervene and defend.

A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

**8.7 VOTING.** Each Unit, including the Developer owned units, shall have one (1) vote for each Unit owned. The vote for each Unit, including those owned by multiple owners or entities, shall be governed by the provision of the By-Laws. If units are divided or combined pursuant to paragraph 5 above, the number of votes applicable to such unit or units after the division or combination shall equal in total the number of votes applicable to the units divided or combined prior to division or combination.

**8.8 MANAGEMENT AGREEMENT.** The Association may enter into an agreement with any person, firm or corporation for the administration, maintenance and repair of the Condominium Property and may delegate to such contractor or manager such of the powers and duties of the Association as the Association and such person, firm, or corporation shall agree.

**8.9 DEVELOPER CONTROL.** The developer shall relinquish all special rights, expressed or implied, through which the developer may directly or indirectly control, direct, modify, or veto any action of the owners' association, its executive board, or a majority of unit owners, and control of the owners' association shall pass to the owners of units within the project, as provided in Florida Statutes.

**8.10 DUTIES OF ASSOCIATION.** The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management systems shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved by the St. Johns River Water Management District. Assessments may be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements.

**9. USE AND OCCUPANCY.**

**9.1 USE.** Each Unit shall be used for residential and related uses and purposes, and for any use authorized by the zoning rules and regulations of the applicable governmental authority.

**9.2 GENERAL USE RESTRICTION.** No person shall use the Condominium Property, or any parts thereof, in any manner contrary to the Condominium Documents or Condominium Act.

**9.3 ALTERATIONS AND ADDITIONS.** No Unit Owner shall make or permit to be made any internal material alteration, addition or modification to his Unit, without the prior written consent of the Association. No Unit Owner shall cause to be made any modification or installation of electrical wiring, television antenna systems or connections whether inside or outside the Unit or in any manner change the appearance of any portion of the Condominium Property. No Unit Owner may cause any material puncture or break in the boundaries of his Unit.

**9.4 LAWFUL USE.** No immoral, improper, offensive or unlawful use shall be made of any or all the Condominium Property, and all laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for maintenance and repair of the property concerned.

**9.5 VENDING MACHINES.** The Association shall have the exclusive and perpetual right to contract for the installation and operation of coin-operated vending machines.

9.6 **NUISANCES.** No nuisance or any use or practice that is the source of unreasonable annoyance to other Unit Owners or Occupant which interferes with the peaceful possession and proper use of the Condominium Property by the Unit Owners or Occupant is permitted. No Unit Owner or Occupant shall permit or suffer anything to be done or kept upon the Condominium Property or his Unit which will increase the rate of insurance on the Condominium.

9.7 **APPLICABILITY TO DEVELOPER.** No Unit Owner or the Association, or their use of the Condominium, shall interfere with the Developer's completion and sale of the Condominium Units. Anything contained herein to the contrary notwithstanding, the Developer may make such use of any unsold Unit and the Common Elements as may facilitate the sale or leasing of any Unit.

9.8 **RULES AND REGULATIONS.** All Unit Owners and other persons shall use the Condominium Property in accordance with the Rules and Regulations promulgated by the Association and the provisions of this Declaration and the By-Laws of the Association, as applicable.

**10. MAINTENANCE, ALTERATION AND REPAIR OF THE CONDOMINIUM PROPERTY.**

10.1 **MAINTENANCE BY ASSOCIATION.** The Association, at its expense, shall be responsible for and shall maintain, repair and replace all of the Common and Limited Common Elements, except as provided in Paragraph 4.4.

10.2 **MAINTENANCE BY UNIT OWNER.** The Unit Owner shall, subject to the other provisions of this Declaration, maintain, repair, and replace, at his expense, all portions of his Unit including, but not limited to, all doors, windows, glass, screens, electric panels, electric wiring, electric outlets and fixtures, heaters, hot water heaters, refrigerators, dishwashers, and other appliances, drains, plumbing fixtures and connections, interior surfaces of all walls, floors and ceilings, ~~and all other portions of his Unit.~~ The Unit Owner shall maintain and repair the air conditioning compressor, refrigerant and electrical lines appurtenant to his Unit.

*balconies previously defined as  
within the Unit*

10.3 **LIABILITY OF UNIT OWNER.** Should a Unit Owner undertake unauthorized additions and modifications to his Unit, or refuse to make repairs as required, or should a Unit Owner cause any damage to the Common Elements, the Association may make such repairs or replacements and have the right to collect for the costs thereof against the said Unit Owner. In the event a Unit Owner threatens to or violates the provisions hereof, the Association shall also have the right to proceed in a court of equity for an injunction to seek compliance with the provisions hereto.

10.4 **INSURANCE PROCEEDS.** Whenever any maintenance, repair and replacement of any items for which the Unit Owner is responsible is made necessary by any loss covered by insurance maintained by the Association, the proceeds of the insurance received by Association, or the Insurance Trustee, shall be used for the purpose of accomplishing such maintenance, repair or replacement. The Unit Owner shall be required to pay all of the costs thereof that exceed the amount of the insurance proceeds.

10.5 **RIGHT OF ENTRY BY ASSOCIATION.** The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit or units.

11. **TAX OR SPECIAL ASSESSMENT AGAINST THE CONDOMINIUM PROPERTY.** If any taxing authority levies or assesses any Tax or Special Assessment against the Condominium Property as a whole, and not the individual Units, the same shall be paid as a Common Expense by the Association and assessed to the Unit Owner. In such event, the amount due shall constitute a lien prior to all mortgages and encumbrances upon any parcel to the same extent as though such Tax or Special Assessment had been separately levied by the taxing authority upon each Unit. All personal property taxes levied or

assessed against personal property owned by Association shall be paid by the Association and shall be a Common Expense.

