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PREPARED BY AND TO BE RETURNED TO:  
Robert S. Freedman, Esquire  
CARLTON, FIELDS, WARD, EMMANUEL,  
SMITH & CUTLER, P.A.  
P.O. Box 3239  
Tampa, FL 33601-3239

**DECLARATION OF CONDOMINIUM  
FOR  
UNION STREET STATION CONDOMINIUM**

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**ORIGINAL OF EXHIBIT NO. 1 CONSISTING OF THE CONDOMINIUM DRAWINGS  
IS RECORDED IN CONDOMINIUM BOOK 3, PAGE 46,  
OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA.**

McGurn Investment Company, a Florida corporation, hereby declares as follows:

**Section 1: Introduction and Submission**

1.1 The Land. The Developer owns the fee title to certain land located in Alachua County, Florida, as more particularly described in Exhibit No. 1 (the "Land").

1.2 Submission Statement. The Developer hereby submits the Land together with all improvements from time to time erected or to be installed thereon to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof, subject to the reservations, easements and restrictions of record. The Developer further submits to condominium ownership under this Declaration the easements declared and/or granted by that certain (a) Declaration and Grant of Easements recorded in Official Records Book 2312, Page 53, public records of Alachua County, Florida ("Declaration and Grant of Easements"), and (b) Easement for Air Rights in favor of the Developer recorded in Official Records Book 2222, Page 1619, public records of Alachua County, Florida ("Air Rights Easement").

1.3 Property Subject to Certain Restrictions and Easements. The Condominium Property (as defined hereinafter) is subject to the covenants, conditions, restrictions, easements and reserved rights of the Developer contained in this Declaration. The Condominium Property is also subject to: (a) the easements reserved in that Quit-Claim Deed recorded in Official Records Book 1139, Page 134 as modified by the Partial Release of Easement recorded in Official Records Book 2214, Page 2626; (b) the easements reserved in that Corporate Warranty Deed recorded in Official Records Book 2044, Page 586 as modified by the Partial Release of Easement recorded in Official Records Book 2284, Page 2162; (c) the easements granted pursuant to that Easement recorded in Official Records Book 2213, Page 2843; (d) the easement rights granted pursuant to that Easement for Air Rights in favor of the Gainesville Community Redevelopment Agency recorded in Official Records Book 2222, Page 1615; (e) the Air Rights Easements; (f) the easements declared and/or granted pursuant to that Declaration and Grant of Easements; (g) the agreements contained in that Parking and Access Agreement recorded in Official Records Book 2312, Page 56 ("Parking and Access Agreement"); (h) the easements created pursuant to that Façade Easement recorded in Official Records Book 2297, Page 2532 ("Façade Easement"); (i) easements granted pursuant to that Foundation and Roof Overhang Easement recorded in Official Records Book 2296, Page 1404; and (j) such other easements and declarations as shown on the Condominium Drawings, as contained in any future amendments to this Declaration, or as declared by the Developer pursuant to reserved rights contained herein. All references are to the public records of Alachua County, Florida.

1.4 Name. The name by which this condominium is to be identified is UNION STREET STATION CONDOMINIUM (the "Condominium").

**Section 2: Definitions**

For purposes of this Declaration and the attached exhibits, the following terms shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning or a specific limited meaning is detailed:

2.1 "Act" or "Condominium Act" or "Florida Condominium Act" means the Florida Condominium Act (Chapter 718, Florida Statutes) as it exists on the date hereof.

2.2 "Agency" means the Gainesville Community Redevelopment Agency, a public body corporate and politic of the State of Florida, and its successors and assigns.

2.3 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as may be amended from time to time. A certified copy of the original Articles of Incorporation are attached as Exhibit No. 2.

2.4 "Assessment," as further described in Sections 13 and 14, means a share of the funds required for the payment of Common Expenses as provided in this Declaration and which from time to time is assessed against the Unit Owner.

2.5 "Association" or "Condominium Association" means UNION STREET STATION CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, the sole entity responsible for the operation of the Condominium. The term "Corporation" shall be deemed to be synonymous with the term "Association."

2.6 "Association Property" means the property, real and personal, in which title or ownership is vested in, or which is dedicated on a recorded plat or leased to, the Association for the use and benefit of its members.

2.7 "Building" means the structure within which the Units and certain Common Elements are located on the Condominium Property.

2.8 "Board of Directors" or "Board" means the board of directors of the Association.

2.9 "By-Laws" mean the By-Laws of the Association, as may be amended from time to time. A copy of the original By-Laws are attached as Exhibit No. 3.

2.10 "Common Elements" mean and include:

- (a) The portions of the Condominium Property which are not included within the Units;
- (b) Easements over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and the Common Elements;
- (c) An easement of support in every portion of a Unit which contributes to the support of any other Unit or the Building;
- (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements;
- (e) Any hallways, foyers, doors, elevators, stairwells, alarm systems, access systems or security systems not contained within a specific Unit;
- (f) All pipes, lines, wiring, facilities and conduits located within the walls which bound and are contained within a Unit and which provide services to more than one Unit; and
- (g) Any other parts of the Condominium Property designated as Common Elements pursuant to this Declaration or the Act.

2.11 "Common Expenses" mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act which shall be assessed or imposed against all or certain of the Units in the Condominium by the Association as authorized by the Act and as provided for in this Declaration. "Common Expenses" shall also include all reserves required by the Act or otherwise established by the Association, in connection with all Units or all Common Elements, regardless of when reserve funds are expended. There shall be two types of Common Expenses: General Common Expenses and Limited Common Expenses, each of which are defined hereinafter.

2.12 "Condominium Drawings" means the legal description, survey, plot plan and graphic depiction of the improvements of the Condominium as required by Section 718.104 of the Act contained in Exhibit No. 1.

2.13 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements and the Common Surplus which is appurtenant to such Unit.

2.14 "Condominium Property" means the Land and the improvements constructed thereon which have been submitted to condominium ownership under this Declaration, subject to the limitations thereof and exclusions therefrom.

2.15 "County" means Alachua County, State of Florida.

2.16 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.

2.17 "Developer" means McGum Investment Company, a Florida corporation, and its successors and such of its assigns as to which its rights hereunder are assigned by written instrument recorded in the public records of Alachua County. Such assignment may be made on an exclusive or non-exclusive basis and may be an assignment of all or only portions of its rights of Developer; provided, however, that no such assignment shall make any assignee the "Developer" for purposes hereof unless such assignment is an assignment of all of Developer's rights and is exclusive, except as to any previously assigned rights.

2.18 "General Common Expenses" mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act which shall be assessed or imposed against all Units in the Condominium by the Association as authorized by the Act.

2.19 "General Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association in connection with all Units or all Common Elements, including, but not limited to, General Assessments, rents, profits and revenues on account of the Common Elements, over and above the amount of General Common Expenses.

2.20 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, credit union, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagee(s) of Units with regard to at least 51% of the voting interests which are appurtenant to Units subject to mortgages held by Institutional First Mortgagees.

2.21 "Limited Common Elements" mean those Common Elements, the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as same are shown on the Condominium Drawings or are specified in this Declaration. References to general Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.22 "Limited Common Expenses" mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act in connection with the maintenance of the Limited Common Elements or other portions of the Condominium Property which shall be assessed or imposed against certain of the Units in the Condominium by the Association as authorized by the Act and as provided for in this Declaration.

2.23 "Limited Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association in connection with certain of the Units or the Limited Common Elements in whole or in part, including, but not limited to, Limited Common Element Assessments, rents, profits and revenues on account of the Limited Common Elements, over and above the amount of Limited Common Expenses.

2.24 "Management Agreement" means that agreement attached as Exhibit No. 4, which provides for the operation and administration of the Condominium and the management of the Condominium Property. Subsequent to termination of the instrument contained in Exhibit No. 4, "Management Agreement" shall mean any agreement between the Association and a third party holding all licenses and approvals necessary to serve as a community association manager in the state of Florida which pertains to the operation and administration of the Condominium and the management of the Condominium Property.

2.25 "Management Firm" means McGurn Management Company, a Florida corporation, and its successors and assigns, or any person or entity contracted by the Association to perform management functions for and on behalf of the Association. The Management Firm shall be responsible for the management services as provided in the Management Agreement.

2.26 "Occupant" means a person (be it an Owner or a tenant or lessee of an Owner) who resides in a Residential Unit or operates a commercial enterprise in a Commercial Unit. Where the context dictates, an Occupant shall also be deemed to include the family members, occasional social guests, tenants, licensees and invitees.

2.27 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.

2.28 "Unit" or "Condominium Unit" means that portion of the Condominium Property which is subject to exclusive ownership and is located within the Condominium Property. The term "Unit" is often used synonymously with "Condominium Parcel" when meaning the sum total of an Owner's ownership interest in the Condominium. There are 2 types of Units in the Condominium: "Commercial Units," which shall exist on the 1<sup>st</sup> and 2<sup>nd</sup> floor of the Building and which shall be used for commercial purposes; and "Residential Units," which shall exist on the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> floors of the Building and which shall be used for residential purposes.

2.29 "Unit Owner" or "Owner of a Unit" or "Owner" means the record owner of legal title to a Condominium Parcel.

### **Section 3: Description of Condominium**

3.1 Identification of Units. The Condominium shall contain 18 Commercial Units and 51 Residential Units. Each Unit is identified by a separate numerical designation as shown on the Condominium Drawings. The Condominium Drawings, together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be the Limited Common Elements for such Unit; (c) an exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed, provided that an easement in air space which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration or the Act. Subject to unforeseen delays beyond the control of the Developer, the estimated latest date of completion of constructing, finishing and equipping the Condominium is December 31, 2001. The date of completion of this Condominium is an estimate only and subject to sales performance or building delays.

Time-share estates or interests will not be created with respect to any of the Units in the Condominium.

3.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:

- (a) Residential Units.

(i) Upper and Lower Boundaries. The upper and lower boundaries of each Residential Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(1) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling.

(2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Residential Unit.

(3) Interior Division and Areas. Except as otherwise provided herein, no part of the floor of the top floor, ceiling of the bottom floor or nonstructural interior walls shall be considered a boundary of the Residential Unit. However, with regard to Residential Units which are located on multiple floors of the Building, the air space and all portions of the stairwell connecting the two floors shall be considered a part of the Residential Unit.

(ii) Perimetrical Boundaries. The perimetrical boundaries of the Residential Unit shall be the vertical planes of the unfinished interior surfaces of the walls and balcony railing bounding the Residential Unit as depicted on the Condominium Drawings extended to their planar intersections with each other and with the upper and lower boundaries.

(iii) Apertures. Where there are apertures in any boundary, including, but not limited to doors, windows, and window and door screens (if any) such boundaries shall be extended to include the doors, windows, and window and door screens and other fixtures located in such apertures, including all frameworks, locks and door knobs thereof. With regard to doors, windows, and window and door screens, the Owner of the Residential Unit shall be solely responsible for the maintenance, repair and replacement of all interior and exterior surfaces thereof, except that the Association shall be solely responsible for the painting of the entry door into the Residential Unit and the exterior doors, as provided in Section 7. Notwithstanding the foregoing, all exterior maintenance and appearance of apertures shall be subject to the provisions of the Façade Easement and Association requirements as set forth herein.

(b) Commercial Units.

(i) Upper and Lower Boundaries. The upper and lower boundaries of each Commercial Unit shall be the following boundaries extended to the planar intersections with the perimetrical boundaries:

(1) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling.

(2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Commercial Unit.

(3) Interior Division. Except as otherwise provided herein, no part of the floor of the top floor, ceiling of the bottom floor or nonstructural interior walls shall be considered a boundary of the Commercial Unit.

(ii) Perimetrical Boundaries. The perimetrical boundaries of the Commercial Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Commercial Unit as depicted on the Condominium Drawings extended to their planar intersections with each other and with the upper and lower boundaries.

(iii) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, bay windows, service windows and doors, such boundaries shall be extended to include the windows, bay windows, service windows and doors and other fixtures located in such apertures, including all frameworks thereof. With regard to such windows, bay windows, service windows, doors and other fixtures, the Owner of the Commercial Unit shall be solely responsible for the maintenance, repair and replacements of all interior and exterior surfaces thereof. Notwithstanding the foregoing, all exterior maintenance and appearance of apertures shall be subject to the provisions of the Façade Easement and Association requirements as set forth herein.

(c) Physical Locations. If the actual physical location of any Unit at any time does not precisely coincide with the area depicted on the Condominium Drawings, the actual physical location of the Unit shall control over locations, dimensions and descriptions reflected on the Condominium Drawings.

### 3.3 Limited Common Elements.

#### (a) Limited Common Elements Appurtenant to Residential Units.

(i) Description. To the extent applicable and subject to the provisions of this Declaration, each Residential Unit shall have as Limited Common Elements appurtenant thereto such portions of the Common Elements as are defined herein and/or shown on the Condominium Drawings, including, but not limited to: (1) any portion(s) of the Common Elements, including, but not limited to, conduits, ducts, plumbing, wiring and other facilities, for the furnishing of utility and other services to a particular Residential Unit; (2) the mailbox assigned to a particular Residential Unit which shall be located within the Building; (3) the specific area located on the Condominium Property on which the air-conditioning equipment serving the Residential Unit is located, together with all lines and facilities leading from such area to the Residential Unit as are needed for the provision of air conditioning and heating to the Residential Unit; (4) light and electrical fixtures affixed to the exterior of a Residential Unit or within the balcony and which solely serve such Residential Unit; (5) all facilities, lines and equipment lying within the Common Elements which provide cable television, internet, telephone or other communication access solely to the Residential Units; (6) the interest of the Residential Unit Owners in the Parking Agreement; (7) the security system serving a Residential Unit (if any); (8) the courtyard area located on the 3<sup>rd</sup> floor of the Building and the walkways located on the 3<sup>rd</sup> and 4<sup>th</sup> floors of the Building, including the fountain, plants, planters, furniture and fixtures, which shall be appurtenant to all Residential Units; and (9) all railings which serve to bound the area of the balconies that are contained within the Residential Units. The use, enjoyment and maintenance of the Limited Common Elements shall be in accordance with the terms and provisions of the Declaration, the Articles of Incorporation, the By-Laws, any rules and regulations duly promulgated by the Association, and local, state, and federal statutes and ordinances.

(ii) Maintenance. The Limited Common Elements appurtenant to the Residential Units shall be maintained, repaired or replaced by the Association as part of the Limited Common Expenses to be paid by the Residential Unit Owners, except that:

(1) each Residential Unit Owner shall be responsible for the maintenance, repair, replacement and reconstruction of any wiring or electrical outlets or, where applicable, light fixture(s) affixed to the exterior walls or ceiling of a Residential Unit, which serve that Residential Unit;

(2) each Residential Unit Owner shall be responsible for replacing the exterior light bulbs for said light fixture(s) by the same color and bulb wattage, as originally installed or as otherwise determined and permitted by the Board;

(3) the air conditioning compressor contained within the Limited Common Elements serving and providing service to a Residential Unit shall be owned by the Residential Unit Owner. The Residential Unit Owner hereby assigns the maintenance of such compressor to the Association, and the Association shall perform said necessary maintenance, including repairs and replacements. The Association shall notify the

affected Residential Unit Owner of the costs of such maintenance following which the affected Residential Unit Owner shall pay to the Association all costs of said maintenance and the Association shall ensure that the maintenance is completed. The Association may contract with a licensed air conditioning contractor to provide such service and as long as the work is completed within a reasonable time, the Association shall have no liability for temporary loss of air conditioning or heating service to a Residential Unit. A Residential Unit Owner has no right or ability to maintain the air conditioning compressor and shall not be permitted access to the Limited Common Element area containing such equipment without being accompanied by a representative of the Association, as such equipment is located on the roof of the Building and the Association must protect itself from liability from injury caused by unsupervised access to the roof area; and

(4) each Residential Unit Owner shall be solely responsible for maintaining all portions of the security system serving the Residential Unit, including, without limitation, all electrical lines and other facilities. Each Residential Unit Owner shall also be solely responsible for any cost associated with false alarms and all annual licensing or registration of alarms.

Notwithstanding the foregoing, all maintenance activities under this section shall be performed in accordance with the Façade Easement.

Should any maintenance, repair or replacement of a portion of the Limited Common Elements appurtenant to a Residential Unit which is the responsibility of the Association be necessitated by the actions or nonactions of a Residential Unit Owner, his family members, or his lessees, servants, guests, invitees or licensees, then such Residential Unit Owner shall be responsible for the costs thereof, and the Association shall also have the right to levy a fine against the Owner of such Residential Unit.

(iii) Insurance. Each Residential Unit Owner shall be solely responsible for insuring their personal property and fixtures contained within the Limited Common Elements appurtenant to a Residential Unit, and the Association shall not have any duty or obligation to do so.

(b) Limited Common Elements Appurtenant to Commercial Units.