12. **LEASING.** All leases or rental agreements for any unit shall be in writing and be subject to the Declaration and By-Laws.

13. **INSURANCE PROVISIONS.** The insurance which shall be purchased and maintained for the benefit of the Condominium shall be governed by the following provisions:

13.1 **PURCHASE OF INSURANCE.** All insurance policies pursuant to this Paragraph 13 shall be purchased by the Association for the benefit of the Association, the Unit Owners and their respective mortgagees, as their interest may appear, and shall provide for the issuance of certificates of insurance and mortgagee endorsements to any or all of the holders of institutional first mortgages. When appropriate and possible, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Unit Owners and the Associations, their respective servants, agents and guests. Each Unit Owner and the Association hereby agree to waive any claim against each other and against other Unit Owners for any loss or damage for which insurance hereunder is carried where the insurer has waived its rights of subrogation as aforesaid. Said policies and endorsements may be deposited with the Insurance Trustee (as hereinafter defined) who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms and conditions hereof.

13.2 **COST AND PAYMENT OF PREMIUMS.** The cost of obtaining all insurance hereunder, excluding only the insurance as may be purchased by individual Unit Owners, is declared to be a Common Expense, as are any other fees or expenses incurred which may be necessary or incidental to carry out the provisions hereof.

13.3 **UNIT OWNERS' RESPONSIBILITY.** Each Unit Owner may obtain insurance, at his own expense, affording coverage upon his own property and for his own liability and living expenses as he deems advisable. When appropriate and possible, all such insurance shall contain the same waiver of subrogation that is referred to herein and shall waive any right to contribution.

13.4 **COVERAGE.** The following coverage shall be obtained by the Association:

(a) The building(s) and all other insurable improvements upon the land, including Common Elements, Limited Common Elements, and all personal property owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavations and foundations) as determined annually by the Association in consultation with the insurance company providing the coverage. Said coverage shall afford protection against the loss or damage by fire and other hazards covered by the standard extended coverage endorsement and all other such risks as, from time to time, may be covered with respect to buildings similar in construction, location and use, including but not limited to, vandalism, malicious mischief, windstorm, war damage and war risk insurance, if available.

(b) Comprehensive general public liability and property damage insurance in such an amount and in such form as shall be required by the Association in limits of not less than \$100,000 for bodily injury or death to any person; not less than \$300,000 for bodily injury or death resulting from any one accident or occurrence, and not less than \$50,000 for property damage. Said coverage shall include, but not be limited to, water damage, legal liability, hired automobile, non-owned automobile, and off-premises employee coverage. All liability insurance shall contain cross liability endorsements to cover liabilities of the Unit Owners as a group to an individual Unit Owner and one Unit Owner to another.

(c) Adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this paragraph, the term persons who control or disburse funds of the association includes, but is not limited to, those individuals authorized to sign checks and



the president, secretary, and treasurer of the association. The association shall bear the cost of bonding.

(d) Workmen's compensation policies shall be obtained to meet the requirements of law.

(e) Such other insurance as the Board of the Association may determine to be necessary from time to time.

**13.5 INSURANCE TRUSTEE.** All insurance policies purchased in accordance with Paragraph 13.4(a) shall provide that all proceeds payable to the Association as a result of any insured loss, except those specifically herein excluded, shall be paid to the Association or, if the Association so elects, to a financial institution doing business in Alachua County and having trust powers. Such institution shall be designated as Trustee, from time to time, by the Association (said Trustee, acting as such, is herein referred to as the "Insurance Trustee") and which appointment is subject only to the approval of the Institutional Mortgagee holding the greatest dollar amount of mortgages against Units in the Condominium. The Insurance Trustee shall not be liable for payment of premiums, the renewal of the policies, the sufficiency or content of the policies, or for failure to collect any insurance proceeds. It is the duty of the Association or the Insurance Trustee to receive said proceeds, as paid, and to hold the same in trust for the benefit of the Association, the Unit Owners and their respective mortgagees, as follows:

(a) Proceeds received on account of damage to Common Elements shall be held in the same proportion as the share in the Common Elements which is appurtenant to each of the Units.

(b) Proceeds on account of damage to the Units shall be held in the following manner in undivided shares:

**(1) PARTIAL DESTRUCTION WHEN THE BUILDING IS TO BE RESTORED.** For the benefit of the Unit Owners of the damaged Units in proportion to the cost of restoring the same suffered by each damaged Unit. Upon the request of the Insurance Trustee, the Association shall certify to the Insurance Trustee the appropriate proportion and each Unit Owner shall be bound thereby and the Insurance Trustee may rely upon said certification.

**(2) TOTAL DESTRUCTION WHEN THE BUILDING IS DESTROYED OR WHEN THE BUILDING IS NOT TO BE RESTORED.** For all Unit Owners of a destroyed building; the share of each being in the same proportion as the Unit Owner's undivided share in the Common Elements which is appurtenant to his Unit. In the event a mortgagee endorsement has been issued hereunder, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interest may appear. In the event that there is more than one building in the condominium then the proceeds shall be held for the benefit of the Unit Owners in the destroyed building as if it were the only building in the Condominium.

**13.6 DISTRIBUTION OF PROCEEDS.** Proceeds of insurance policies received by the Insurance Trustee or the Association shall be distributed to or for the benefit of the Unit Owners (after first paying or making provision for payment of the expenses, including a reasonable fee for services rendered, of the Insurance Trustee) in the following manner:

(a) If the damage for which the proceeds were paid is to be reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying said costs shall be distributed to the Association.

(b) If it is to be determined that the damage for which the proceeds are paid shall not be reconstructed, the proceeds shall be distributed to the Unit Owners and their mortgagees as their interest may appear.

(c) In making distribution to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate provided by the Association as to the names

of the Unit Owners and mortgagees and their respective shares of the distribution. Upon request of the Insurance Trustee the Association shall forthwith deliver said certificate.

**13.7 ASSOCIATION AS AGENT.** The Association is irrevocably appointed agent for each Unit Owner, for each owner of a mortgage upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

**13.8 DETERMINATION TO RECONSTRUCT.** If any part of the Condominium Property shall be damaged by casualty the determination as to whether or not it shall be reconstructed shall be made in the following manner:

(a) **COMMON ELEMENT.** If the damage is to only Common Elements the damaged property shall be reconstructed unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

(b) **DAMAGE TO UNITS.** If the damage is to Units and if Units to which more than 70% of the Common Elements are appurtenant are found by the Board of Directors to be untenable, then the damaged property will not be reconstructed and the Condominium will be terminated without agreement as elsewhere provided, if, within sixty (60) days after the casualty, Unit Owners owning 75% or more of the Common Elements and eligible holders holding mortgages on units which have at least 51 percent of the votes of units subject to eligible holder mortgages agree in writing to such termination. Notwithstanding the foregoing, if the damages could be repaired for \$200,000.00 or less, the property shall be reconstructed.

(c) **CERTIFICATE.** The Insurance Trustee may rely upon a certificate of the Association executed by its President or Vice-President and Secretary or Assistant Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

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

**13.10 NATURE OF RECONSTRUCTION.** Any reconstruction included hereunder shall be substantially in accordance with the plans and specifications of the original building, or as the building was last constructed, subject to modification to conform with the then current governmental restrictions and codes if necessary.

**13.11 ESTIMATES.** In all instances hereunder, immediately after a casualty causing damage to the property for which the Association has the responsibility of maintenance and repair, the Association shall obtain a reliable, detailed estimate of the cost to place the damaged property in a condition as good as that before the casualty. Such cost may include professional fees and premiums for such bonds as the Board may desire, or those required by any Institutional Mortgagee involved.

**13.12 ASSESSMENTS.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction by the Association, or if, at any time during reconstruction or upon completion of reconstruction, the funds for the payment of the costs of reconstruction are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to their ownership in the Common Elements. Such assessments on account of damage to Common Elements shall be in proportion to the Unit Owner's shares in the Common Elements.

**13.13 DISPOSITION OF PROCEEDS.** The proceeds of insurance and any special assessments, if any, collected on account of a casualty and deposited with the Insurance Trustee or the Association shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction in the following manner:

(a) That portion of insurance proceeds representing damage for which the responsibility of reconstruction lies with the Unit Owner: to such contractors, suppliers, and personnel for work done, materials supplied or services rendered for such reconstruction. Payments shall be in such amounts and at such times as the Unit Owners may direct, or if there is a mortgagee endorsement, to such payee as the Unit Owner and the mortgagee direct. Nothing contained herein shall be construed to limit or modify the responsibility of the Unit Owner to make such reconstruction.

(b) If the amount of the estimated cost of reconstruction is less than \$25,000.00, and is the responsibility of the Association: The construction fund shall be disbursed directly to the Association in payment of such costs and upon the Association's order, provided, however, that upon the request of a mortgagee which is a beneficiary of the insurance policy, the construction fund shall be disbursed as the Association and such mortgagee may properly direct.

(c) the amount of the estimated cost of reconstruction is more than \$25,000.00, and is the responsibility of the Association, then the reconstruction funds shall be paid from the account of the Association, from time to time, as the work progresses. If a Trustee has been appointed, said Trustee shall make payments upon the written request of the Association accompanied by an appropriate certificate signed by both an officer of the Association and by the architect or engineer in charge of the work, setting forth:

(1) That the sum then requested either has been paid by the Association or is justly due and certifying that the sum requested does not exceed the value of the services and materials described in the certificate.

(2) That except for the amounts stated in said certificate to be due as aforesaid, there is no outstanding indebtedness known which may become the basis of vendor's, mechanic's or materialman's liens.

(3) That the cost, as estimated, of work remaining to be done subsequent to the date of said certificate, does not exceed the amount of funds remaining in the hands of the Insurance Trustee after the payment of the sum so requested.

(a) It shall be presumed that the first monies disbursed in payment of such costs of reconstruction shall be from insurance proceeds and shall first be applied to reconstruction of the Common Elements and then to the Units. If there is a balance in a construction fund after the payment of all costs of reconstruction said balance shall be distributed to the Association.

(b) Payment for any reconstruction made under Subparagraphs (b) and (c) of this paragraph shall be made by the Insurance Trustee or the Association only upon presentation of proof of payment of bills for materials in place, labor, services and materials for work covered and included in such payments for which failure to pay might result in a lien on the Common Elements.

**13.14 EFFECT OF MORTGAGEE ENDORSEMENTS CONCERNING INSURANCE PROCEEDS.** In the event a mortgagee endorsement has been issued relative to any Unit, the share of the Unit Owner shall be held in trust for the mortgagee as heretofore provided. All mortgagees waive the rights to said proceeds if the same are used pursuant to the provisions of the Declaration to pay for the restoration of such damage. The provisions hereof shall not affect the rights of the mortgagee, if any, to require any surplus proceeds to be distributed to it, over and above the amounts actually used for such restoration. All covenants contained herein for the benefit of any mortgagee may be enforced by such mortgagee. Nothing contained herein, however, shall be construed as relieving the Unit Owner from his duty to reconstruct damage to his Unit as heretofore provided.