(i) Description. To the extent applicable and subject to the provisions of this Declaration, each Commercial Unit shall have as Limited Common Elements appurtenant thereto such portions of the Common Elements as are defined herein and/or shown on the Condominium Drawings, including, but not limited to: (1) any portion(s) of the Common Elements, including, but not limited to, conduits, ducts, plumbing, wiring and other facilities, for the furnishing of utility and other services to a particular Commercial Unit; (2) the mailbox assigned to a particular Commercial Unit which shall be located within the Building; (3) the specific area located on the Condominium Property on which the air-conditioning equipment serving the Commercial Unit is located, together with all lines and facilities leading from such area to the Commercial Unit as are needed for the provision of air conditioning and heating to the Commercial Unit; (4) light and electrical fixtures affixed to the exterior of a Commercial Unit and which solely serve such Commercial Unit; (5) with regard to certain Commercial Units located on the ground floor of the Building, portions of the area lying between the exterior walls of the Building which border the Commercial Unit and the boundaries of the Condominium Property, as bounded by the horizontal projections of the interior boundaries of the Commercial Unit leading directly outward to the boundaries of the Condominium Property, as specifically depicted and identified on the Condominium Drawings ("Adjacent Exterior Commercial Area"); (6) the grease traps, together with the facilities, lines and equipment, used in connection with the Commercial Units; (7) all ceiling fans and related equipment and lines affixed to the ceiling of any Limited Common Element area appurtenant to a Commercial Unit; (8) all exhaust vents (including vent stacks, filters, fans and protection systems related thereto) and lines, pipes and facilities pertaining thereto which are used by a Commercial Unit; and (9) specifically with regard to the Commercial Units located on the 2<sup>nd</sup> floor of the Building, the restroom facilities located on such floor. The use, enjoyment and maintenance of the Limited Common Elements appurtenant to the Commercial Units shall be in accordance with the terms and provisions of the Declaration, the Articles of



Incorporation, the By-Laws, any rules and regulations duly promulgated by the Association, and local, state, and federal statutes and ordinances.

(ii) Maintenance. The Limited Common Elements appurtenant to the Commercial Units shall be maintained, repaired or replaced by the Association as part of the Limited Common Expenses to be paid by the Commercial Unit Owners, except that:

(1) each Commercial Unit Owner shall be responsible for the maintenance, repair, replacement and reconstruction of any wiring or electrical outlets or, where applicable, light or fan fixture(s) affixed to the exterior walls or ceiling of a Commercial Unit, which serve a particular Commercial Unit or are within the Adjacent Exterior Commercial Area;

(2) each Commercial Unit Owner shall be responsible for replacing the exterior light bulbs for said light fixture(s) by the same color and bulb wattage, as originally installed or as otherwise determined and permitted by the Board;

(3) the air conditioning compressor contained within the Limited Common Elements serving a Commercial Unit shall be owned by the Commercial Unit Owner. The Commercial Unit Owner hereby assigns the maintenance of such compressor to the Association, and the Association shall perform said maintenance, including repairs and replacements. The Association shall notify the affected Commercial Unit Owner of the costs of such maintenance, following which the affected Commercial Unit Owner shall pay to the Association all costs of such maintenance and the Association shall ensure that the maintenance is completed. The Association may contract with a licensed air conditioning contractor to provide such service and as long as the work is completed within a reasonable time, the Association shall have no liability for temporary loss of air conditioning or heating service to a Commercial Unit. A Commercial Unit Owner has no right or ability to maintain the air conditioning compressor or heat pump and shall not be permitted access to the Limited Common Element area containing such equipment without being accompanied by a representative of the Association, as such equipment is located on the roof of the Building and the Association must protect itself from liability from injury caused by unsupervised access to the roof area of the Building. However, recognizing the importance of immediate air conditioning repairs for Commercial Units, the Association can approve certain licensed air conditioning contractors who shall be allowed to provide emergency repairs and have access to the roof of the Building who can be employed and paid directly by the Commercial Unit owners;

(4) with regard to the Adjacent Exterior Commercial Area which lies in direct proximity to a Commercial Unit, such Commercial Unit Owner shall be responsible for maintaining such area in a neat and orderly fashion and shall routinely sweep such area to remove dust and debris. The Commercial Unit Owner shall be entitled to utilize such area in connection with the operation of the commercial enterprise within such Commercial Unit, provided that any such usage shall be permitted only on the prior written approval of the Association. Such approval shall not be unreasonably withheld, and usage of the Adjacent Exterior Commercial Area as an outdoor café shall be permitted without prior approval. As a condition of such usage of the Adjacent Exterior Commercial Area, the Commercial Unit Owner shall be required to obtain general liability insurance and any other insurance necessary for the operation of its commercial enterprise on the Adjacent Exterior Commercial Area and to name the Developer, the Association and the Unit Owners as a whole as additional insureds. Notwithstanding any provision to the contrary, the underlying foundation of the Adjacent Exterior Commercial Area shall be maintained by the Association as a General Common Expense, as such area shall be used by both Commercial Unit Owners and Residential Unit Owners;

(5) each Commercial Unit Owner using one or more grease traps shall be responsible for the maintenance, regular cleaning, repairs and replacement of the grease traps in proportion to their usage of a particular grease trap; and

(6) each Commercial Unit Owner shall be responsible for maintaining, cleaning (on a regular basis), repairing and replacing all exhaust vents (including vent stacks, filters, fans and protection systems related thereto) and lines, pipes and facilities pertaining thereto which are used by such Commercial Unit Owner.

Notwithstanding the foregoing, all maintenance activities under this section shall be performed in accordance with the Façade Easement.

Should any maintenance, repair or replacement of a portion of the Limited Common Elements appurtenant to a Commercial Unit which is the responsibility of the Association be necessitated by the actions or nonactions of a Commercial Unit Owner, his family members, or his lessees, servants, guests, invitees or licensees, then such Commercial Unit Owner shall be responsible for the costs thereof, and the Association shall also have the right to levy a fine against the Owner of such Commercial Unit.

(iii) Insurance. Each Commercial Unit Owner shall be solely responsible for insuring their personal property and fixtures contained within the Limited Common Elements appurtenant to a Commercial Unit, and the Association shall not have any duty or obligation to do so.

(c) Security Systems for Commercial Units. Each Commercial Unit Owner shall be solely responsible for maintaining all portions of the security system serving the Commercial Unit, including, without limitation, all electrical lines and other facilities, and all installations and facilities of such system shall be deemed to be a part of the Commercial Unit, regardless of whether or not contained within the described boundaries of the Commercial Unit pursuant to Section 3.2(b). Each Commercial Unit Owner shall also be solely responsible for any cost associated with false alarms and all annual licensing or registration of alarms. The Association shall in no manner be involved with such security systems.

3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act and any other provisions of this Declaration):

(a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

(b) Utility and Other Services; Drainage. Non-exclusive easements are hereby reserved unto the Developer and also granted to the respective utility providers under, through and over the Condominium Property as may be required from time to time for the construction, use and maintenance of all utilities (whether public or private), cable and/or satellite television service, communications and security systems, and other services which may serve the Condominium; provided, however, that these easements shall not permanently interfere with the use of the Units. A non-exclusive easement is also reserved unto the Developer and granted to all applicable governmental entities over and across the Common Elements for the purpose of providing drainage and for the installation, operation, use and maintenance of drainage facilities; provided, however, that the Association shall be responsible for the continuous maintenance of the easements and rights-of-way of the drainage system for the Condominium Property.

(c) Encroachments. If: (1) any portion of the Common Elements encroaches on any Unit; (2) any Unit encroaches on any other Unit or on any portion of the Common Elements; or (3) any encroachment shall hereafter occur as a result of (a) construction of the improvements; (b) settling or shifting of the improvements; (c) any alteration or repair to the Common Elements made by or with the consent of the Association or the Developer, as appropriate, or (d) any repair or restoration of the improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements; then a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall exist.

(d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and Occupant and their guests and invitees, shall exist for pedestrian or vehicular traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use. None of the easements specified in this subsection shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association.

(e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its sole discretion, to enter the Condominium Property and take all action necessary or convenient for the purpose of completing the construction, or any part thereof, of any improvements or Units located, and for repair, replacement and maintenance purposes or where the Developer determines that it is required or desires to do so.

(f) Sales and Management Activities. Until such time as the Developer has conveyed all Units to third parties, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements (which shall include the lobby areas and any meeting rooms or offices located within the Building) for Unit models; sales, management and construction offices; to show model Units and the Common Elements to prospective purchasers and tenants of Units; and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease. In addition, until such time as the Developer has conveyed all Units to third parties, the Developer shall be authorized to permit the Management Firm to utilize any offices located within the Building in order to perform the services required of it pursuant to the Management Agreement, and the Management Agreement shall specifically authorize the Management Firm to utilize the Common Elements as may be necessary for the performance of the Management Firm's duties (provided that such usage does not interfere with the use of the Condominium Property).

(g) Facilities and Services. Easements shall exist over, under, across and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and the Common Elements.

(h) Condominium Drawings. Easements shall exist as are described or shown on the Condominium Drawings.

(i) Developer Activities. Until such time as the Developer completes and sells all of the Units in the Condominium, the Developer reserves the right to prohibit access to any portion of the Common Elements or uncompleted Units to any of the Occupants, and to utilize various portions of the Common Elements or the Units, in connection with such construction and development. No Unit Owner or such Owner's guests or invitees shall interfere or hamper the Developer, its employees, successors or assigns, in connection with such construction. Thereafter, during such time as the Developer, its successors or assigns, own any Units within the Building and is carrying on any business in connection therewith, including the selling, renting or leasing of such Units, the Unit Owners, their guests and invitees shall not interfere with such activities or prevent access to such Units by the Developer, its employees, its successors or assigns.

(j) Association Easement. A perpetual, non-exclusive easement is hereby granted to the Association and its successors and assigns over, across, under and through the Condominium Property for the purpose of permitting the Association to perform its obligations hereunder. Such easement shall permit access to the Units with reasonable prior notice, except that no notice shall be required in the event of an emergency.

(k) Drive-through Easement. An easement is hereby declared over a portion of the driveway area located on the eastern portion of the Condominium Property for the benefit of the Owner of the Commercial Unit contained in the northeast corner of the Building of the 1<sup>st</sup> floor and its guests and assigns as specifically depicted

and identified on the Condominium Drawings as an Adjacent Exterior Commercial Area. Such easement shall be for the purpose of permitting drive-through services to be performed in connection with the operation of such Commercial Unit.

A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable and/or satellite television service, communications and security systems, or other service or drainage facilities or the use of these easements. The Association shall have the irrevocable right of access to each Unit during reasonable hours, to maintain, repair or replace those items and areas, for which the Association is responsible, and to remove any improvements interfering with or impairing such facilities or easements or as necessary to prevent damage to the Common Elements or to a Unit or Units.

Wherever in this Section or elsewhere in this Declaration an easement is granted or reserved to any party, such easement shall also benefit such party's successors, grantees, assigns, agents, employees, licensees, invitees and guests. All easements shall be non-exclusive easements.

### 3.5 Special Easements, Rights to Grant Easements and Other Reserved Rights .

(a) Developer hereby reserves unto itself and its successors and assigns, and grants to the Association with the power to assign, non-exclusive easements over, under and through the Condominium Property for the construction, maintenance and operation of electric, gas or other utility, cable and/or satellite television service, security systems, communications, service or other easements pertaining to the construction, maintenance and operation of other equipment, conduits, pipes, lines and similar installations servicing the Condominium Property or other property with the power to relocate any such existing easements in any portion of the Condominium Property and/or Association Property, provided that such easements or the relocation of easements will not prevent or unreasonably interfere with the reasonable use of the Units.

(b) Developer hereby reserves unto itself and its successors and assigns, and grants to the Association with the power to assign, non-exclusive easements over, under, on and through the Condominium Property for the purposes of access to, constructing or maintaining improvements on, providing utility services to or across, or providing drainage to or from the Condominium Property, any other property which may become part of the Condominium Property pursuant to this Declaration, or any other property adjacent to the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units.

(c) Developer hereby reserves unto itself and its successors and its assigns non-exclusive easements over, on, and through the Condominium Property for vehicular and/or pedestrian traffic by the Developer, its designees, successors, assigns, licensees, lessees, invitees, and guests within the Condominium Property, provided that any such easements shall not interfere with the reasonable use of the Units.

(d) Developer hereby reserves the right to install all lines, pipes and facilities throughout the Condominium Property as may be needed for the use of the Units individually and/or collectively from time to time. Developer shall assume all costs associated with such installations. Subsequent to installation, unless otherwise provided and agreed to by the affected Unit Owner(s), the Association shall be responsible for the maintenance of such lines, pipes and facilities.

(e) For as long as the Developer remains liable under any warranty, whether statutory, expressed, or implied, for any act or omission in the development of the Building or in the sale or marketing thereof, the Developer shall have the right to enter on the Condominium Property, and to take all actions necessary or convenient for the purpose of inspecting, testing, surveying, to determine the actions needed to fulfill any warranty or to determine the extent of the warranty, and to take those actions necessary to fulfill the Developer's responsibilities under the warranty. The Developer can nullify any warranty if the Association or a Unit Owner prohibit or limit access

to the Common Elements or to a Unit as deemed necessary by the Developer in its sole discretion for any actions pursuant to the warranty.

(f) Developer hereby reserves the right to assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association. Any assignment of Developer rights shall be evidenced by an instrument recorded with the formalities of a deed in the public records of the County.

3.6 Incidental Damage. Any damage to any Unit caused by, or as a result of, the carrying out of the maintenance responsibilities of the Association or another Unit Owner, or the negligence thereof, shall be repaired promptly by the Association as a Common Expense, or the Unit Owner, as the case may be. Any damage to any part of the Common Elements caused by or the result of any intentional act of a Unit Owner, the Unit Owner's family, agents, contractors, invitees, licensees or tenants, or by such Unit Owner in carrying out his maintenance responsibilities, if any, shall be repaired promptly at the expense of such Unit Owner.

3.7 Use of Multiple Units to Form One Comprehensive Residential or Commercial Space. A Unit may be combined with either the Unit directly above the subject Unit and/or the Unit directly below the subject Unit and/or the laterally-adjacent Unit in order to permit occupancy of such areas as one comprehensive residential space or commercial space. Such a combination of Units shall be for purposes of occupancy and use only and shall not be deemed an amendment to this Declaration. Further, any such combination shall not be considered to be a material alteration of or modification to the configuration or size of a Unit. In all events, the subject Units shall in no manner be considered to become one Unit, but rather shall at all times remain and be considered to exist in the same manner as prior to the combination for purposes of Assessments, voting and all other matters as provided herein. Commercial Units and Residential Units shall not be permitted to be combined with one another.

Any such combination of Units shall be required to comply with all applicable building, health, safety, and other applicable codes and laws as may be applicable. Additionally, no construction activities to effect such a combination shall be commenced without the prior written approval of the Board of Directors, which approval cannot be unreasonably withheld. The Board shall ensure that the combination of Units shall have no detrimental impact on the structural integrity of the Building or the usage of the other Units in the Building. The Board shall act in a reasonable and prudent manner in recognizing the rights of the Owner to combine such Units in the manner contemplated by this paragraph. The Developer shall be exempt from the approval provisions of this paragraph.

#### **Section 4: Restraint on Separation and Partition of Common Elements**

The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from such Unit and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, cannot be conveyed or encumbered, except together with such Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall be undertaken, except as provided herein with respect to termination of the Condominium.

**Section 5: Ownership of Common Elements and Common Surplus and Share  
Of Common Expenses; Voting Rights**

5.1 Ownership Shares. The undivided share in the Common Elements and Common Surplus appurtenant to each Unit, as well as the undivided share of the Common Expenses to be paid with respect to each Unit, shall be computed on the following basis:

(a) The allocation of percentage shares in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, separately stated for General, Residential Limited and Commercial Limited percentage shares, appurtenant to each Unit is set forth in Exhibit No. 5 as attached hereto and made a part hereof by this reference. The allocation of percentage shares has been established by the Developer in the following manner:

(i) The approximate area of each Unit has been measured in square feet including the areas lying interior of the centerline of all party walls, corridor walls and exterior walls bounding the Unit. Such area for each such Unit is hereafter referred to as its "Unit Area."

(ii) The total of the Unit Area of all Units has been computed and is hereinafter referred to as the "Total Unit Area." The total of the Unit Area of all Residential Units has been computed and is hereinafter referred to as the "Total Residential Unit Area." The total of the Unit Area of all Commercial Units has been computed and is hereinafter referred to as the "Total Unit Commercial Area."

(iii) The Total Unit Area has been divided into the Unit Area of each Unit to determine the allocation of General percentage shares for each Unit. The Total Residential Unit Area has been divided into the Unit Area of each Residential Unit to determine the allocation of Residential Limited percentage shares for each Residential Unit. The Total Commercial Unit Area has been divided into the Unit Area of each Commercial Unit to determine the allocation of Commercial Limited percentage shares for each Commercial Unit. All percentage shares are set forth on Exhibit No. 5 to this Declaration.

(b) The aforementioned method of calculation of Unit Area includes portions of the Condominium within the interior, corridor and exterior walls that are technically part of the Common Elements. The foregoing methods of calculation were undertaken in order to establish a fair and equitable method of allocating assessment percentages to Units within the Condominium and every purchase of a Unit, whether from the Developer or otherwise, hereby agrees to be bound by such calculations and hereby irrevocably waives the right to assert that the formula used or the measurements made were unfair, inequitable, or otherwise in error.

5.2 Limited Common Expense Exception. Certain Limited Common Expenses by their nature are more appropriately allocated on a per Unit basis as opposed to a percentage basis. The Board of Directors shall determine which expenses are to be allocated on a per Unit basis and budget and assess such expenses accordingly.

5.3 Voting. The Owner(s) of a Unit are entitled to cast votes equal to the amount of their percentage shares as set forth in Exhibit No. 5. Any 2 or more Units which have been combined into one combined area shall be deemed to be separate Units (as if they had not been so combined) and shall therefore be entitled to cast the number of votes allocated to such Units. The votes attributable to a Unit shall not be divisible. Membership in the Association shall automatically terminate on the termination of ownership of a Condominium Parcel, and the subsequent owner(s) shall automatically become entitled to membership.