**13.15 AUTHORITY OF ASSOCIATION.** In all instances, herein, except when a vote of the membership of the Association, or of a particular building, is specifically required, all decisions, duties and obligations of the Association under this Paragraph 13

may be made by the Board. The Association and its members shall jointly and severally be bound thereby.

**13.16 REPAIR OF LAND.** In the event, pursuant to the provisions of Paragraph 13.8(b), the Condominium is not terminated but a building is not to be restored, the remains of said building shall be razed and the land thereunder restored to a landscaped green area at the sole pro-rata expense of the Unit Owners who own Units in said building. The expense thereof may be deducted from any insurance proceeds payable on account of casualty to said building.

**13.17 CONVEYANCE TO ASSOCIATION.** In the event, pursuant to the provisions of Paragraph 13.8(b) hereof, the Condominium is not terminated but a building is not to be restored, the payment of any insurance funds to the Unit Owners and/or their mortgagees of said building on account of casualty to said building, shall be contingent upon said Unit Owner's conveying by Quit-Claim Deed, executed in recordable form, all Units in said building to the Association, and further contingent upon the mortgagees thereof executing Satisfactions of Mortgages, in recordable form for all mortgages encumbering Units in said building. The share of the Common Expenses of said Units conveyed to the Association shall be a Common Expense to be shared by the remaining Unit Owners of the Condominium. Since said remaining Unit Owners will not own 100% of the Common Elements due to the fact that the Association will own the Units of said building which were not restored, and in order to collect said Common Expenses attributable to the Units owned by the Association, there shall be added to the Budget an amount entitled "Common Expenses of Association's Units" which shall be mathematically determined to equal an amount such that when added to the actual expenses and assessments of the Association, the amount to be collected from the remaining Unit Owners according to their percentage of Common Expense equals expenses and assessments.

#### **14. ASSESSMENTS.**

**14.1 GENERAL AUTHORITY.** The Association, through its Board, shall have the power to make, levy and collect regular and special assessments for Common Expenses and such other assessments as are provided for by the Condominium Act and the provisions of this Declaration and all other expenses declared by the Directors of the Association to be Common Expenses from time to time.

**14.2 UNIT OWNER'S GENERAL LIABILITY.** All Common Expenses levied against Unit Owners and Units shall be on a uniform basis in the same proportion as the percentages of the undivided shares in the ownership of the Common Elements without increase or diminution for the existence, or lack of existence, of any exclusive right to use a part of the Limited Common Elements. Should the Association be the owner of any Unit(s), the assessment, which would otherwise be due and payable to the Association or others by the owner of such Unit(s), shall be a Common Expense as the same relates to the collection of such sums from the Unit Owners to pay the Association's obligations.

**14.3 PAYMENT.** The assessments of the Association levied against the Unit Owner and his Unit shall be payable in such installments, and at such times, as may be determined by the Board of Directors of the Association.

**14.4 EMERGENCIES.** If assessments levied are, or may prove to be insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem necessary. The Board of Directors of Association in assessing for Common Expenses shall include therein a sum to be collected and maintained as a reserve fund for capital expenditures and deferred maintenance as required by Florida Statutes.

**14.5 SEPARATE PROPERTY.** All monies collected by the Association shall, be maintained separately in the Association's name. Such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of the

provisions of this Declaration. Reserve and operating funds of the Association shall not be commingled unless combined for investment purposes. All assessments received by the Association shall be held for the benefit of the Unit Owners. No Unit Owner shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein, except as an appurtenance to his Unit. Such funds shall not be subject to attachment or levy by a creditor or judgment creditor of a Unit Owner. When the owner of a Unit shall cease to be a member of the Association by the divestment of his ownership of such Unit the Association shall not be required to account to such owner for any share of the funds or assets of the Association.

**14.6 DEFAULT.** The payment of any assessment or installment thereof due to the Association shall be in default if such payment is not paid to the Association when due. If in default for in excess of ten (10) days, the delinquent assessment, or delinquent installments thereof and all advances permitted by Paragraph 14.8 hereof, shall bear interest at the rate equal to the maximum rate then allowed to be charged to individuals in the State of Florida. In addition, a late charge of the greater of \$25.00 or 5 percent of each installment, which is acknowledged not to be a penalty, shall be then due and payable. In the event that any Unit Owner is in default in payment of any assessments or installments thereof owed to the Association, said Unit Owner shall be liable for all costs of collecting the same, including reasonable attorney's fees and court costs.

**14.7 NO WAIVER.** No Unit Owner may exempt himself from liability for any assessment levied by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit for which the assessments are made or in any other manner.

**14.8 LIEN.** The Association is hereby granted a lien upon each Condominium parcel, which lien shall secure the payment of all monies from each Unit Owner for which the Unit Owner is liable to the Association, including all assessments, interests and reasonable costs and attorney's fees incurred as an incident to the enforcement of said lien. The lien granted to Association may be foreclosed as provided in the Condominium Act (F.S. 718, et seq.). The lien granted to the Association shall further secure such advances for taxes and payments on account of Institutional Mortgages, liens or encumbrances which may be advanced by the Association in order to preserve and protect its lien. The lien shall be effective, have priority, and be collected as provided by the Condominium Act, unless, by the provisions of this Declaration, such liens would have a greater priority or dignity, in which event, the lien rights in favor of the Association having the highest priority and dignity shall be the lien of the Association.