**Section 6: Amendments**

6.1 Amendment by Unit Owners. Except as provided in Section 6 below or elsewhere in this Declaration or the exhibits, this Declaration (including the Condominium Drawings) may be amended by affirmative

vote, either in person or by proxy, of not less than 66% of the total voting interests in the Condominium. Such vote shall occur at an Association meeting duly called for such purpose pursuant to the By-Laws; provided, however, that no such amendment (1) shall change the configuration (meaning the external boundaries) or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the proportion or percentage by which a Unit Owner shares the Common Expenses and owns the Common Surplus, unless such amendment is also approved by the record Owner of such Unit and all record owners of liens on such Unit, or (2) shall be made which affects any of the rights and privileges provided to the Developer without the written consent of the Developer. All amendments shall be recorded and certified as required by the Act.

## 6.2 Amendment by Developer.

(a) Amendment to Condominium Plans and Declaration. The Developer reserves the right to make whatever changes it may deem necessary in the Condominium Drawings and this Declaration until such time as the Developer has transferred control of the Association to the non-Developer Unit Owners pursuant to applicable provisions of the Act. The amendment reflecting such changes need only be executed by the Developer; provided, however, that no such amendment unilaterally approved by the Developer shall change the configuration (meaning the external boundaries) or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the proportion or percentage by which a Unit Owner shares the Common Expenses and owns the Common Surplus, unless such amendment is also approved by the record Owner of such Unit, all record owners of liens on such Unit, and at least a majority of the total voting interests of the Association.

(b) Special Amendment. Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends the Declaration and any provision therein (i) to comply with requirements of the FNMA, FHLMC, the Government National Mortgage Association, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Units; and (iii) to bring this Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Unit Owner and the Association. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Developer to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate on December 31, 2006, or the date on which Developer no longer owns any Units, whichever is earlier.

(c) This Declaration and all exhibits hereto, where applicable, may be amended unilaterally by the Developer for the purposes set forth and pursuant to Section 718.110(5), Florida Statutes, to correct scrivener's errors.

6.3 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County.

6.4 Prohibited Amendments. No amendment may change the Residential Use Restriction, Façade Easement, Air Rights Easement or any provisions relating to the Development Agreement unless prior written

consent has been obtained from all parties to said agreement and recorded in the public records of the County as an attachment to the amendment.

The acquisition of property by the Association, or material alterations or substantial additions to Association property or to the common elements, by the Association shall not be deemed to constitute a material alteration or modification of the appurtenances to the Units. No amendment may require the approval of the Association for the sale, transfer, lease or encumbrance of a Unit by a Unit Owner.

6.5 Limitation. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer without the consent of the Developer. The provisions of this paragraph may not be amended in any manner.

6.6 Procedure. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended, new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, rather, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Section \_\_\_\_\_ of the Declaration. See provision \_\_\_\_\_ for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

### **Section 7: Maintenance and Repairs**

7.1 Responsibility for the maintenance, repair and replacement of the Condominium Property is as follows:

(a) Common Elements. In addition to items to be maintained pursuant to Section 3.3, the Association shall manage, maintain, repair and replace, as part of the Common Expenses, all of the Common Elements, including, but not limited to, the following:

- (i) all drainage and stormwater management systems, driveways, and adjacent drainage;
- (ii) all water and wastewater lines and piping serving the Units of the Condominium;
- (iii) all landscaping, plants, planters and sprinkler systems within the Condominium Property; and
- (iv) all elevators and entryways to and stairwells within the Building, any controlled access and intercom systems serving the Building (but specifically excluding the security systems for the Residential Units and the Commercial Units), and all fire and emergency warning systems and lights.

However, the Association shall not perform such maintenance required of a Unit Owner who utilizes portions of the Limited Common Elements in accordance with Section 3.3 herein, as otherwise contemplated herein, or to the extent such maintenance arises from the negligence, misuse or neglect of specific Unit Owners, in which case such cost shall be paid solely by such Unit Owners.

In accordance with Section 20.1, a Unit Owner shall be liable for the expense of any maintenance, repair or replacement to the Common Elements made necessary by his negligence, misuse or neglect or by that of any member of his family or his or their guests, employees, agents or lessees.



(b) Units. The responsibility for maintenance, repair and replacement within the Units shall be shared by the Association and the Unit Owners as follows:

(i) By the Association. The Association shall be responsible for maintaining, repairing and replacing all water and wastewater lines and piping located outside of the Unit (except as otherwise stated in sub-paragraph (ii) below), all pipes, lines, wiring, facilities and conduits located within the walls and any soffits contained within a Unit and which provide services to more than one Unit, and any portions of any fire protection and emergency warning systems, including, sprinklers, alarms, dampers, barriers and lights contained within the physical boundaries of and servicing a Unit. The costs of such maintenance shall constitute General Common Expenses. In addition, with regard to the Residential Units, the Association shall be responsible for (1) maintaining the exterior surfaces (defined to be those walls that are visible from the exterior of the Building) and interior portions of all walls that serve to bound the balcony area contained within a Residential Unit and (2) painting the exterior surfaces of the front entry doors and the doors leading to the balcony from the living area, and the costs of such maintenance shall constitute Limited Common Expenses for the Residential Units. In accordance with Section 20.1, a Unit Owner shall be liable for the expense of any maintenance, repair or replacement of any part of the Unit to be maintained by the Association under this paragraph made necessary by his negligence, misuse or neglect or by that of any member of his family or his or their guests, employees, agents or lessees,

(ii) By the Unit Owner. Each Unit Owner shall maintain, repair and replace everything within the confines of the Owner's Unit, which is not to be maintained by the Association, including, but not limited to:

- (1) The entire Unit as defined in Section 3.2;
- (2) Interior paint, finish, covering, wallpaper and decoration of all walls, floors and ceilings contained within the Unit boundaries;
- (3) All built-in shelves, cabinets, counters, storage areas and closets;
- (4) Any and all appliances and mechanical, ventilating, heating and air conditioning equipment contained within and serving the Unit;
- (5) All bathroom fixtures, equipment and apparatuses;
- (6) All electrical, plumbing (including connections and fixtures), telephone and television fixtures, apparatuses, equipment, outlets, switches, wires, pipes and conduits, ducts, electric lines and other facilities for the furnishing of utility and other services between the Unit and its individual service panel or meter if contained within a Unit, except as may be otherwise maintained by the Association as Common Elements pursuant to Section 7.1(b)(i);
- (7) All interior doors, interior surfaces, non-load-bearing walls, partitions, and room dividers;
- (8) All furniture, furnishings and personal property contained within the respective Unit;
- (9) Any ceiling fans and related electrical equipment attached to the ceiling of the balcony area contained within a Residential Unit;
- (10) With regard to Commercial Units, all exterior doors, which shall be kept in good repair and shall be freshly painted as required by the Association;

(11) All locks and doorknobs on entry doors as described in Section 3.2(a)(iii) (all locks shall be keyed in such a manner as to require only 1 key per Residential Unit to gain access to such Residential Unit, and all locks shall be keyed to permit the Association to have a master key system; the Association and/or the Management Firm shall not be authorized to permit access to a Residential Unit by use of the master key except in the event of an emergency or to perform its duties as contemplated in this Declaration, the Articles, the By-Laws or any resolution of the Board); and

(12) All other maintenance or repair of or replacements involving a Unit as contemplated and authorized hereunder.

7.2 Notwithstanding the provisions of Section 7.1, all modifications to the exterior of the Building shall be consistent with the terms and provisions of the Façade Easement and must be approved in writing by the Board, or a committee designated by the Board and headed by an officer of the Association, prior to commencement of such work so as to maintain the character and to preserve the aesthetic and architectural qualities of the Condominium. The Association shall promulgate rules and regulations in accordance with the foregoing.

### **Section 8: Additions, Alterations or Improvements by the Association**

Whenever, in the judgment of the Board of Directors, the Common Elements require capital additions, alterations or improvements (as distinguished from maintenance, repairs and replacements) costing in excess of \$5,000.00 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if approved by a majority of the total voting interests in the Condominium. Any such additions, alterations or improvements to such Common Elements costing in the aggregate \$5,000.00 or less in a calendar year may be made by the Board of Directors without approval of the Unit Owners. Such cost shall be as a "Capital Improvement Assessment" of the Unit Owners as provided in Section 13.2. For purposes of this Section 8, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year.

No alterations or additions may be made by the Association to the Limited Common Elements of any particular Unit if such alteration or addition will adversely affect or prejudice the rights of such Unit Owner unless such Owner's consent first has been obtained. The cost of the foregoing shall be assessed as a Common Expense unless otherwise provided herein.

No alteration, addition or improvement shall be undertaken by the Association in connection with the exterior of the Building which would violate the terms and provisions of the Façade Easement.

### **Section 9: Additions, Alterations or Improvements by Unit Owner**

9.1 To the Common Elements. After the completion of the improvements included in the Common Elements which are set forth in this Declaration, there shall be no alterations or additions to the Common Elements (which by definition includes the Limited Common Elements) by a Unit Owner, except as authorized by the Board of Directors and approved by not less than 66 % of the total voting interests in the Condominium.

9.2 To the Units. Except as otherwise reserved by the Developer or detailed in Sections 3.7 or 18, no Unit Owner shall make any alteration or improvement to such Owner's Unit except in accordance with this Section 9.2. A Unit Owner may make alterations and improvements to the interior of the Unit so long as such alterations or improvements are not visible from the outside of the Unit, do not impair the structural integrity of the Unit or the Building, do not otherwise violate the terms of this Declaration, and are in compliance with all applicable building codes and laws. Other alterations or improvements to a Unit which are not discussed in this Declaration may be made only if prior approval in writing is obtained from the Board or a committee designated by the Board.

9.3 Indemnification by Unit Owner. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and such Owner's heirs, personal representatives, successors and assigns, to hold the Association and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance from and after that date of installation or construction as may be required by the Association.

**Section 10: Additions, Alterations or Improvements by Developer**

The restrictions of Section 9 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the approval of the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and on any Unit owned by it, and Limited Common Elements appurtenant thereto. Any amendments to this Declaration or the Condominium Drawings required by actions taken pursuant to this Section may be effected by the Developer alone without the consent of any other person; provided, however, if any such amendment shall change the external boundaries) or size of any Unit in any material fashion, materially alter the appurtenances to the Unit, or change the percentage by which the Unit Owner shares the Common Expenses and the Common Surplus, the such amendment must be joined in by the record owners of the Unit, all record owners of liens on the affected Unit, and at least a majority of the total voting interests in the Association; except that the Developer may change the number, size and external boundaries of Developer-owned Commercial Units in the 2<sup>nd</sup> floor of the Building as long as the total percentage interest by which the Developer as Unit Owner shares in the Common Expenses and Common Surplus is merely reallocated between said Commercial Units and not increased or decreased in total, without requiring the consent of at least a majority of the total voting interests in the Association. The provisions of this Section may not be added to, amended or deleted unless by, or with the prior written consent of, the Developer.

**Section 11: Operation of the Condominium by the Association; Powers and Duties**

11.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

(a) The irrevocable right to have access to any Unit and the Limited Common Elements appurtenant thereto during reasonable hours as necessary for the maintenance, repair or replacement of such portions thereof, for performing extermination services, or at any time and by force, if necessary, for making emergency repairs to prevent damage to the Building, the Common Elements or to the Unit or any other Units;

(b) The power to make and collect Assessments and other related expenses authorized under the Act against Unit Owners, to lease, maintain, repair and replace the Common Elements, and to grant, modify or cancel easements pertaining to the Common Elements;

(c) The duty to maintain accounting records, according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times on prior request;

(d) The power to contract for the management and maintenance of the Condominium Property and to authorize a duly licensed management agent to assist the Association in carrying out its powers and duties with such funds as made available by the Association for such purposes. The Association also shall have the power to join with other condominium associations and entities in contracting for the maintenance and repair of the properties of such other condominiums and other type properties, and may contract for or may join with other condominium associations in contracting for the management of the properties of such other condominiums and

other type properties, as may be more specifically provided for by the Articles of Incorporation and the By-Laws. The Association, through its Board of Directors, has entered into a Management Agreement, attached hereto as Exhibit No. 4;

(e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association. Such actions must be approved by a majority of the entire Board of Directors and the Owners of all the Units or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing, and no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer;

(f) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property;

(g) The power to acquire, lease, mortgage and convey real and personal property and to grant, modify and cancel easements regarding such property, provided that such action may be done only (i) on the approval of a majority of the Board of Directors, and (ii) a finding by the Board that such action is for the benefit of the members of the Association. The requirements of Section 8 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the proviso as to the debt incurred) shall also apply to this acquisition and dealing with Association-owned property. The acquisition of a Unit as a result of a foreclosure of the lien for Assessments shall be exempt from these requirements;

(h) The power to acquire or enter into agreements acquiring leaseholds, memberships or other possessory or use interests in lands or facilities for recreational purposes as long as such arrangements are approved by a majority of the total voting interests in the Condominium;

(i) The power to execute and enter into the Parking and Access Agreement; and

(j) All of the powers which a corporation not-for-profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation and By-Laws, Chapter 617, Florida Statutes, and the Act, in all cases except as expressly limited or restricted in the Act or the documents of the Condominium.

11.2 Conflict. In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the attached exhibits, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act.

11.3 Limitation of Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners, regardless if whether or not same shall have been approved by the Association pursuant to the provisions hereof.

**NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR**

INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY, INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(a) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE CONDOMINIUM PROPERTY HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF;

(b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, ALACHUA COUNTY, THE CITY OF GAINESVILLE AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

(c) ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN ON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.

AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS SECTION SHALL ALSO INURE TO THE BENEFIT OF THE DEVELOPER AND ITS AFFILIATES, WHICH SHALL BE FULLY PROTECTED HEREBY.

11.4 Restraint On Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to such Owner's Unit.

11.5 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required on any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinders of all record Owners of the Unit is specifically required by this Declaration or by law.

11.6 Acts of the Association. Unless the approval or action of Unit Owners and/or a certain specific percentage of the Board of Directors is specifically required in this Declaration, the Articles of Incorporation, the By-Laws, applicable rules and regulations of the Association or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken, such action or

approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

11.7 Amendment of By-Laws. No modification of or amendment to the By-Laws shall be valid unless set forth in or annexed to a duly recorded amendment to this Declaration. The By-Laws may be amended in the manner provided for therein, but no amendment to the By-Laws shall be adopted which would affect or impair the validity or priority of any mortgage covering any Condominium Parcel(s), or which would change the provisions of the By-Laws with respect to institutional mortgages without the written approval of all Institutional First Mortgagees of record. No amendment shall change the rights and privileges of the Developer without its written consent. Any amendment to the By-Laws shall be executed by the parties as required in this Section 11 and in Section 6 above, and said amendment shall be recorded in the public records of the County.

11.8 Binding Effect of Condominium Documents. Every Owner, whether having acquired ownership of a Unit by gift, conveyance or transfer by operation of law, or otherwise, shall be bound by the Articles of Incorporation, the By-Laws, the provisions of this Declaration and any management agreement entered into by the Association for the management and operation of the Condominium.

11.9 Condition of Approvals by the Association. No alteration, addition or improvement to or on the Condominium Property shall be undertaken or approved by the Association in connection with the exterior of the Building which would violate the terms and provisions of the Façade Easement. Where required herein or in the Façade Easement, no alteration, addition or improvement shall be undertaken without the prior written approval of the Agency.

The Board has the right to condition the approval of an alteration, addition or improvement to or on the Condominium Property on design, safety considerations, structural integrity, aesthetic appeal, workmanship, materials to be used, and construction details (including the amount of time to complete the project and days and times that work may be performed). Neither the Association nor the Board shall have any responsibility or liability for any work approved or performed or any deficiencies thereof, for any damages caused thereby, for the damage, loss, or injury caused by the failure to comply with applicable law and government regulation, or for the failure to give approval of any request. Any alteration, improvement, or addition shall be in compliance with all applicable codes and government requirements. This Section shall not apply to the Developer or its assigns.

11.10 Eligibility of Directors. No person shall be entitled to serve on the Board of Directors if they have not met the eligibility requirements contained in the Act or as are provided in the By-Laws.

## **Section 12: Management**

The Association has entered into the Management Agreement, attached as Exhibit No. 4. The general purpose thereof is to contract for the management and maintenance of the Condominium Property and to authorize the Management Firm to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association, its directors and its officers shall, however, retain at all times the powers and duties granted by the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules, and execution of contracts on behalf of the Association. Each Unit Owner, and such Owner's heirs, successors and assigns, shall be bound by the Management Agreement and any concurrent or subsequent Management Agreement(s) entered into by the Association, and by virtue of taking title to a Condominium Parcel, such Owner shall be deemed to have agreed to, confirmed, ratified and approved the provisions of any such Management Agreement and the acts of the Board of Directors and officers of the Association in entering into the Management Agreement.

Each Owner, by virtue of taking title to a Unit, acknowledges that some or all of the persons comprising the original Board of Directors and officers of the Association are or may be stockholders, officers and directors of the Management Firm, and that such circumstance shall not and cannot be construed or considered as a breach of their duties and obligations to the Association, nor as possible grounds to invalidate the Management Agreement, in whole or in part.

### **Section 13: Determination of Assessments**

13.1 General Assessment. The Board of Directors shall from time to time, and at least annually, prepare and adopt a budget for the Condominium ("Budget for Common Expenses"), determine the amount payable by the Unit Owners to meet the General Common Expenses of the Condominium, and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws ("General Assessment"). The Board of Directors shall then advise all Unit Owners promptly in writing of the amount of the General Assessment payable by each of them. The Budget for Common Expenses shall include the reserves required by law or determined appropriate by the Board, the costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles of Incorporation, the By-Laws or applicable rules and regulations of the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any adopted Budget for Common Expenses shall be subject to change by the Board of Directors, and the amount of the General Assessment shall be changed in accordance with such revised Budget for Common Expenses to cover actual expenses at any time.

13.2 Special Assessments and Limited Common Element Assessments. In addition to General Assessments, the Board of Directors may levy "Special Assessments" and "Limited Common Element Assessments" on the following terms and conditions:

(a) "Special Assessments" shall mean amounts levied against each Owner and such Owner's Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.

(b) Special Assessments may be levied by the Board of Directors and shall be payable in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments and Capital Improvement Assessments, in the aggregate in any year, cause the total Assessments levied to exceed 115% of Assessments for the preceding calendar year, the Board must obtain approval of a majority of the Owner of Units represented at a meeting duly called, noticed and held in accordance with the By-Laws and the Act.

(c) "Limited Common Element Assessments" shall mean amounts levied in accordance with Section 718.113(1), Florida Statutes, against the Owners of certain Units for the Association's maintenance, repair, replacement and/or reconstruction of the Limited Common Elements described in Section 3.3 hereof (which amounts shall constitute the Limited Common Expenses) which are appurtenant to such Units, to the extent applicable. The Budget for Common Expenses shall state the amount payable by the Unit Owners to meet the Limited Common Expenses of the Condominium, and allocate and assess such Limited Common Expenses among certain of the Unit Owners in accordance with the provisions of this Declaration and the By-Laws

### **Section 14: Collection of Assessments**

The General Assessments, Special Assessments and Limited Common Element Assessments (collectively, the "Assessments") shall be collected as follows:

14.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a judicial sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while such person

(as defined by Section 1.01(3), Florida Statutes) is the Owner of the Unit. Additionally, a Unit Owner shall be jointly and severally liable with the previous owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right such Unit Owner may have to recover from the previous owner the amounts paid by such Unit Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

14.2 Default in Payment of Assessments. Assessments and installments thereof not paid within 10 days from the date when they are due shall bear interest at the rate established from time to time by the Board of Directors from the due date until paid (provided, however, that no such rate shall exceed the maximum allowed by law). If the Board has not established such rate, the rate shall be 12% per annum. The Board, in its discretion from time to time, shall be permitted to elect not to collect interest on past-due Assessment amounts. Each delinquent payment shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of each delinquent installment. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Condominium Parcel, with interest thereon and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien shall be effective on the earliest date allowed by law, which shall be no later than the recording of the claim of lien. Such lien shall be evidenced by the recording of a claim of lien in the public records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amounts due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been paid or until such claim of lien is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon, the administrative late fee (if permitted under applicable law), and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or authorized agent of the Association. On payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association or its assignee may bring an action to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed in Florida and may also bring an action at law to recover a money judgment for the unpaid Assessments and other amounts due without waiving any claim of lien. The Association is entitled to recover its costs and reasonable attorneys' fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

As an additional right and remedy of the Association, on default in the payment of Assessments after 30 days' prior written notice to the Unit Owner and the recording of a claim of lien, the Association may declare the balance of General Assessment installments due for the remainder of the fiscal year and payments of other known Assessments to be accelerated and be immediately due and payable. If the amount of such accelerated installments or payments changes, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within 10 days of same taking effect.

Any payments received by the Association from a delinquent Unit Owner shall be applied first to accrued interest, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing application of funds received shall be applicable despite any restrictive endorsement, designation or instruction placed on or accompanying a payment.

14.3 Notice of Intention to Foreclose Lien. Unless otherwise required by the Act or other applicable law, no foreclosure judgment may be entered until at least 30 days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and on such



mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

14.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent, the expenses of such receiver to be paid by the party which does not prevail in the foreclosure action.

14.5 Institutional First Mortgagee. If an Institutional First Mortgagee or other purchaser shall obtain title to a Unit by foreclosure, or by deed in lieu of foreclosure, such Institutional First Mortgagee or other purchaser, its successors and assigns, shall be liable for Assessments or other related expenses authorized under the Act secured by the claim of lien only to the extent provided by the Act. If, due to the applicable provisions of the Act, any unpaid share of the Assessments or other related expenses authorized under the Act are not required to be paid, then such unpaid share or other related expenses authorized under the Act shall be deemed to be a Common Expense collectible from all of the Unit Owners, including such acquirer and such acquirer's successors and assigns.

14.6 Certificate of Unpaid Assessments. Within 15 days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other monies owed to the Association by the Unit Owner with respect to such Owner's Unit. Any person other than the Unit Owner who relies on such certificate shall be protected thereby. Pursuant to Section 19.5 hereof, the Association shall be required to issue such a certificate in connection with the sale of a Unit.

14.7 Installments. General Assessments and Limited Common Element Assessments shall be collected monthly or quarterly, in advance, as determined from time to time by the Board of Directors. Initially, General Assessments and Limited Common Element Assessments will be collected monthly.

14.8 Developer's Guarantee. If, in the purchase agreement or by other means pursuant to the Act, Developer shall guarantee to each purchaser that the General Assessments and the Limited Common Element Assessments for a specific period of time will not exceed a certain dollar amount, then the Developer shall only be obligated to pay the amount of Common Expenses incurred during that period and not produced by General Assessments or Limited Common Element Assessments received from other Unit Owners.

### **Section 15: Insurance**

Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

15.1 "Insurance Trustee". The Board of Directors shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Insurance Trustee, the Board of Directors will perform directly all obligations imposed on such Insurance Trustee by this Declaration. If so designated in the Management Agreement, the Management Firm shall serve as Insurance Trustee on appointment by the Board. Fees and expenses of any Insurance Trustee are Common Expenses.

#### 15.2 Purchase, Custody and Payment.

(a) Purchase. All insurance policies purchased by the Association shall be issued by an insurance company authorized to do business in Florida meeting all criteria established by the Board or the Act and any rules promulgated thereunder.

(b) Named Insured. Under all insurance policies purchased by the Association, the named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.

(c) Custody of Policies and Payment of Proceeds. All insurance policies purchased by the Association shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee, and such policies and endorsements thereto shall be deposited with the Insurance Trustee.

(d) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association on request to each Institutional First Mortgagee who holds a mortgage on a Unit covered by the policy. Copies or certificates shall be furnished not less than 10 days prior to the beginning of the term of the policy, or not less than 10 days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

(e) Exceptions from Association Responsibility; Unit Owner's Personal Coverage. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage on any property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

Unit Owners may be required to purchase flood insurance for their respective Unit(s) if such insurance is required by their mortgagee(s).

The Association shall have no obligation to purchase flood insurance or fire, casualty or windstorm insurance on the Units or the contents thereof.

In accordance with Section 3.3, the Unit Owner shall be solely responsible for insuring any and all of their equipment, machinery, fixtures, furniture or the like installed and/or placed on or within the Limited Common Elements appurtenant to such Owner's Unit, as well as any other improvements located within such Limited Common Elements.

Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against a Unit Owner due to accidents occurring within such Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Unit Owner so desires, to purchase insurance for all risks not covered by insurance carried by the Association.

15.3 Coverage Responsibilities of Association. The Association shall use its best efforts to obtain and maintain adequate insurance covering the following:

(a) Casualty. All-perils insurance covering loss or damage to all portions of the Condominium Property except for the insurance coverage required to be maintained by a Unit Owner pursuant to this Declaration, and all items for which the Association is required under applicable provisions of the Act to insure against loss or damage by fire, flood and/or wind and against loss or damage by risks now or hereafter embraced by standard extended coverage and vandalism and malicious mischief endorsements (collectively, the "Insured Property"). Such policies may contain reasonable deductible provisions as determined by the Board of Directors. Such coverage shall afford protection against such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured

Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors, but with combined single limit liability of not less than \$1,000,000.00 per occurrence, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.

- (c) Worker's Compensation and other mandatory insurance, when applicable.
- (d) Fidelity Insurance, if required by the Act or FNMA/FHLMC, covering all persons who control or disburse Association funds, such insurance to be in the amount required by law.
- (e) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (f) Such Other Insurance as the Board of Directors shall determine from time to time to be desirable, including, but not limited to, director and officer liability insurance.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association, its officers, members of the Board, the Developer, any management firm and its respective employees and agents, and against the Unit Owners individually and as a group; (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage on the same risk; and (iii) avoid liability for a loss that is caused by an act of the Board of Directors, a member of the Board of Directors, any management firm and its respective employees and agents, the Developer, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of any management firm or the individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association shall have the agreed amount and inflation guard endorsement unless the Board finds such endorsement is unobtainable or economically infeasible.

15.4 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least 30 days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may wish to obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

15.5 Premiums. Premiums on insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management firm employees may be paid by such management firm pursuant to the applicable management agreement. Premiums may be financed in such manner as the Board of Directors deems appropriate.

15.6 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, any management firm (if applicable), the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering losses to the Insured Property shall be paid to the Insurance Trustee, which may be designated by the Board of Directors and which, if so appointed, may be a bank or trust company in Florida with trust powers, having its principal place of business in the State of Florida, the Management Firm or other qualified third party as determined by the Board. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein, and for the benefit of the Unit

Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

(a) Insured Property. Proceeds on account of damage to the Insured Property shall be held by the Association for each Unit Owner as tenants in common on the basis of the fair market value of each Unit, relative to the other Units in the Condominium, immediately prior to the event of casualty (such fair market value may be determined by an MAI-certified appraiser selected by the Board of Directors in its sole discretion); provided, however, that prior to any distributions to the Unit Owners, such proceeds shall first be distributed in accordance with the provisions of Section 15.7 herein.

(b) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

15.7 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

(a) Expenses of the Trust. All expenses of the Insurance Trustee shall be paid first or provision shall be made therefor.

(b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as provided herein. Any proceeds remaining after defraying such costs shall be distributed to each Unit Owner, by check made payable jointly to such Unit Owner and its respective mortgagee(s) (if any), in accordance with the provisions of Section 15.6(a).

(c) Failure to Reconstruct or Repair. If it is determined that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 15.6(a), and distributed to each Unit Owner by check made payable jointly to such Unit Owner and its respective mortgagee(s) (if any). If there is no mortgage on the Unit, all distributions shall be made directly to the Unit Owner.

(d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely on a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

15.8 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien on 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 on the payment of claims.

15.9 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

15.10 Insurance Coverage for the Units. Each Unit Owner shall be solely responsible for insuring all personal property and fixtures contained within the Unit, including, but not limited to, floor coverings, wall coverings or ceiling coverings.

**Section 16: Reconstruction or Repair After Fire or Other Casualty**

16.1 Determination to Reconstruct or Repair. Subject to the immediately following subsection, in the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property, and the Insurance Trustee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If 75% or more of the Insured Property is substantially damaged or destroyed and if Unit Owners owning 75% of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution and the Developer, the City of Gainesville and the Agency also approve such resolution if such damage or destruction occurs during the term of the Façade Easement, the Condominium Property shall not be repaired and the net proceeds of insurance resulting from such damage or destruction shall be distributed to each Unit Owner, by check made payable to such Unit Owner and its respective mortgagee(s), in accordance with the provisions of Section 15.6(a).

Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than 60 days from the date the Insurance Trustee notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than 90 days after the Insurance Trustee notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee may rely on a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

Any reconstruction or repair pursuant to this Section shall be consistent with the Façade Easement and the Air Rights Easement.

16.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements and the then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors and the then-applicable building and other codes.

16.3 Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(a) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$500,000.00, then the construction fund shall be disbursed in payment of such costs on the order of the Board of Directors; provided, however, that on request to the Insurance Trustee by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

(b) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is \$500,000.00 or more, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subsection (a) above, but then only on the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

(c) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance shall be distributed to each Unit

Owner, by check made payable jointly to such Unit Owner and its respective mortgagee(s), in accordance with the provisions of Section 15.6(a).

(d) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners on Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made on the order of the Association alone or on the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Unit Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely on a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

16.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or on completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be levied against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, as determined by the Association.

16.5 Responsibilities of Unit Owners. If damage occurs to the Units, the maintenance and responsibility of which lies solely on the respective Unit Owners, then each Unit Owner shall be solely responsible for all necessary reconstruction and repair to its respective Unit which reconstruction and repair shall be effected promptly and in accordance with guidelines established by the Board of Directors. Each Unit Owner shall have the absolute responsibility of applying insurance proceeds, arising as a result of flood, fire or other casualty damage to the Unit to the repair and/or reconstruction of such Unit; provided, however, that no Unit Owner shall have the responsibility of applying insurance proceeds to the repair and/or reconstruction of the respective Units if the Condominium is terminated in accordance with the provisions of Section 21.

16.6 Benefit of Mortgagees. Certain provisions in this Section are for the benefit of mortgagees of Units and may be enforced by any of them.

16.7 Gainesville Community Redevelopment Agency. The Agency shall be listed as an additional insured with respect to its interest in the Façade Easement and the Residential Use Restriction. The Agency shall only be entitled to reimbursement from the proceeds of the insurance to the extent that it has paid in advance for the maintenance of the Façade Easement or residential use of the Building from the annual tax increment of the Condominium. Any right to reimbursement is subordinate and inferior to any first mortgage on the Condominium or any Unit therein. After 20 years, the Agency shall have no right to the proceeds of any insurance except to the extent of any Agency mortgage still outstanding.

### Section 17: Condemnation

Any condemnation of any portion(s) of the Condominium Property shall be governed by the following provisions:

17.1 Deposit of Certain Condemnation Awards with Insurance Trustee. Condemnation awards pertaining to the taking of Common Elements shall be paid over by each Unit Owner to the Insurance Trustee for use as noted hereinafter in this Section. If the Unit Owner fails to turn over such award as required, the defaulting Unit Owner shall be charged the maximum interest which does not constitute usury under Florida law until such amount is fully paid.

Condemnation awards pertaining to the condemnation of Units shall not be the property of the Association.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for in Section 16 for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated following a condemnation, the proceeds of the awards pertaining to the condemnation of Common Elements will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of 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 and the property damaged by the taking will be made usable in the manner provided below. The proceeds of any such awards shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee after a casualty, or as elsewhere in this Section specifically provided.

17.4 Condemnation of Common Elements. Awards for the taking of portions of the Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors; provided, however, that if the cost of such 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 capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed, after adjustments to these shares effected pursuant hereto by reason of the taking, to each Unit Owner by check made payable jointly to such Unit Owner and its respective mortgagee(s), in accordance with the provisions of Section 15.6(a).

17.5 Condemnation of a Unit. If there is a taking of a Unit, the respective Unit Owner shall not be required to utilize any portion of the condemnation award with regard to reconstruction of the Unit. Following such taking of a Unit and the recording of a deed to the condemning authority, (a) the affected Unit Owner shall no longer have an ownership interest in the Unit or an undivided ownership interest in the Common Elements, and (b) such Unit Owner shall no longer be responsible for the payment of Common Expenses.

The following changes shall be made in the Condominium following a taking as described in this Section:

(a) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors.

(b) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This distribution shall be determined by taking the fractional share of each Unit Owner in proportion to the number of Units remaining in the Condominium.

(c) Assessments. If the Association does not have the funds necessary to alter the remaining portion of the condemned Unit for use as a part of the Common Elements, the additional funds for such 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 applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

17.6 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking

shall be evidenced by an amendment to this Declaration that is only required to be approved by, and executed on the direction of, a majority of all members of the Board of Directors.

**Section 18: Occupancy and Use Restrictions**

In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

18.1 Use and Occupancy.

(a) Residential Units.

(i) Each Residential Unit shall be used only for single-family residential purposes, except as may be otherwise herein expressly provided. No Residential Unit shall be used for purposes specifically prohibited by law. Notwithstanding the foregoing or any other provisions herein, the Developer shall be permitted to utilize Residential Units which the Developer owns or leases as model apartments, as sales or other offices or management services, or for overnight accommodations by its designees.

(ii) In no event shall occupancy exceed two persons per bedroom; provided, however, visiting guests shall be excluded from this requirement if they have a permanent residence elsewhere and if they do not reside in the Unit for more than 30 days per year. An Occupant shall not be prevented from using a Residential Unit as an at-home office, so long as the Occupant also uses the Residential Unit as the Occupant's Alachua County residence and has obtained prior written approval for the at-home office from the Board. The Occupant shall submit such request to the Board in writing, and within 30 days after the Board has received all information needed to approve or disapprove the request, the Board shall provide a written approval or disapproval to the Occupant. The right to approve or disapprove any such at-home office is in the sole discretion of the Board. The Board, in its sole discretion, has the right to revoke its approval on 30 days notice with cause. The Board has the right to condition the approval on safety, noise, and nuisance considerations (including, but not limited to, limitations of times and days when the at-home office can be used). Neither the Association nor its Board shall have any responsibility or liability for any approved at-home office or for the failure to give approval of any request. Any at-home office shall be in compliance with all applicable codes and government requirements.

(iii) The provisions of this subsection (a) shall not be amended for 20 years without the written consent of the Developer and the Agency.

(b) Commercial Unit. Each Commercial Unit shall be used for commercial purposes and enterprises permitted by applicable governmental ordinances and laws. No Commercial Unit shall be used for purposes specifically prohibited by law. No Commercial Unit shall be used for uses that would not be compatible with a quality commercial property, including, but not limited to, blood banks, soup kitchens, adult book stores, etc.

18.2 Specific Prohibited Uses. No sign, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed on the exterior of a Unit, Limited Common Elements or Condominium Property by any Occupant without prior written consent of the Board of Directors. The foregoing includes signs within a Unit which are visible from outside the Unit; provided, however, that Commercial Units shall be permitted to install high quality, decorative and inviting signage appropriate to the historic and pedestrian character of the Building and in conformance with the Façade Easement and signage guidelines adapted by the Association. Such signage must be maintained by the Commercial Unit Owner.

No person shall use the Common Elements or any part thereof, or a Unit, or the Condominium Property, or any part thereof, in any manner contrary to or not in accordance with the rules and regulations set forth in the By-Laws or properly pertaining thereto and promulgated from time to time by the Association.



The Unit Owner shall not permit or suffer anything to be done or kept in such Owner's Unit which will increase the rate of insurance on the Condominium Property.