**14.9 PROVISIO.** A unit owner regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while her or she is the unit owner. Additionally, a unit owner is jointly and severally liable with previous owners for all unpaid assessments that came due up to the time of transfer of title. The liability of a first mortgage or its successors or assigns may be limited by Section 718.116 (1) F.S.

**14.10 CERTIFICATE OF STATUS OF ASSESSMENTS.** Any Unit Owner, mortgagee, or lienor may require the appropriate certificate as set forth in F.S. 718.116(8).

**14.11 GRANTEE LIABILITY.** In any voluntary conveyance of a Unit; the grantee shall be jointly and severally liable with the grantor for all unpaid assessments of any nature incurred prior to the time of such voluntary conveyance.

**14.12 NO ELECTION OF REMEDIES.** The institution of a suit at law for collection of any delinquent assessment may be maintained without waiving the lien securing the same. Proceeding by foreclosure to attempt to effect such collection shall not be deemed an election precluding the institution of suit at law for collection of the same. All Unit Owners do hereby waive pleading the theory of "elections of remedies" in any such proceedings.

**14.13 MECHANICS LIENS.** The creation and enforcement of mechanic's and other liens against the Units and Condominium Property, except those created by this Declaration, shall be governed by the provisions of the Condominium Act.

**14.14 DEVELOPER EXEMPTION.** The Developer shall be excused from the payment of the share of the common expenses and assessments related to those units owned by the Developer for a period of time subsequent to the recording of the Declaration of Condominium which period shall terminate on the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first condominium unit occurs. However, the Developer must pay the portion of common expenses incurred during that period which exceed the amount assessed against other unit owners.

**15. TERMINATION.** The Condominium may be terminated in the following manner:

**15.1 DESTRUCTION.** If it is determined in the manner provided in Paragraph 13 that the Condominium Property as a whole shall not be reconstructed, the Condominium will be terminated.

**15.2 AGREEMENT.** As provided in Section 718.117 of the Condominium Act, the Condominium may be terminated at any time by the approval in writing of all Unit Owners and all record owners of mortgages on Units.

If the proposed termination is submitted to a meeting of the Association, and if the approval of the Unit Owners owning not less than 75% of the Common Elements and their Institutional Mortgagees is obtained, in writing, not later than sixty (60) days from the date of such meeting, then the approving Unit Owners (through the Association), shall have an option to buy all of the Units of the disapproving Unit Owners for the period of one hundred twenty (120) days from the date of such meeting. The vote of those Unit Owners approving the termination shall be irrevocable until the expiration of the option. Any Unit Owner voting against termination, or not voting, may, within fifteen (15) days from the date the vote was taken, change or cast his vote in favor of termination by delivering written notification thereof to the Secretary of the Association. The option shall be upon the following terms:

(a) **EXERCISE OF OPTION.** The option shall be exercised by delivery, or the mailing by registered mail, of an agreement to purchase, signed by the Association, to each of the Owners of the Units voting against termination. The agreement shall be subject to the purchase of all Units owned by Owners not approving the termination.

(b) **PRICE.** The sale price for each Unit shall be the fair market value as determined between the seller and the Association within thirty (30) days from the delivery of said agreement. In the absence of agreement on the price of any Unit, the price shall be determined by an appraiser appointed by the Chairman of the local Board of Realtors. A judgment of specific performance of the sale, at the price determined by the appraiser, may be entered in any court of competent jurisdiction.

(c) **PAYMENT.** The purchase price shall be paid in cash.

(d) **FORM.** The contract shall be in the form of the Standard Deposit Receipt and Contract for Sale and Purchase then in use in Alachua County, Florida.

(e) **CLOSING.** The sale of all Units shall be closed simultaneously and within thirty (30) days following the determination of the sale price of the last Unit to be purchased.

**15.3 CERTIFICATE.** The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying the fact of the termination, which shall become effective upon the certificate being recorded in the Public Records.

**15.4 SHARES OF OWNERS AFTER TERMINATION.** After termination of the Condominium the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares that shall be equal to the sum of the undivided shares in the Common Elements appurtenant to the Units prior to termination so that the sum total of the ownership shall equal one hundred percent (100%).

**15.5 OCCUPANCY RIGHTS AFTER TERMINATION.** In the event of termination of the Condominium by agreement pursuant to Paragraph 15.2 hereof, each approving Unit Owner shall have the perpetual exclusive right to occupy the air space which formerly constituted said Unit Owner's Condominium Unit prior to termination, unless otherwise agreed upon in writing evidenced by a Certificate executed by said Unit Owner and recorded in the public records.

**15.6 EXCLUSIVE RIGHTS EXTINGUISHED BY TERMINATION.** All exclusive rights of use of Common Elements shall be extinguished by virtue of the termination of the Condominium.

**15.7 AMENDMENT.** This Paragraph 15 concerning termination cannot be amended without approval of two-thirds (2/3) of the total voting interests.

**15.8 EQUITABLE RIGHTS.** Unit Owners shall have such rights as provided in F.S. 718.118.

**16. AMENDMENTS.** Except as herein or elsewhere provided, this Declaration may be amended in the following manner:

**16.1 NOTICE.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

**16.2 PROPOSAL OF AMENDMENT.** An amendment may be proposed by either the 66% vote of the Board of Directors of the Association, or by 15% of the members of the Association. Except as elsewhere provided, a proposed amendment must be approved by the owners of not less than two-thirds of the units.

**16.3 AMENDMENT AS TO OMISSIONS OR ERRORS.** If there is an omission or error in a declaration of condominium, or in other documents required by law to establish the condominium, the Association may correct the error or omission by an amendment to the declaration, or the other documents required to create a condominium, by vote of a majority of the voting interests. The amendment is effective when passed and approved and a certificate of the amendment is executed and recorded as provided in s.718.110, FS. This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of Unit Owners, unless the affected Unit Owners consent in writing. This subsection does not restrict the powers of the Association to otherwise amend the declaration, or other documentation.

(a) No amendment shall alter a Unit Owner's percentage in the Common Elements, alter his proportionate share in the Common Expense or Common Surplus, change a Unit Owner's voting rights, or alter the basis for apportionment of assessment which may be levied by the Association against a Unit Owner without the written consent of the Unit Owner.

(b) No amendment shall be passed which shall impair or prejudice the rights and priorities of any Institutional Mortgagee without the written consent of the Institutional Mortgagee affected, which shall not be unreasonably withheld.

(c) No amendment shall be made without the consent of the Unit Owners as to matters covered by section 718.110 (4) and (8) FS.

(d) Prior to the recordation in the Public Records of a deed from the Developer, the Developer without the joinder of any other person, may amend any of the provisions of this Declaration by filing an amendment in the Public Records.

**16.5 EXECUTION AND RECORDING.** Except as otherwise provided in this Declaration, a copy of each amendment shall be attached to a certificate, executed by the officers of the Association, certifying that the amendment was duly adopted. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records. Any amendment to the Covenants and Restrictions which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

**17. REMEDIES.**

**17.1 RELIEF.** Each Unit Owner and the Association shall be governed by and shall comply with the provisions of this Declaration. A violation thereof shall entitle the appropriate party to the following relief: An action to recover sums due for damages, injunctive relief, foreclosure of any lien or any combination thereof, for any other action available pursuant to the Condominium Act or law. Suit may be sought by Association, Developer, or, if appropriate, by one or more Unit Owners and the prevailing party shall be entitled to recover reasonable attorneys' fees, including attorney's fees on appeal. Each Unit Owner acknowledges that the failure to comply with any of the provisions of this Declaration shall or may constitute an injury to the Association, Developer or other Unit Owners, and that such injury may be irreparable. Upon request, an Institutional Mortgagee is entitled to written notification from the Association of any default by its mortgagor of any obligation under this Declaration or the By-Laws. The appropriate water management district shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system.

**17.2 COSTS AND ATTORNEYS' FEES.** In any proceeding arising because of an alleged default, act, failure to act, or violation by the Unit Owner or Association, including the enforcement of any lien granted pursuant to this Declaration or its exhibits, the Association shall be entitled to recover the costs of the proceeding, including reasonable attorneys' fees. Further, in the event proceedings are instituted by or against the Association for any reason whatsoever, including but not limited to (1) actions for declaratory judgment, (2) any claim that any of the above have not complied with their obligations under the Offering Circular, this Declaration and its exhibits, or (3) that any provision of the same is unconscionable, unfair (or the like) or violates any state or Federal law or regulation, and if the Association is the prevailing party then, and in that event, they shall be entitled to recover all costs of the proceedings. Said recoverable costs shall include, but are not limited to, reasonable attorney's fees at all levels of the proceeding, including appeals, together with all costs, including those not normally allowable in actions at law such as, but not limited to, copies of depositions, whether or not used at trial; travel expenses for witnesses traveling from without Alachua County for the purpose of testifying at trial or deposition; expert witnesses; fees for testifying at trial or deposition, together with such additional fees as the expert witness may charge the said party in connection with his preparation for giving such testimony; witness subpoenas issued to insure the presence of witnesses at deposition or at trial whether or not the witness shall actually appear or be called upon to testify.

**17.3 NO WAIVER.** The failure of the Association to enforce any right, provision, covenant or condition created or granted by this Declaration shall not constitute a waiver of the right of said party to enforce such right, provision, covenant or condition in the future.

**17.4 RIGHTS CUMULATIVE.** All rights, remedies and privileges granted to Association, the Developer or Unit Owner pursuant to any of the provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be available to such party at law or in equity. Each Unit Owner agrees in



any proceeding brought pursuant to the provisions hereof not to plead or defend the same on the theory of "election of remedies."

17.5 **VENUE; WAIVER OF TRIAL BY JURY.** Every Unit Owner or Occupant and all persons claiming any interest in a Unit agrees that in any suit or proceeding brought pursuant to this Declaration, such suit shall be brought in the Circuit Court of the 8<sup>th</sup> Judicial Circuit in and for Alachua County, Florida, or the United States District Court, Northern District of Florida, as the same is now constituted or any court in the future that may be the successor to the courts contemplated herein. All such parties do further waive the right to trial by jury and consent to a trial by the court without a jury.

17.6 **APPOINTMENT OF AGENT; PROVISIO.** Should suit be instituted, the Unit Owners or Occupants do hereby irrevocably appoint the Secretary of State of the State of Florida as their Agent for the acceptance of service of process should, at the time of such service of process, any such person not be residing in Alachua County, Florida.

18. **MISCELLANEOUS RIGHTS OF DEVELOPER.**

18.1 **RIGHT TO USE FACILITIES.** Notwithstanding any provisions of this Declaration to the contrary, the Developer shall have the right to use and occupy any unsold Unit, the Common Elements and any of the Limited Common Elements, the exclusive use of which have not been assigned, for the purpose of a Sales Office or for any other purpose.

19. **NOTICES.** Whenever notices are required to be sent hereunder, the same may be delivered to Unit Owners, either personally or by mail, at their place of residence in the Condominium. Notices to the Association shall be delivered or mailed to the Secretary of the Association, or in case of the Secretary's absence, then to the President of the Association.

Notices to the Developer shall be made to Developer at 4907 NW 43<sup>rd</sup> Street #F, Gainesville, FL 32606.