18.3 Nuisances. No nuisances (as reasonably determined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of unreasonable annoyance to the Occupants or which interferes with the peaceful possession or proper use of the Condominium Property by the Occupants. No activity specifically permitted by this Declaration shall be deemed a nuisance.

18.4 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property. The Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.

18.5 Antennae and Satellite Dishes. Satellite dishes and antennas and all related lines and equipment located wholly within the physical boundaries of a Unit shall be permitted without any requirement for approval from the Board of Directors; provided, however, that any such equipment located on a balcony cannot be visible from the street.

Satellite dishes, aerials and antennas shall not be permitted on the Common Elements except to the extent required to be permitted by applicable law (including, but not limited to, the federal Telecommunications Act of 1996). The Association shall have the right and authority, in its sole discretion and from time to time, to promulgate rules and regulations concerning the size and location of and safety restrictions pertaining to the installation of satellite dishes, aerials and antennas and all related lines and equipment which shall be permitted on the Common Elements.

Notwithstanding any provision to the contrary, the Association, in its sole discretion shall have the power and ability to erect or install any satellite dish, antenna or any similar structure on the Common Elements, provided that such satellite dish, antenna or structure be solely utilized for the reception of television, radio or internet signals to be utilized by the occupants of the Condominium or for security purposes. Any satellite dish, aerial or structure installed on the Common Elements must be installed in accordance with the Façade Easement.

18.6 Pets. No more than 2 dogs or cats shall be kept in a Residential Unit, provided same are not kept, bred or maintained for any commercial purpose, do not become a nuisance or annoyance to neighbors and are first registered with the Association. Birds and fish shall be permitted only to the extent they remain within the boundaries of the Unit and do not constitute an annoyance or nuisance to other Unit Owners. No reptiles, rodents or other wildlife shall be kept in or on the Condominium Property (including Units). The owners of the pet must clean up all wastes of their pet as are deposited on the Common Elements and dispose of such wastes appropriately. All dogs and cats must be kept on a leash no more than 6 feet in length when outside the Residential Unit and shall be walked only within areas, if any, designated for such purpose by the Association. No pets may be kept in or on the Limited Common Element 3<sup>rd</sup> floor courtyard or 3<sup>rd</sup> or 4<sup>th</sup> floor walkways appurtenant to a Residential Unit. The owner of a pet shall indemnify the Association and the Developer and hold them harmless from and against any loss or liability of any kind or character whatsoever arising from such owner's having any pet on the Condominium Property. If any pet owner fails to clean up after the pet, the Association shall cause such service to be performed and charge the offending pet owner for the costs.

Any complaints filed by occupants for damage caused by a pet shall be submitted in writing to the Board, which shall determine the amount of the damage and notify the person who owns the pet in writing to make the necessary repair, replacement or removal (as the case may be). If such person fails to properly act within 15 days from the date of such notice, or fails to otherwise reach an agreement in writing with the Board as to the payment for

such damage or remedying any other violation within 15 days from the date of such notice, such person shall be required to permanently remove the pet from the Condominium Property. Payment for damages pursuant to this subsection shall not be in lieu of any right of action which the person sustaining the damage shall be entitled to independently.

Any pet complaint filed with the Association, whether or not such complaint involves damage, shall be verified by a designated member of the Board of Directors. Each verified pet complaint shall constitute an infraction for purposes of this subsection. The Board shall take action with regard to such infractions as follows:

(1) If the complaint is the first infraction, the Board shall notify the pet owner in writing and formally request that no such infraction again occur.

(2) If the complaint is the second infraction, the Board shall notify the pet owner and warn such owner that the next infraction will cause a fine to be assessed.

(3) If the complaint is the third infraction, the Board shall notify the pet owner of the continuing violation and refer the matter to a committee of 3 Residential Unit Owners, none of whom shall be presently serving on the Board or be related to a director or the offending pet owner, for a determination as to a fine for the continuing infraction. Such committee shall, within 7 days following issuance of the notice of third infraction, determine whether a fine should be levied and provide a recommendation thereon to the Board. The amount of any fine shall not exceed the maximum amount allowed under the applicable provisions of Section 718.303, Florida Statutes. If a fine is recommended by such committee, the Board shall issue a written notice to the offending pet owner advising of the levying of the fine. However, such fine shall not become due and owing until such pet owner has received such written notice and has been given the opportunity to request a hearing before the committee of Residential Unit Owners described in this subsection (C) at a time and date which shall not be more than 30 days after the date of such notice. If the offending pet owner elects not to seek such a hearing, the recommendation of a fine made by the committee shall become binding on the Association and the pet owner. If such a hearing is held, the decision of the committee as to whether to rescind, modify or ratify the proposed fine shall be binding on the Association and the pet owner. All decisions made by such committee shall be made by majority vote.

(4) If the complaint is the fourth infraction, the Board shall notify the pet owner and demand that the pet be removed from the Condominium Property within 30 days from notice. Prior to taking the action contemplated in this subsection (4), such pet owner shall have the same opportunity for notice and a hearing as provided in subsection (3) above.

Infractions for purposes of this Section shall accumulate only on the basis of each calendar year. In other words, the number of infractions in any calendar year shall not be carried forward into the next calendar year for purposes of the enforcement of this Section.

No pets shall be permitted to occupy a Commercial Unit at any time.

18.7 Barbecue Grills. No barbecue grills shall be permitted on any balcony. The Association may place one or more barbecue grills on the Limited Common Element courtyard area on the 3<sup>rd</sup> floor of the Building, which shall only be for the use of the residential Occupants. The Association may promulgate rules and regulations concerning the ability to use the barbecue grills.

18.8 Weight and Sound Restrictions. Any heavy item of personal property or installed fixtures (such as a waterbed) must be compatible with the structural integrity of the Building, and no installation of such item shall be permitted without the prior written consent of the Board. The Unit Owner shall submit such request to the Board in writing, and within 30 days after the Board has received all information needed to approve or disapprove the request,

the Board shall provide a written approval or disapproval to the Unit Owner. The right to approve or disapprove is in the sole discretion of the Board. Neither the Association nor the Board shall be responsible or liable for any damage or injury that occurs as a result of approving or disapproving such improvements.

18.9 Balcony Restrictions. In order to promote an attractive appearance of the balconies that are a part of each Residential Unit and to comply with the Facade Easement, balcony decorations and improvements shall be subject to prior written approval of the Board. The balconies shall be kept neat, clean and free from trash at all times. The overhead balcony fan and light shall be a standard design as designated by the Board. Balconies may not be screened. On exterior balconies, flower boxes and plants are allowed inside the balcony railing. The Association shall be solely responsible for painting the walls which serve to bound the balcony, and no Unit Owner or Occupant shall be permitted to paint such walls or doors in such walls. The balconies shall not be used for storage or for parking bicycles or motorcycles. No objects shall be hung from any balconies other than healthy, maintained plants. No glue down carpet or tile shall be installed on any balcony. Unit Owners may change the color of the horizontal surface of the balcony by painting it with Elastomeric paint, or its equivalent, as approved by the Board, so that the waterproof surface is appropriately maintained.

18.10 Front Doors. Residential Unit Owners may change the design of their front entryway door subject to prior written approval of the Board. Any exterior door shall only be painted or stained colors approved by the Board, which may be the same for all Residential Units or all Commercial Units or all Units.

18.11 Trash. Trash and other garbage shall be regularly removed from each Unit and shall not be allowed to accumulate therein. No refuse container shall be placed by a Unit Owner in or on the Common Elements. Trash from the Residential Units and the 2<sup>nd</sup> floor Commercial Units having access shall be placed in the trash chute so as not to create a mess around the trash chute area. Any spillage, leakage or mess left on any Common Elements or Limited Common Elements shall be cleaned by the offending Unit Owner. Recyclable materials shall be placed in such areas as are designated by the Board. Garbage which is too big for the trash chute shall be removed by the Unit Owner.

18.12 Window Treatments. Curtains and drapes (and other window treatments) that face the exterior windows or glass doors of a Unit shall be white or off-white in color. No reflective film shall be placed on any windows or doors.

18.13 Urban Environment. All Unit Owners and Occupants of the Building acknowledge the urban downtown environment of the Condominium. The Commercial Units located on the 1<sup>st</sup> floor of the Building and public events shall not be considered to have created a nuisance so long as the businesses and events operate in compliance with applicable codes and government requirements. The Board shall approve temporary street closings for downtown events that comply with applicable codes and government requirements.

18.14 Right to Use Common Elements and Right to Peacefully Assemble. Each Unit Owner and their guests are entitled to use the Common Elements in accordance with the purposes for which they are intended, but no use may hinder or encroach on the lawful rights of another Unit or Unit Owner. The Association may adopt reasonable rules and regulations pertaining to the use of the Common Elements. A Unit Owner shall not do anything within such Owner's Unit or on or to the Common Elements that would damage or adversely affect any Unit, the Building, or the Common Elements. Unit Owners shall not be unreasonably restricted in their right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in the areas of the Common Elements, in accordance with the Act.

18.15 Fire Protection Requirements. The Condominium is constructed to meet fire codes for multi-use multi-story buildings. A Unit Owner must not disable any fire protection devices which include smoke and fire alarms, vent or duct line fire dampers or wraps and the sprinkler system. Any alterations or repairs to ceilings or walls that would penetrate fire protection barriers must be undertaken in such manner as to maintain conformance to applicable

fire codes. Such alterations and repairs include installation of recessed lights, speakers or other equipment which would result in the penetration of the fire ceiling or exterior wall. Any such installation or repairs must be done by a licensed contractor with knowledge of fire code requirements.

**Section 19: Selling, Leasing and Mortgaging of Units**

The right of a Unit Owner to sell, transfer, lease or mortgage all or a portion of a Unit shall not be subject to the approval of the Association.

19.1 Sales. There are no restrictions on an Owner's right to sell his Unit.

19.2 Leases. No lease of a Residential Unit by its Owner shall be for a period of less than 3 months. No lease of a Residential Unit shall permit more than two persons in a one or two bedroom Unit and no more than three persons in a three bedroom Unit. Notwithstanding any provision to the contrary, the Developer may lease any Unit owned by the Developer for any period of time. A Unit Owner leasing such Owner's Unit shall promptly notify the Association of each lessee and the term of such lease. No sub-leasing of a Unit Owner's interest shall be permitted. The Association shall have the right to require on notice to all Unit Owners that a substantially uniform form of lease be used by all Unit Owners (including the Developer) intending to lease after said notice and to provide such form as a Common Expense.

A tenant of a Unit shall have all of the use rights in the Association Property and Common Elements otherwise available for use by Unit Owners, and the Owner of the leased Unit shall not have such rights, except as a guest. This shall not interfere with access rights of an Owner as landlord pursuant to applicable law.

Every lease of a Unit shall expressly provide that a material condition of the lease is full compliance with the terms and conditions of this Declaration, the Articles of Incorporation and the By-Laws, and any rules and regulations duly promulgated by the Association. The Unit Owner shall be jointly and severally liable for any injury or damage to the Condominium Property or Association property caused by the lessee or the lessee's guests or family members. All leases are subordinate to any claim of lien filed by the Association to collect any Assessment, regardless of whether the lease pre-dates or post-dates the recording of the lien.

19.3 Continuing Liability. The liability of the Unit Owner under this Declaration shall continue, notwithstanding the fact that he may have leased said Unit. Every purchaser, tenant or lessee shall be subject to this Declaration, the Articles of Incorporation, the By-Laws, and any Management Agreement, as well as the provisions of the Act.

19.4 No Severance of Ownership. No part of the Common Elements (including the Limited Common Elements) may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.

19.5 Certificate of the Association; Notification of New Ownership. In connection with the conveyance of each Unit, an officer of the Association shall execute a certificate stating that all Assessments levied against such Unit have been paid in full, or if not paid in full, the amounts due and owing. The Board of Directors shall furnish such certificate on receipt from the Unit Owner of a request form (which will be prepared by the Association) setting forth the proposed purchaser's name, notice address and date of closing. Payment of outstanding Assessments shall be in accordance with the Act. Each new Owner receiving a conveyance from any party except the Developer shall notify the Association promptly after becoming a new Owner by delivering a copy of his recorded deed to the Unit to the Association and the Management Firm.

19.6 Gifts and Devise, Etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 19.

19.7 Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.

### **Section 20: Compliance and Default**

Each Occupant and the Association shall be governed by and shall comply with the terms of this Declaration and all exhibits hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

20.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence, misuse or neglect or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence, misuse or neglect by the Association.

20.2 Compliance. If a Unit Owner fails to maintain a Unit, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines or to sue in a court of law for damages. For purposes of this Declaration, the failure of an Occupant who is not a Unit Owner to comply with the terms and provisions of this Declaration shall not relieve the Unit Owner from liability and responsibility.

20.3 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the Articles of Incorporation, the By-Laws or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees) not to exceed \$2,500.

20.4 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Articles of Incorporation, the By-Laws or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

### **Section 21: Termination of Condominium**

The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided elsewhere in this Declaration, or (ii) such time as termination of the condominium form of ownership is authorized by a vote of Owners owning 80% of the Units, by 100% of the Institutional First Mortgagees, and by the Developer, the Agency and the City of Gainesville if the Development Agreement (as defined hereinafter) remains in effect. On such termination, the former Condominium Property shall be subject to an action for partition by any Owner, and the net proceeds of sale shall be divided among all Owners on the basis of the fair market value of each Unit, relative to the other Units in the Condominium, immediately prior to the termination event; provided, however, that no payment shall be made to an Owner until all mortgages and liens on his Unit, in the order of their priority, have been satisfied out of his share of such net proceeds. On such termination, all funds of the Association, including reserves, insurance proceeds, and condemnation awards, shall be divided among all Owners on the basis of the fair market value of each Unit, relative to the other Units in the Condominium. No payment shall be made to an Owner until all mortgages and liens on his Unit, in the order of their priority, have been satisfied out of his share of

such net proceeds. The termination of the Condominium shall be effective on a certificate of the Association, executed by its President and Secretary, certifying the basis of the termination being recorded in the public records of Alachua County.

This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns any Unit.

**Section 22: Additional Rights of Mortgagees and Others**

The following provisions are intended for the benefit of each holder of a first mortgage on a Unit, and, to the extent that any other provisions of this Declaration conflicts with the following provisions, if at all, the following provisions shall control:

22.1 If requested in writing, the Association shall furnish to each Institutional First Mortgagee of a Unit and any holder, insurer or guarantor of a first mortgage a written notice of any default by the Unit Owner of such Unit in the performance of such Unit Owner's obligations under this Declaration that has not been cured within 30 days.

22.2 If requested in writing, each Institutional First Mortgagee of a Unit and any holder, insurer or guarantor of a first mortgage on a Unit shall have the right:

(a) to examine current copies of this Declaration, the By-Laws, rules and regulations and the books, records and financial statements of the Association during normal business hours;

(b) to receive, without any charge and within a reasonable time after such request, the annual financial statement which is prepared and distributed by the Association to the Unit Owners at the end of its fiscal year. If the financial statement is not an audited statement, an Institutional First Mortgagee shall be entitled to have an audited statement prepared at its expense;

(c) to receive written notices of meetings of the Association and to designate a representative to attend such meetings;

(d) to receive written notice of any decision by the Unit Owners to make a material amendment to the Declaration, the By-Laws or the Articles of Incorporation;

(e) to receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(f) to receive written notice of any action which would require the consent of a specified number of Institutional First Mortgagees.

22.3 No provision of this Declaration or the Articles of Incorporation or any similar instrument pertaining to the Condominium Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over any rights of the Institutional First Mortgagees of Units pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, and/or the Common Elements, or any portion thereof or interest therein. In such event, the holder of any first mortgage on a Unit shall be entitled, on specific written request, to timely written notice of such loss.

22.4 If a specific written request is made to the Association, each Institutional First Mortgagee or holder, insurer or guarantor of a mortgage on a Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Elements if such damage or destruction or taking exceeds \$25,000.00 or if damage shall occur to a Unit in excess of \$5,000.00.

22.5 If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder, insurer or guarantor of any first mortgage on a Unit will be entitled to timely written notice, on specific written request, of any such proceeding or proposed acquisition and no provisions of any document will entitle a Unit Owner or other party to priority over such holder with respect to the distribution to such Unit of the proceeds of any award or settlement.

22.6 Any holder of a first mortgage on a Unit who receives a written request to approve additions or amendments and fails to deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

22.7 As required by Section 718.110, Florida Statutes, any mortgagee consent required under this Section shall not be unreasonably withheld.

### **Section 23: Disclaimer of Warranties**

Developer hereby disclaims any and all express or implied warranties as to design, construction, furnishing and equipping of the Condominium Property, except only those set forth in Section 718.203 of the Act. As to such warranties which cannot be disclaimed, and to other claims, if any, which can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby disclaimed.

All Unit Owners, by virtue of their acceptance of title to their respective Units (whether from the Developer or another party), shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages.

### **Section 24: Mediation and Arbitration**

All issues or disputes which are recognized by the Act or by administrative rules promulgated under the Act as being appropriate or required for mediation or arbitration shall be resolved through such alternative resolution procedures instead of civil litigation as provided by the 8<sup>th</sup> Judicial Circuit.

### **Section 25: Additional Provisions**

25.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws shall be sent by first class mail to the Association in care of the Association president and the Management Firm. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the address of such Unit Owner appearing in the Association's records at the time the notice is transmitted. Where a Unit is owned by more than one person, the Association shall provide all required notice, to that one address which the Developer initially identifies for that purpose and thereafter as one or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or the Owners of the Unit do not agree, to the address provided in the deed of record.

All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association.

All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

25.2 Interpretation. The Board of Directors shall be responsible for interpreting the provisions hereof and of any of the attached exhibits. Such interpretation shall be binding on all parties unless wholly unreasonable. An opinion of legal counsel to the Association, or the legal counsel having drafted this Declaration, that any

interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

25.3 Required Compliance with Declaration, Articles of Incorporation, and By-Laws. All provisions of this Declaration, including the Articles of Incorporation and By-laws for the Association, are enforceable equitable servitudes, run with the land, and are effective until this Declaration is terminated. Each Unit Owner, Occupant and other invitee, and the Association shall be governed by and comply with the provisions of this Declaration, the Articles of Incorporation and the By-Laws. All provisions thereof shall be deemed expressly incorporated into any deed conveying any Unit and into any lease of any Unit, whether or not expressly stated

25.4 Agreement for Development of the Condominium Property. The Condominium will be or has been constructed by Developer pursuant to an unrecorded Agreement for Development of Property between the City of Gainesville, the Agency and the Developer dated August 24, 1998 ("Development Agreement"). The Condominium is subject to the Façade Easement, and is also subject to a Residential Use Restriction (as defined in the Development Agreement and set forth in Section 18.1(a) above) as to the 51 Residential Units, all of which are located on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floors of the Building. The Developer retains the right to receive the Grant Award (as defined in the Development Agreement) to be paid from the tax increment revenues derived from the Condominium and to all other rights of the Developer contained in the Development Agreement. Neither the Association nor any Unit Owners shall have any rights to any portion of the Grant Award. Furthermore, the Developer remains liable for all obligations of the Developer contained in the Development Agreement, subject to the Residential Use Restriction and the Façade Easement being maintained by the Association and the Unit Owners. In the event of any violation of the Residential Use Restriction or the Façade Easement, the Developer shall have the right to sue to enjoin such violation(s) or sue for damages as measured by the loss of any Grant Award payable to the Developer. The Developer shall be entitled to all costs of enforcement of this Section, including reasonable attorneys' fees. No portion of this Declaration may be amended in any manner that would affect the Residential Use Restriction, the Façade Easement or payment of the Grant Award to Developer.

25.5 Binding Effect of Section 718.303, Florida Statutes. The provisions of Section 718.303(1), Florida Statutes, shall be in full force and effect and are incorporated herein

25.6 Right of Developer to Add Recreational Facilities and Common Elements. If the Developer elects to add or expand any recreational facilities or any other portion of the Common Elements, the Developer shall pay all the expenses relating to the construction or the providing of such addition or expansion and shall record an amendment to this Declaration describing such property. The amendment shall be executed with the formalities of a deed and recorded in the public records of the County. No approval or action of the Association, Unit Owners or mortgagees shall be necessary for adding such additional Common Elements to condominium ownership. All costs of maintenance, repair and replacement relating to the addition or expansion of the recreational facilities or any other portion of the Common Elements shall be a Common Expense.

25.7 Right of Developer to Convey Property to the Association. The Developer hereby reserves the right to convey to the Association any real property lying contiguous to the Condominium Property free and clear of liens and encumbrances, including other parcels more suitable to become Association Property rather than Common Elements. All costs and expenses associated with such Association Property shall be Common Expenses. The Association shall be required to accept any such conveyance from the Developer.

25.8 Exhibits. The terms and provisions contained in the exhibits to this Declaration are hereby incorporated into this Declaration. In the event of any conflict between the terms and provisions of this Declaration and the terms and provisions of any exhibit, this Declaration shall control.

25.9 Signature of President and Secretary. Wherever the signature of the President of the Association is required, the signature of a Vice-President may be substituted, and, wherever the signature of the Secretary of the



Association is required, the signature of an Assistant Secretary may be substituted, provided that the same person may not execute any single instrument on behalf of the Association in 2 separate capacities.

25.10 Severability. The invalidity in whole or in part of any provision of this Declaration, the exhibits or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions which shall remain in full force and effect.

25.11 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.

25.12 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each Occupant who is not a Unit Owner (by reason of such occupancy), shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles of Incorporation, the By-Laws and applicable rules and regulations, are fair and reasonable in all material respects.

25.13 Gender; Plurality. For ease of reference, the pronoun "it" has been used herein without regard to the proper grammatical person or gender of the party being referred to. All such references shall be deemed to include the singular or plural person and the masculine, feminine or neuter gender, as required by the context.

25.14 Captions. The captions herein and in the attached exhibits are inserted only for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be affixed this 2nd day of October, 2000.

WITNESSES:

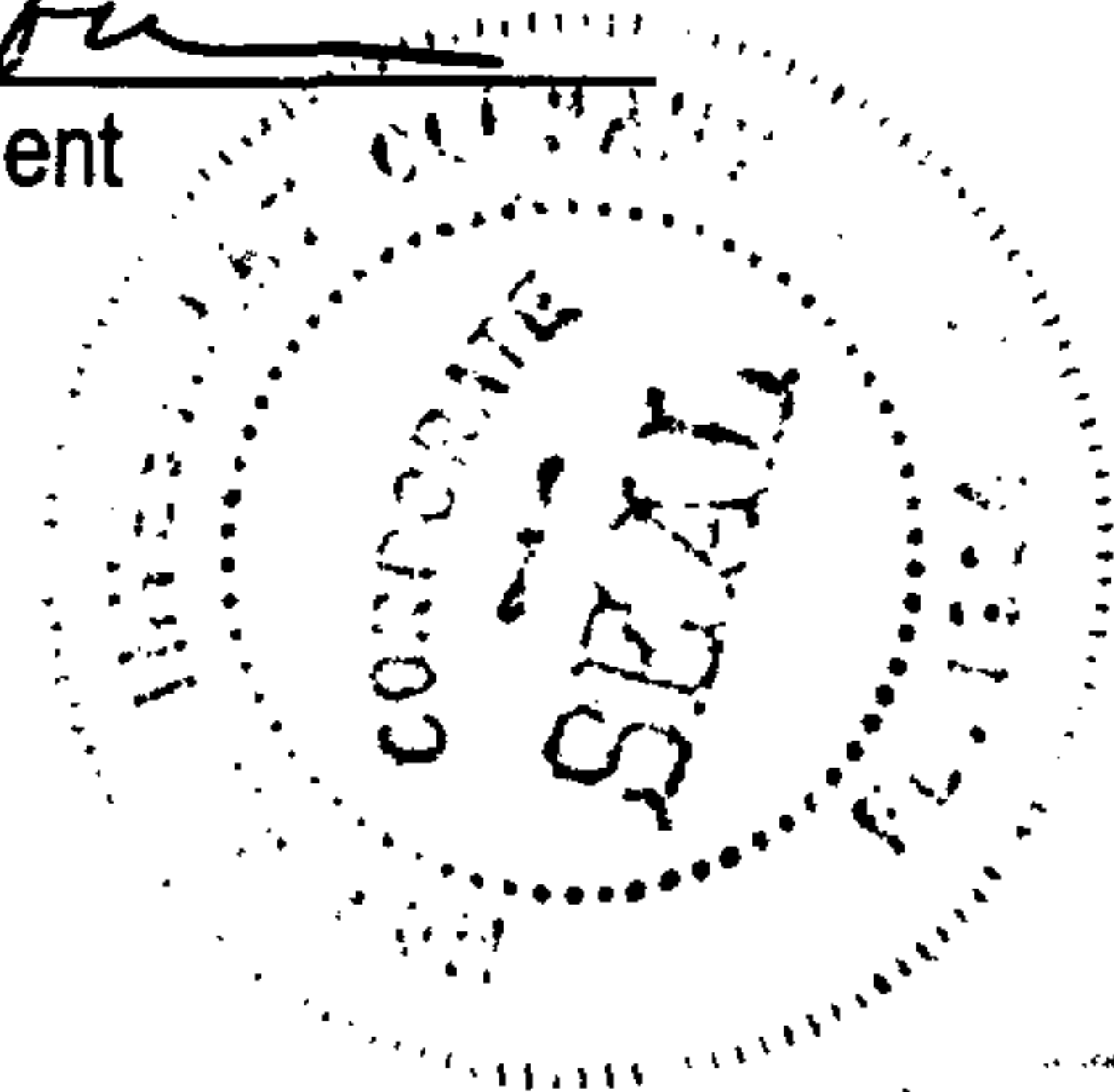
McGurn Investment Company, a Florida corporation

[Signature]  
Print Name: Linda C. McGurn

By: [Signature]  
Kenneth R. McGurn, President

[Signature]  
Print Name: Robert Coggin

(Seal)



STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 2nd day of October, 2000, by Kenneth R. McGurn, as President of McGurn Investment Company, a Florida corporation, on behalf of said entity, as the Developer of Union Street Station Condominium. He is personally known to me.

My Commission Expires:

[Signature]  
(Signature)

(AFFIX NOTARY SEAL)

Name: MARY ANN KELLY  
(Legibly Printed)

Notary Public, State of Florida

CC 824488  
(Commission Number, if any)

NOTARY PUBLIC - STATE OF FLORIDA  
MARY ANN KELLY  
COMMISSION # CC824488  
EXPIRES 6/11/2003  
BONDED THRU ASA 1-888-NOTARY1

**CONSENT**

The undersigned, on behalf of the CITY OF GAINESVILLE, FLORIDA, a municipal corporation, who holds an interest in the property subject to this Declaration pursuant to the following instruments:

- (1) Easement contained in the instrument recorded May 30, 1978 in Official Records Book 1139, at page 134, as modified by the Partial Release of Easement recorded February 2, 1999 in Official Records Book 2214, at page 2626, and by the Quit-Claim Deed recorded April 22, 1999 in Official Records Book 2227, at page 2692, all being recorded in the Public Records of Alachua County, Florida;
- (2) Easement recorded January 27, 1999 in Official Records Book 2213, at page 2843 of the Public Records of Alachua County, Florida;
- (3) Easement for Air Rights recorded March 22, 1999 in Official Records Book 2222, at page 1615 of the Public Records of Alachua County, Florida;
- (4) Easement for Air Rights recorded March 22, 1999 in Official Records Book 2222, at page 1619 of the Public Records of Alachua County, Florida;
- (5) Consent recorded February 23, 1999 in Official Records Book 2217, at page 2732 of the Public Records of Alachua County, Florida;
- (6) Unrecorded Agreement for Development of Property dated August 24, 1998; and
- (7) Foundation and Roof Overhang Easement recorded June 15, 2000 in Official Records Book 2296, Page 1404 of the Public Records of Alachua County, Florida,

hereby consents to the Declaration to which this instrument is attached, subject to the interests described above.

Dated this 22nd day of August, 2000.

**WITNESSES:**

Name: Neomia Brown  
 Print Name: Neomia Brown

Name: Merlyn R. Crews  
 Print Name: MERLYN R. CREWS

Approved as to form and legality  
[Signature]  
 Marion J. Radson, City Attorney

**AUG 21 2000**

CITY OF GAINESVILLE, FLORIDA, a municipal corporation

By: Paula M. Delaney  
 Paula M. Delaney, Mayor

Attest: [Signature]  
 Kurt M. Lannon, Clerk of the Commission

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 22nd day of August, 2000, by Paula M. Delaney, Mayor of the CITY OF GAINESVILLE, FLORIDA, a municipal corporation. He/She either  is personally known to me or  has produced \_\_\_\_\_ as identification.

Sharon D. Watson  
 Notary Public



**CONSENT**

The undersigned, on behalf of **GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic of the State of Florida, who holds an interest in the property subject to this Declaration pursuant to the following instruments:

- (1) Easement for Air Rights recorded March 22, 1999 in Official Records Book 2222, at page 1615 of the Public Records of Alachua County, Florida;
- (2) Easement for Air Rights recorded March 22, 1999 in Official Records Book 2222, at page 1619 of the Public Records of Alachua County, Florida;
- (3) Consent recorded February 23, 1999 in Official Records Book 2217, at page 2732 of the Public Records of Alachua County, Florida;
- (4) Unrecorded Agreement for Development of Property dated August 24, 1998;
- (5) Facade Easement recorded June 23, 2000 in Official Records Book 2297, at page 2532 of the Public Records of Alachua County, Florida;
- (6) Mortgage and Security Agreement recorded September 15, 2000 in Official Records Book 2312, at page 1678 of the Public Records of Alachua County, Florida,

hereby consents to the Declaration to which this instrument is attached, subject to the interests described above.

Dated this 22nd day of August, 2000.

**WITNESSES:**

Name: Jenny Higginbotham  
 Print Name: Jenny Higginbotham  
 Name: Dene Brewer  
 Print Name: Dene Brewer

**GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic of the State of Florida

By: Wayne Bowers  
Wayne Bowers, Executive Director

Approved as to form and legality  
Conchi M. Ossa

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 22nd day of August, 2000, by Wayne Bowers, Executive Director of the GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic of the State of Florida. He/She either  is personally known to me or  has produced \_\_\_\_\_ as identification.

(AFFIX NOTARY SEAL)

Conchi M. Ossa  
Notary Public



Conchi M. Ossa  
MY COMMISSION # CC696966 EXPIRES  
December 1, 2001  
BONDED THRU TROY FAJN INSURANCE, INC.

CONSENT

The undersigned, on behalf of FIRST UNION NATIONAL BANK, who holds an interest in the property subject to this Declaration pursuant to the Mortgage dated November 24, 1998, and recorded November 25, 1998, in Official Records Book 2203, at page 2157; as modified by the Mortgage Modification and Consent Agreement dated March 29, 1999, recorded April 8, 1999, in Official Records Book 2225, at page 1334, and by the Mortgage Modification Agreement No. 2 dated August 15, 2000, recorded August 17, 2000, in Official Records Book 2307, Page 1984, all recorded in the Public Records of Alachua County, Florida, hereby consents to the Declaration to which this instrument is attached encumbering the mortgaged property,

Dated this 30<sup>th</sup> day of August, 2000.

WITNESSES:

FIRST UNION NATIONAL BANK

Name: Susan G. Moore  
Print Name: SUSAN G. MOORE

By: [Signature]  
Name: Richard R. Gross  
Title: Assistant Vice President

Name: [Signature]  
Print Name: Scott J. Speare

(Seal)

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of August, 2000, by RICHARD R. GROSS, as ASST. V. P. of FIRST UNION NATIONAL BANK. He/She either  is personally known to me or  has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

[Signature]  
(Signature)

Name: \_\_\_\_\_  
(Legibly Printed or Typed)

Notary Public, State of Florida



SUSAN G. MOORE  
COMMISSION #CC 804751  
My Commission Expires Jan. 26, 2003  
BONDED THROUGH CECIL W. POWELL CO.

\_\_\_\_\_  
(Commission Number, if any)

CONSENT

The undersigned, on behalf of ALACHUA COUNTY ABSTRACT COMPANY, who holds an interest in the property subject to this Declaration pursuant to an easement for non-exclusive ingress, egress and public utilities over vacated SE 2<sup>nd</sup> Street as reserved in that certain Warranty Deed recorded in Official Records Book 2044, at page 586 of the Public Records of Alachua County, Florida, as modified by the Partial Release of Easement in Official Records Book 2284, at page 2162 of the Public Records of Alachua County, Florida, hereby consents to the Declaration to which this instrument is attached encumbering the property subject to the easement.

Dated this 30 day of August, 2000.

WITNESSES:

ALACHUA COUNTY ABSTRACT COMPANY

Name: Terri L. Mincy  
Print Name: Terri L. Mincy

By: [Signature]  
Name: MIKE CONWAY  
Title: PRESIDENT

Name: Lisa M Slaght  
Print Name: Lisa M Slaght

(Seal)

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 30 day of August, 2000, by Mike Conway, as President of ALACHUA COUNTY ABSTRACT COMPANY. He/She either  is personally known to me or  has produced \_\_\_\_\_ as identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

Billie H. Zeigler  
(Signature)  
Name: Billie H. Zeigler  
(Legibly Printed or Typed)  
Notary Public, State of Florida



Billie H. Zeigler  
MY COMMISSION # CC609182 EXPIRES  
April 19, 2001  
BONDED THRU TROY FAIR INSURANCE, INC.