20. **CONSTRUCTION.** All of the provisions of this Declaration shall be construed in accordance with the Laws of the State of Florida. This construction shall govern in all matters, including matters of substantive and procedural law.

21. **GENDER.** Unless the contrary appears to have been intended, words in the plural number shall include the singular and words in the singular shall include the plural, and words of the male gender shall include the female gender and the neutral gender.

22. **CAPTIONS.** The captions to the paragraphs of this Declaration are intended for convenience only and are not deemed to be all inclusive as to the matters contained in such paragraphs or considered in connection with the construction of any of the provisions of this Declaration.

23. **SEVERABILITY.** If any term or provision of this Declaration, or the application thereof to any person or circumstances, shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Declaration, or the application of such term or provision to persons or circumstances other than those to which such term may be held invalid or unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

24. **NOTICE OF ACTION.** Upon written request to the Association, identifying their name and address and the unit number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any unit estate on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an owner of a unit estate subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of 60 days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders;

(e) Unless the formula for reallocation of interests in the common elements after a partial condemnation or partial destruction of a condominium project is fixed in advance by the constituent documents or by applicable law, no reallocation of interests in the common elements resulting from a partial condemnation or partial destruction of such a project may be effected without the prior approval of eligible holders holding mortgages on all remaining units whether existing in whole or in part, and which have at least 51 percent of the votes of such remaining units subject to eligible holder mortgages;

(f) An eligible mortgage holder who receives a written request to approve additions or amendments to the Declaration, the By-Laws or the Articles of Incorporation and who does not deliver or mail to the requesting party a negative response within 30 days shall be deemed to have approved such request.

## 25. CONDEMNATION.

### 25.1 DEPOSIT OF AWARDS WITH ASSOCIATION OR INSURANCE TRUSTEE.

The taking of condominium property by condemnation shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Association or Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association or Insurance Trustee; and in the event of failure to do so, the amount of that award shall be set off against the sums hereafter made payable to that owner.

25.2 DETERMINATION WHETHER TO CONTINUE CONDOMINIUM. Whether the condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty. For this purpose, the taking by condemnation shall be deemed to be a casualty.

25.3 DISBURSEMENT OF FUNDS. If the condominium is terminated after condemnation, the proceeds of the awards and special assessments will be deemed to be the condominium property and shall be owned and distributed in the manner provided from insurance proceeds if the condominium is terminated after a casualty. If the condominium is not terminated after condemnation, the size of the condominium will be reduced, the owners of the condemned units will be made whole and the property damaged by the taking will be made useable in the manner provided below. The proceeds of the awards and special assessments shall be used for these purposes and shall be disbursed in a manner provided for disbursement of funds by the Association or Insurance Trustee after a casualty.

25.4 UNIT REDUCED BUT TENANTABLE. If the taking reduces the size of the unit and the remaining portion of the unit can be made tenantable, the award for the taking of a portion of the unit shall be used for the following purposes in the order stated and the following charges shall be effected in the condominium:

(a) RESTORATION OF UNIT. The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

(b) **DISTRIBUTION OF SURPLUS.** The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

**25.5 UNIT MADE UNTENANTABLE.** If the taking is of the entire unit or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated and the following changes shall be effected in the condominium:

(a) **PAYMENT OF AWARD.** The market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

(b) **ADDITION TO COMMON ELEMENTS.** The remaining portion of the unit, if any, shall become a part of the common elements and shall be placed in condition for use by all of the unit owners in the manner approved by the board of directors of the Association; provided that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner elsewhere required for further improvement of the Common Elements.

(c) **ADJUSTMENT OF SHARES IN COMMON ELEMENTS.** The shares in the Common Elements appurtenant to the units that continue as part of the condominium shall be adjusted to distribute the ownership of the Common Elements among the reduced number of Unit Owners. This shall be done by restating the shares of continuing Unit Owners in the Common Elements as percentages of the total of the numbers representing the shares of these owners as they exist prior to the adjustment.

(d) **ASSESSMENTS.** If the amount of the award for the taking is not sufficient to pay the market value of the condemned unit to the owner and to condition the remaining portion of the unit for use as a part of the Common Elements, the additional funds required for those purposes shall be raised by assessments against all of the Unit Owners who will continue as owners of units after the changes in the condominium effected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after changes effected by the taking.

(e) **ARBITRATION.** If the market value of a unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the unit and the Association within 30 days after notice by either party, the value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be one appraiser each appointed by the Unit Owner, mortgagee of the unit, and the Association who shall base their determination upon an average of their appraisals of the unit; -and a judgment of specific performance upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all Unit Owners in proportion to the shares of the owners in the Common Elements as they exist prior to the changes effected by the taking.

**25.6 TAKING OF COMMON ELEMENTS.** Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements useable in the manner approved by the board of directors of the Association; provided, that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for further improvement of the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustment of these shares on account of the condemnation. If there is a mortgage of a unit, the distribution shall be paid jointly to the owners and mortgagees of the unit.

IN WITNESS WHEREOF, the Developer has executed this Declaration on this 30 day of June, 2005

Signed, Sealed and Delivered  
in the presence of:

GARLAND VENTURES, INC.

*(Signature)*  
Sharon M. Deery

By: *(Signature)*  
GARLAND PLA, President

(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF ALACHUA

BEFORE ME, the undersigned authority, personally appeared GARLAND PLA, to me well known to be the person described in and who executed the foregoing instrument as President of GARLAND VENTURES, INC., and has severally acknowledged before me that she executed said instrument as such officer of said Corporation, and that the Seal affixed thereto is the Corporate Seal of said Corporation, and that it was affixed to said instrument by due and regular Corporate authority, and that said instrument is the free act and deed of said Corporation.