(Commission Number, if any)

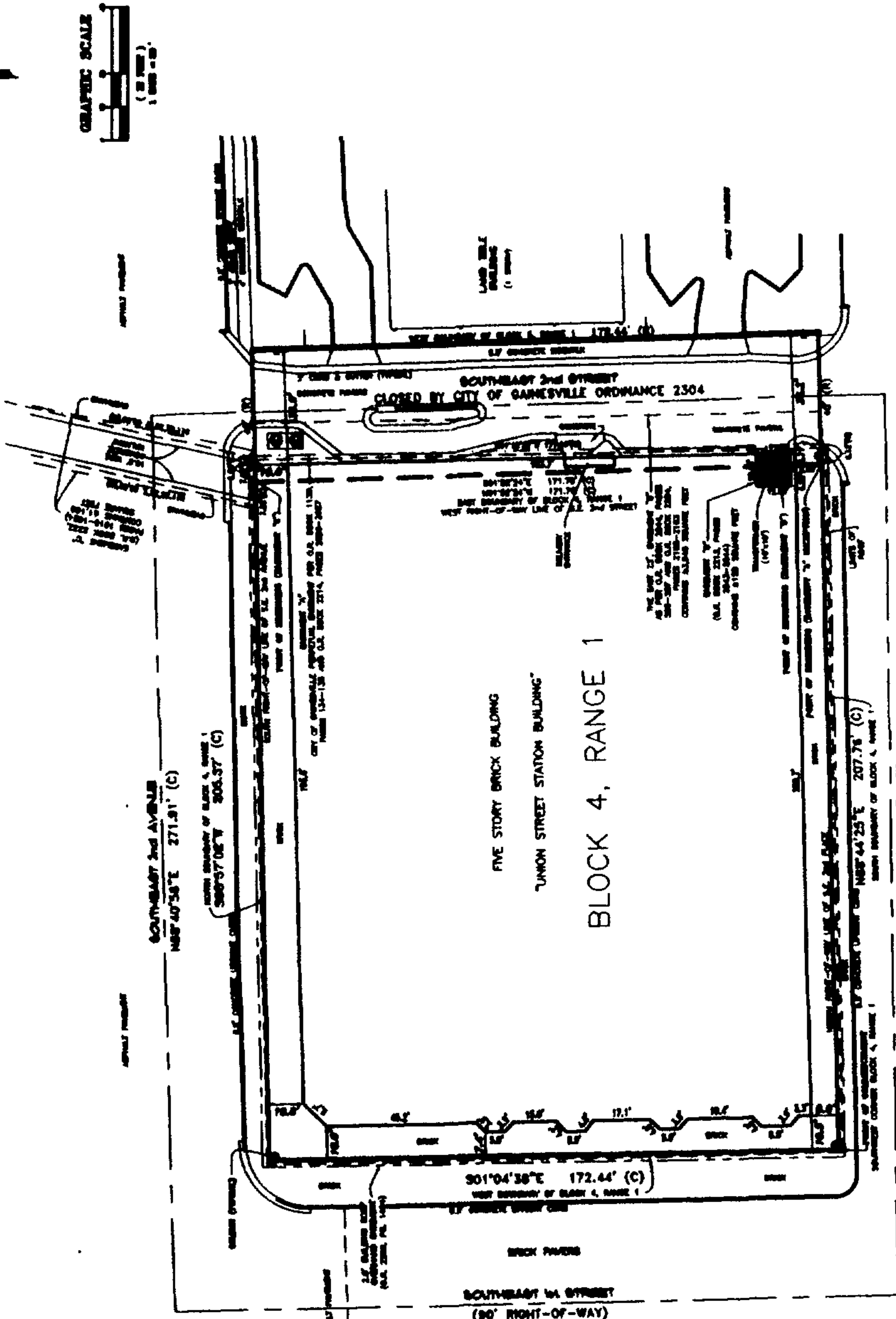
# UNION STREET STATION CONDOMINIUM

## SECTION 4, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA

DESCRIPTION: UNION STREET STATION CONDOMINIUM ALL OF BLOCK FOUR (4), RANGE ONE (1) OF THE MAP OF GAINESVILLE, FLORIDA, AS RECORDED IN THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA, IN DEED BOOK "H", PAGE 383, LESS THE RIGHT-OF-WAY FOR SECOND AVENUE AS RECORDED IN OFFICIAL RECORDS BOOK 208, PAGE 150; TOGETHER WITH THAT PART OF THE FORTY FOOT (40') STREET LYING BETWEEN BLOCK 4, RANGE 1 AND BLOCK 5, RANGE 1 OF ORIGINAL GAINESVILLE, AS PER DEED BOOK "H", PAGE 383 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA, CLOSED BY CITY OF GAINESVILLE ORDINANCE #2304.

TOGETHER WITH THAT CERTAIN EASEMENT FOR AIR RIGHTS RECORDED IN OFFICIAL RECORDS BOOK 2222, PAGE 1819 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA COMMENCING 17.55 FEET AND ENDING 45 FEET ABOVE THE HIGHEST POINT ON THE STREET LYING WITHIN THE FOLLOWING DESCRIBED PARCEL OF PROPERTY LYING AND BEING IN SECTION 4, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA:

COMMENCE AT A FOUND NAIL AND DISK MARKING THE SOUTHWEST CORNER OF BLOCK 4, RANGE 1 AND THE NORTH RIGHT-OF-WAY LINE OF SOUTHEAST 2ND PLACE; THENCE ALONG SAID NORTH LINE NORTH 88°44' 25" EAST A DISTANCE OF 207.76 FEET TO A FOUND "L" AND DISK MARKING THE WEST RIGHT-OF-WAY LINE OF SOUTHEAST 2ND STREET; THENCE NORTH 01°52' 24" WEST A DISTANCE OF 171.70 FEET TO A FOUND NAIL AND DISK MARKING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF SOUTHEAST 2ND AVENUE AND THE POINT OF BEGINNING; THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 88°54' 57" WEST A DISTANCE OF 7.88 FEET; THENCE NORTH 11°32'28" EAST A DISTANCE OF 88.59 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID SOUTHEAST 2ND AVENUE; THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH 89°01'47" EAST A DISTANCE OF 17.41 FEET; THENCE SOUTH 11°32'28" WEST A DISTANCE OF 88.58 FEET TO A POINT ON SAID SOUTH RIGHT-OF-WAY LINE; THENCE ALONG SAID LINE SOUTH 88°57'03" WEST A DISTANCE OF 9.56 FEET TO THE POINT OF BEGINNING.



1.3 Property Subject to Certain Restrictions and Easements. The Condominium Property (as defined hereinafter) is subject to the covenants, conditions, restrictions, easements and reserved rights of the Developer contained in the Declaration. The Condominium Property is also subject to: (a) the easements reserved in that Official Record Book 1139, Page 134 as modified by the Partial Release of Easement recorded in Official Records Book 2214, Page 2626; (b) the easements reserved in that Corporate Warranty Deed recorded in Official Records Book 2044, Page 586 as modified by the Partial Release of Easement recorded in Official Records Book 2222, Page 1819; (c) the easements reserved in that Declaration and Grant of Easements recorded in Official Records Book 2312, Page 56 ("Parking and Access Agreement"); (d) the easements declared and/or granted pursuant to that Declaration and Access Agreement recorded in Official Records Book 2297, Page 2532 ("Facade Easement"); (e) the easements created pursuant to that Facade Easement recorded in Official Records Book 2296, Page 1404; (f) the easements recorded in Official Record Book 2213, Page 2843 (Transformer Room), and (g) all other easements and declarations as shown on the Condominium Drawings, as contained in any future amendments to this Declaration, or as declared by the Developer pursuant to reserved rights contained herein. All references are to the public records of Alachua County, Florida.

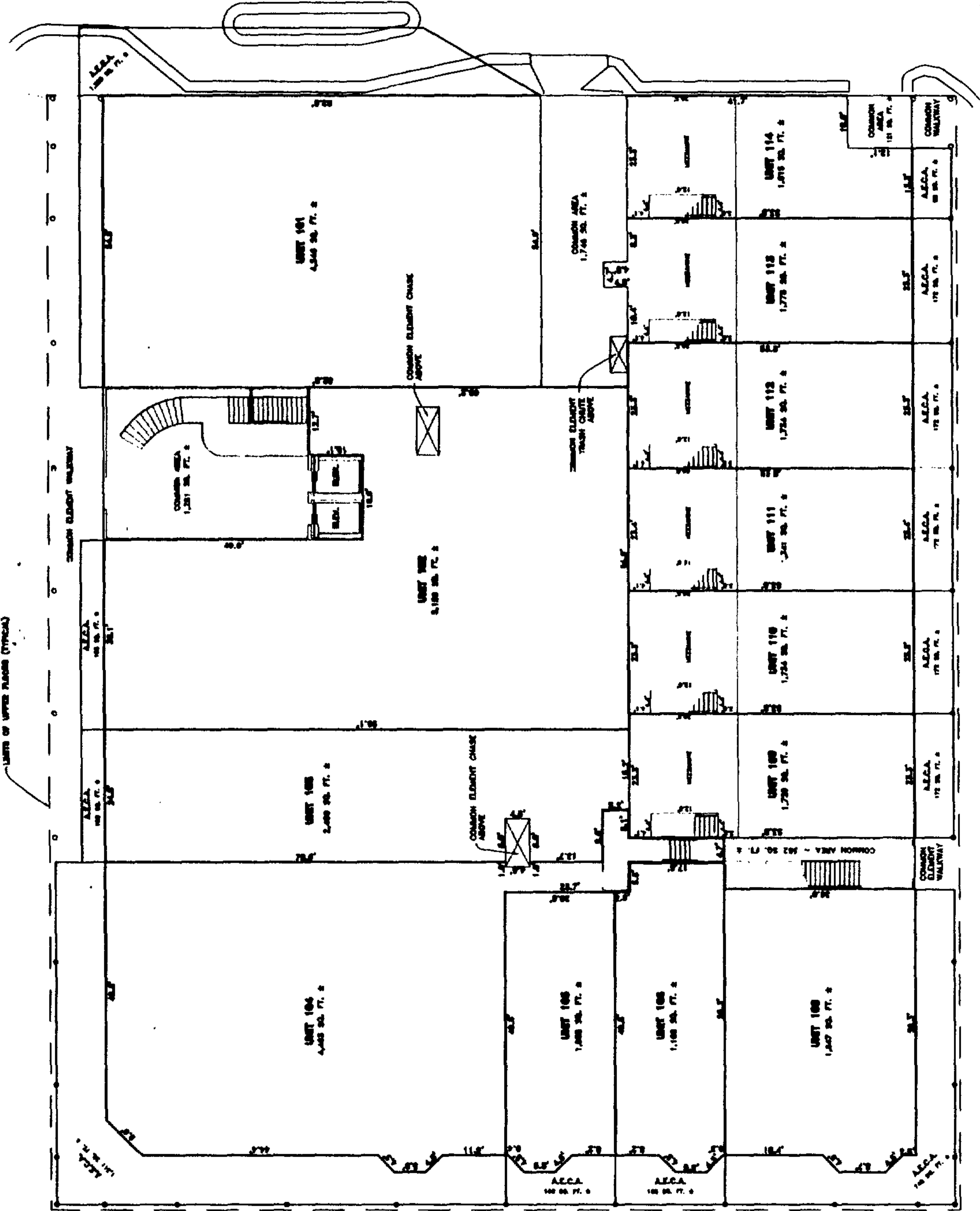
*[Handwritten signature and date]*  
 9-25-00



DAB SURVEYING, INC.  
111 PLAZA PLAZA  
GAINESVILLE, FL 32601  
352-371-1111

# UNION STREET STATION CONDOMINIUM

SECTION 4, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA



### FIRST FLOOR PLAN

UNITS TOTAL: 14 UNITS  
COMMON AREAS TOTAL: 1,740 SQ. FT.

NOTES:  
 1. UNITS TO BE MEASURED BY ARCHITECTURE FOR CONDOMINIUM PURPOSES.  
 2. COMMON AREAS TO BE MEASURED BY ARCHITECTURE FOR CONDOMINIUM PURPOSES.  
 3. ALL AREAS ARE MEASURED AS SHOWN ON THIS PLAN.  
 4. ALL AREAS ARE MEASURED TO THE CENTERLINE OF WALLS UNLESS OTHERWISE NOTED.  
 5. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF WALLS UNLESS OTHERWISE NOTED.  
 6. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF CURBS UNLESS OTHERWISE NOTED.  
 7. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF STAIRS UNLESS OTHERWISE NOTED.  
 8. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF DOORS UNLESS OTHERWISE NOTED.  
 9. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF PARTITIONS UNLESS OTHERWISE NOTED.  
 10. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF CEILING UNLESS OTHERWISE NOTED.  
 11. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF FLOOR UNLESS OTHERWISE NOTED.  
 12. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF ROOF UNLESS OTHERWISE NOTED.  
 13. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF FOUNDATION UNLESS OTHERWISE NOTED.  
 14. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF EXTERIOR WALLS UNLESS OTHERWISE NOTED.  
 15. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF EXTERIOR DOORS UNLESS OTHERWISE NOTED.  
 16. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF EXTERIOR WINDOWS UNLESS OTHERWISE NOTED.  
 17. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF EXTERIOR STAIRS UNLESS OTHERWISE NOTED.  
 18. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF EXTERIOR DOORS UNLESS OTHERWISE NOTED.  
 19. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF EXTERIOR WINDOWS UNLESS OTHERWISE NOTED.  
 20. ALL AREAS ARE MEASURED TO THE INSIDE FACE OF EXTERIOR STAIRS UNLESS OTHERWISE NOTED.



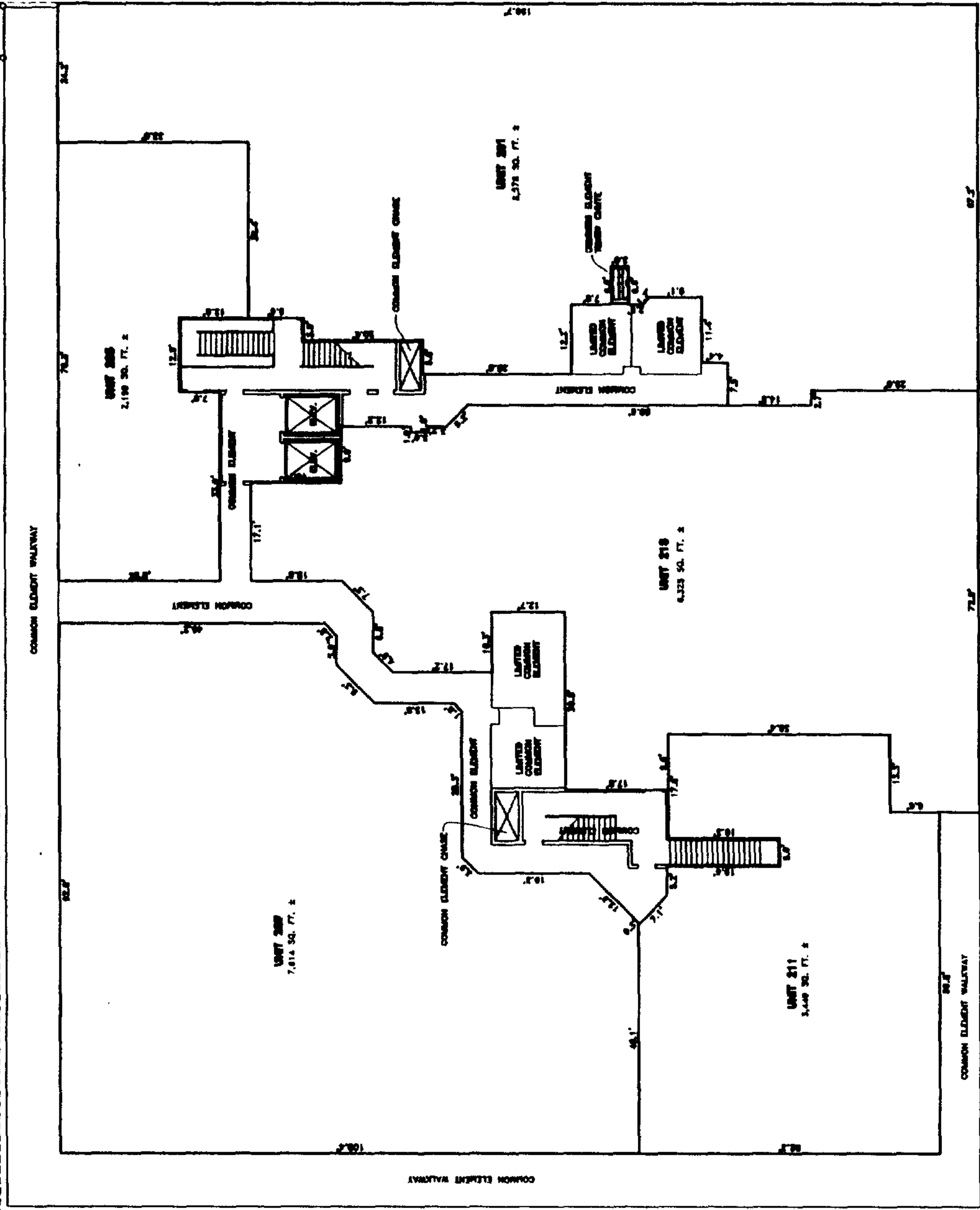
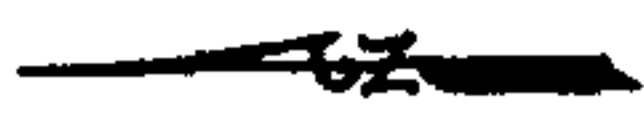
DAB SURVEYING, INC.  
111 PALMWOOD DRIVE  
APOLLO BEACH, FLORIDA 33772  
813-940-0000



# UNION STREET STATION CONDOMINIUM

SECTION 4, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA

UNIT'S AREAS SHOWN ABOVE AS SHOWN



## SECOND FLOOR PLAN

UNIT TOTAL 26,155 SQ. FT. ±  
COMMON AREAS TOTAL 7,148 SQ. FT. ±

NOTES:  
1) REFER TO DECLARATION OF CONDOMINIUM FOR DEFINITION OF UNIT COMMONS, RESTROOMS, STAIRS AND APPURTENANCES SUCH AS TERRACE, BALCONY, ETC. AND ARE SHOWN IN THIS PLAN.  
2) REFER TO DECLARATION OF CONDOMINIUM FOR DEFINITION OF COMMON AREAS, WHICH INCLUDES ALL COMMON AREAS, STAIRS, TERRACE, ETC. WHICH WILL BE SHOWN IN COMMON AREAS TOLERANCES.  
3) ± = APPROXIMATE TO TOLERANCE, UNIT.