WITNESS my hand and seal, at the State and County aforesaid, this 30<sup>th</sup> day of June, 2005



*(Signature)* (SEAL)  
Notary Public, State of Florida at Large  
My Commission Expires:

FOR GOOD AND VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged, GARLAND CONDOMINIUM ASSN., INC. a Florida Corporation, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration of Condominium and Exhibits attached hereto.

IN WITNESS WHEREOF, the above-named Condominium Association, a Florida Corporation, has caused these presents to be signed in its name by its President, this 30 day of June, 2005

Signed, Sealed and Delivered  
in the presence of:

GARLAND CONDOMINIUM ASSN., INC.

*(Signature)*  
Sharon M. Deery

By: *(Signature)* (SEAL)  
GARLAND PLA, President

STATE OF FLORIDA  
COUNTY OF ALACHUA

BEFORE ME, the undersigned authority, personally appeared GARLAND PLA, to me well known to be the person described in and who executed the foregoing instrument as

President of GARLAND CONDOMINIUM ASSN., INC., a Florida Corporation, and she severally acknowledged before me that she executed said instrument as such officer of said Association, and that the Seal affixed thereto is the Corporate Seal of said Corporation, and that it was affixed to said Instrument by due and regular Corporate authority, and that said instrument is the free act and deed of said Corporation.

WITNESS my hand and seal, at the State and County aforesaid, this 30 day of June, 2005.

  
\_\_\_\_\_  
Notary Public, State of Florida (SEAL)



INSTRUMENT # 2148789  
41 PGS

CONSENT OF MORTGAGEE

The undersigned, **MERCANTILE BANK**, a corporation organized and existing under the laws of the United States of America, hereby consents to the recording of the Declaration of Condominium of GARLAND CONDOMINIUM, this 30 day of June, 2005.

IN WITNESS WHEREOF, the said corporation has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officer hereunto duly authorized, this 30th day of June, A.D., 2005.

Signed, sealed and delivered in the presence of:

MERCANTILE BANK

By: Robert Cameron  
ROBERT CAMERON, President

[Signature]  
Witness signature  
CARL L JOHNSON  
Printed Name

[Signature]  
Witness Signature  
Sharon M Grey  
Printed Name

STATE OF FLORIDA  
COUNTY OF ALACHUA

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared **ROBERT CAMERON**, known to me to be the President of Mercantile Bank, a corporation organized and existing under the laws of the United States of America, to me known to be the person described in and who executed the foregoing Consent of Mortgagee, and he acknowledged then and there before me that he executed the same as such officer for the purposes therein expressed; and that he affixed thereto the official seal of said corporation; and that the said agreement is the act and deed of said corporation.  Said person is personally known to me, or  Said person produced the following type of identification: \_\_\_\_\_.

Witness my hand and official seal in the County and State last aforesaid this 30th day of June, A.D. 2005.

[Signature]  
Notary Public  
My Commission Expires:



EXHIBIT "A"

GARLAND CONDOMINIUM

Alachua County, FLORIDA

A survey of the land containing the legal description of the land being submitted to condominium ownership, a graphic description of the improvements, and a plot plan is recorded in Condominium Book 4, Page 47, of the Public Records of Alachua County, Florida. The legal description of the land is also shown below.

Lands described in O.R.B. 2064, page 2099 of the public records of Alachua County, Florida; LESS and EXCEPT lands described in O.R.B. 1993, page 2268, said public records; lying in the Northwest 1/4 of Section 32, Township 9 South, Range 20 East, Alachua County, Florida; being more particularly described as follows:

Commence at a railroad spike at the Northwest corner of said Section 32, and run thence South  $00^{\circ}07'43''$  West, along the West line of said Section, 665.89 feet to the Westerly extension of the South right-of-way line of N.W. 21<sup>st</sup> Avenue; thence South  $89^{\circ}34'31''$  East, along said Westerly extension and along said South right-of-way line, 1347.20 feet to the Point-of-Beginning of the herein described parcel; thence continue South  $89^{\circ}34'31''$  East, along said South right-of-way line and along its Easterly extension thereof, 427.81 feet; thence North  $00^{\circ}06'48''$  West 21.05 to the South line of Felton Court, according to the plat thereof, recorded in plat book "D", page 30, said public records of Alachua County, Florida; thence South  $88^{\circ}53'23''$  East, along said South line, 215.43 feet to the Southeast corner of said Felton Court and the Northwest corner of said O.R.B. 1993, page 2268; thence South  $00^{\circ}12'07''$  West 120.83 feet to the Southwest corner of said O.R.B. 1993, page 2268; thence South  $86^{\circ}19'33''$  East 30.29 feet to the Southeast corner of said O.R.B. 1993, page 2268 and the West line of Pine Park Subdivision; thence South  $00^{\circ}06'46''$  East, along said West line, 95.76 feet; thence North  $89^{\circ}36'25''$  West 673.32 feet; thence North  $00^{\circ}02'46''$  East 200.20 feet to the said South right-of-way line of N.W. 21<sup>st</sup> Avenue and the said Point-of-Beginning.

Containing 3.117 Acres more or less.

INSTRUMENT # 2148789  
41 PGS

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of GARLAND CONDOMINIUM ASSN., INC., a Florida corporation, filed on June 16, 2005, as shown by the records of this office.

The document number of this corporation is N05000006245.

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Sixteenth day of June, 2005



CR2EO22 (2-03)

INSTRUMENT # 2148789  
41 PGS

*Glenda E. Hood*  
Glenda E. Hood  
Secretary of State