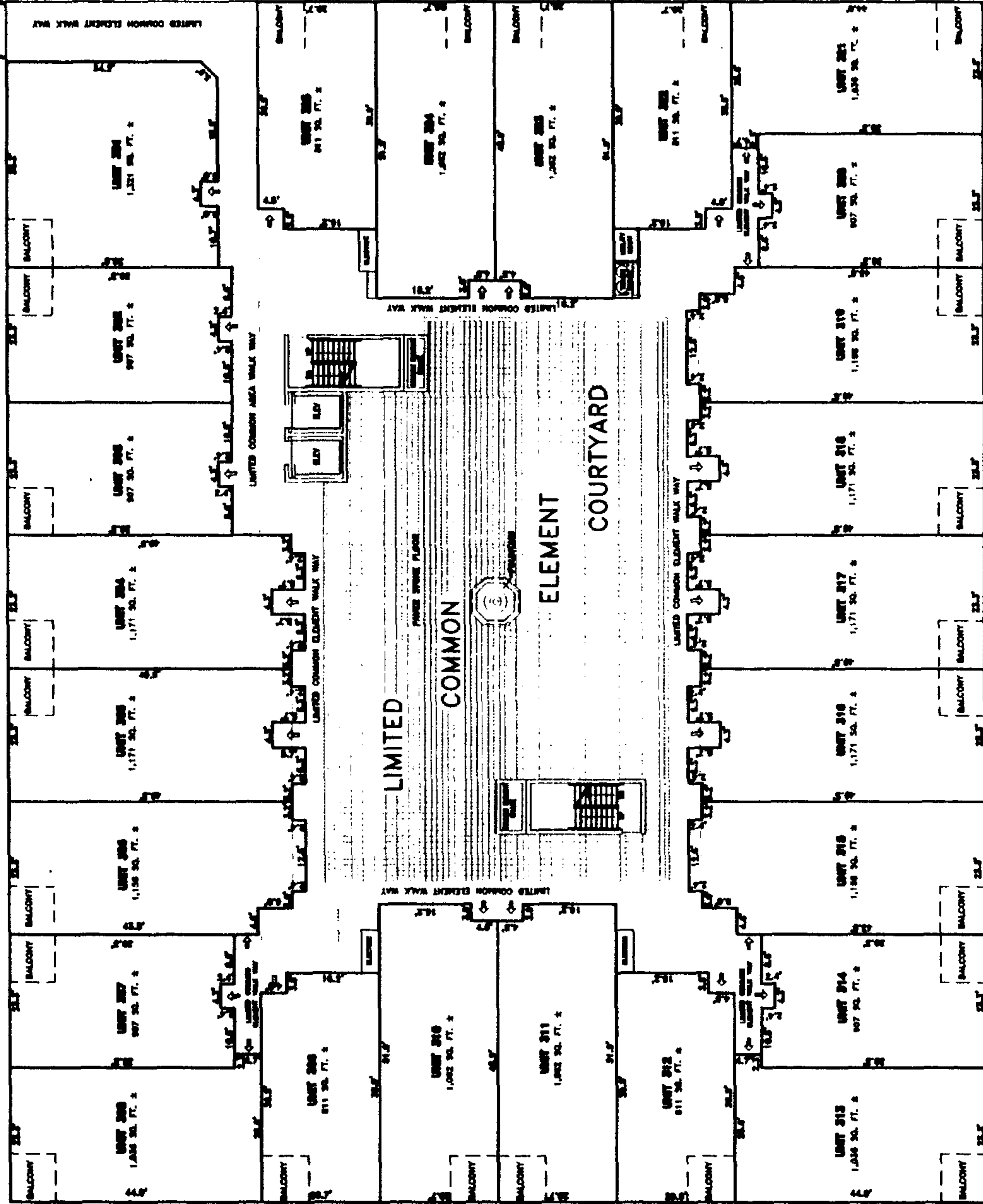


**DMB SURVEYING, INC.**  
111 FLAMINGO DRIVE  
APOLLO BEACH, FLORIDA 33772  
813-966-1888

# UNION STREET STATION CONDOMINIUM

SECTION 4, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA

SEE TO BE ADDED TO THIS PLAN



### THIRD FLOOR PLAN

UNITS TOTAL 24,736 SQ. FT. - 16,046 SQ. FT. - COMMON AREA

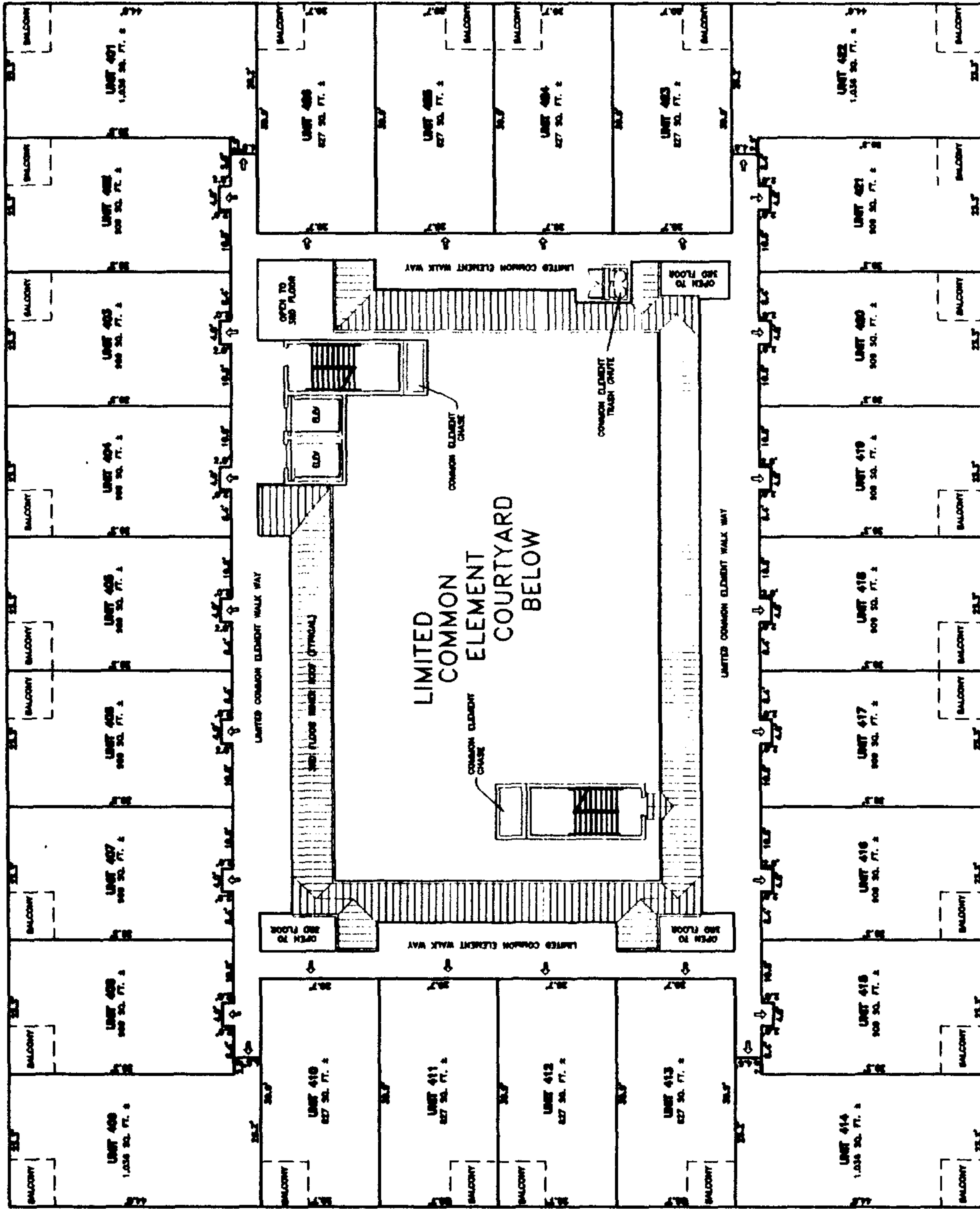
1) THIS IS A DECLARATION OF CONDOMINIUM FOR THE DEVELOPMENT OF THE CONDOMINIUM PROJECT DESCRIBED HEREIN AND APPROVED BY THE BOARD OF DIRECTORS OF THE DEVELOPER AS SET FORTH IN THE DECLARATION OF CONDOMINIUM. THIS DECLARATION OF CONDOMINIUM IS A PART OF THE DECLARATION OF CONDOMINIUM AND IS SUBJECT TO THE DECLARATION OF CONDOMINIUM.



DAB SURVEYING, INC.  
111 PALM BLVD., SUITE 200  
APOLLO BEACH, FLORIDA 33770  
PH: 813-941-1000

# UNION STREET STATION CONDOMINIUM

## SECTION 4, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA



### FOURTH FLOOR PLAN

ALL FOURTH FLOOR UNITS ARE THE SAME.  
(SEE PRELIMINARY ARCHITECTURAL FLOOR PLAN)  
UNITS TOTAL SQUARE FEET: 6 - 4,004 SQ. FT. & COMMON AREA

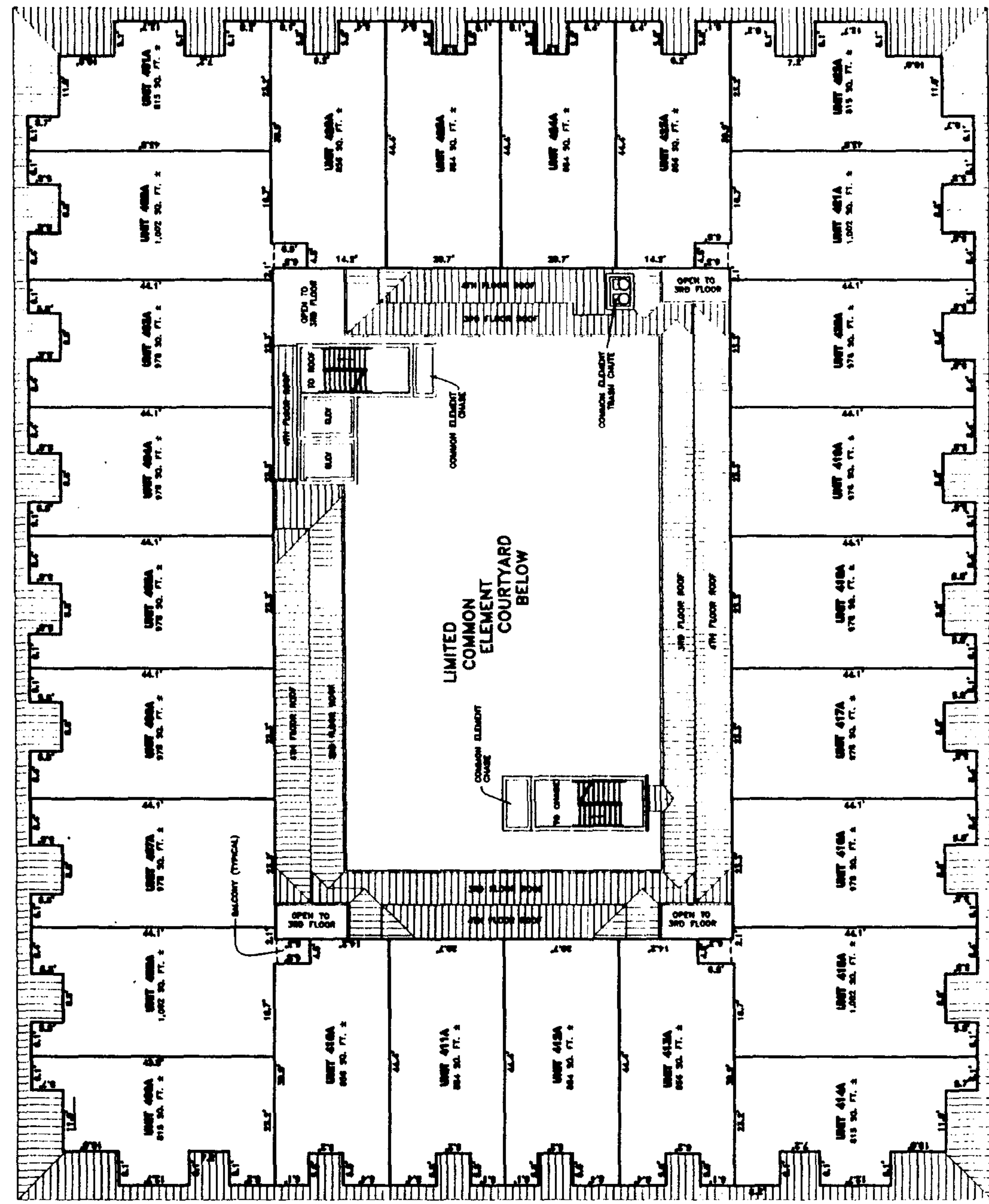
NOTES:  
1) REFER TO DECLARATION OF CONDOMINIUM FOR  
DEFINITIONS OF LIMITED COMMON ELEMENTS,  
COMMON ELEMENTS AND APPLICABLE LAWS,  
ORDINANCES, ETC.  
2) UNITS ARE TO BE USED AS RESIDENTIAL UNITS.  
3) UNITS ARE TO BE USED AS RESIDENTIAL UNITS.  
4) UNITS ARE TO BE USED AS RESIDENTIAL UNITS.  
5) UNITS ARE TO BE USED AS RESIDENTIAL UNITS.  
6) UNITS ARE TO BE USED AS RESIDENTIAL UNITS.  
7) UNITS ARE TO BE USED AS RESIDENTIAL UNITS.



D&B SURVEYING, INC.  
111 FLORIDA AVENUE  
APOLLO BEACH, FLORIDA 33770  
813-446-1000

# UNION STREET STATION CONDOMINIUM

## SECTION 4, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA



**FIFTH FLOOR PLAN**

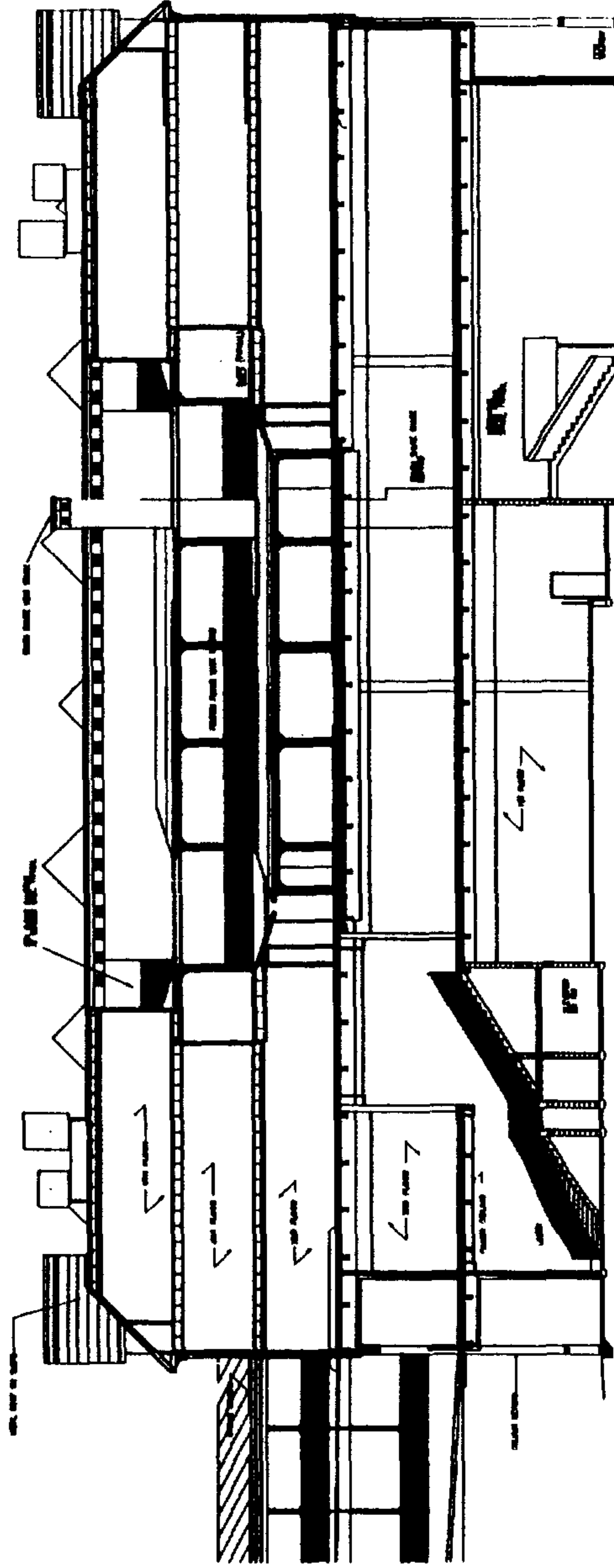
NOTES:  
 1) REFER TO DECLARATION OF CONDOMINIUM FOR DEFINITIONS OF COMMON ELEMENTS, LIMITED COMMON ELEMENTS, AND UNIT.  
 2) ALL DIMENSIONS ARE IN FEET AND INCHES.  
 3) DIMENSIONS ARE GIVEN TO THE CENTERLINE OF WALLS UNLESS OTHERWISE NOTED.  
 4) ALL DIMENSIONS ARE TO THE CENTERLINE OF WALLS UNLESS OTHERWISE NOTED.  
 5) REFER TO ARCHITECTURAL DRAWINGS FOR DIMENSIONS OF COMMON ELEMENTS.



DAS SURVEYING, INC.  
 111 PALMER WAY  
 APOLLO BEACH, FLORIDA 33770  
 813-968-1000

# UNION STREET STATION CONDOMINIUM

SECTION 4, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA



NORTH/SOUTH ELEVATION

NOTES:  
1) REFER TO DECLARATION OF CONDOMINIUM FOR DESCRIPTION OF UNIT CONVEYANCE, STRUCTURAL DETAILS AND APPLICABLE CODES AS APPLICABLE.  
2) THIS DRAWING IS SUBJECT TO THE CITY OF PALM BEACH COUNTY, FLORIDA, AND THE COUNTY OF ALACHUA COUNTY, FLORIDA, LOCAL ORDINANCES AND ALL APPLICABLE REGULATIONS.  
3) NO - SHALL BE IN ACCORDANCE WITH ALL APPLICABLE CODES AND REGULATIONS.  
4) ALL DIMENSIONS ARE AS SHOWN UNLESS OTHERWISE NOTED.



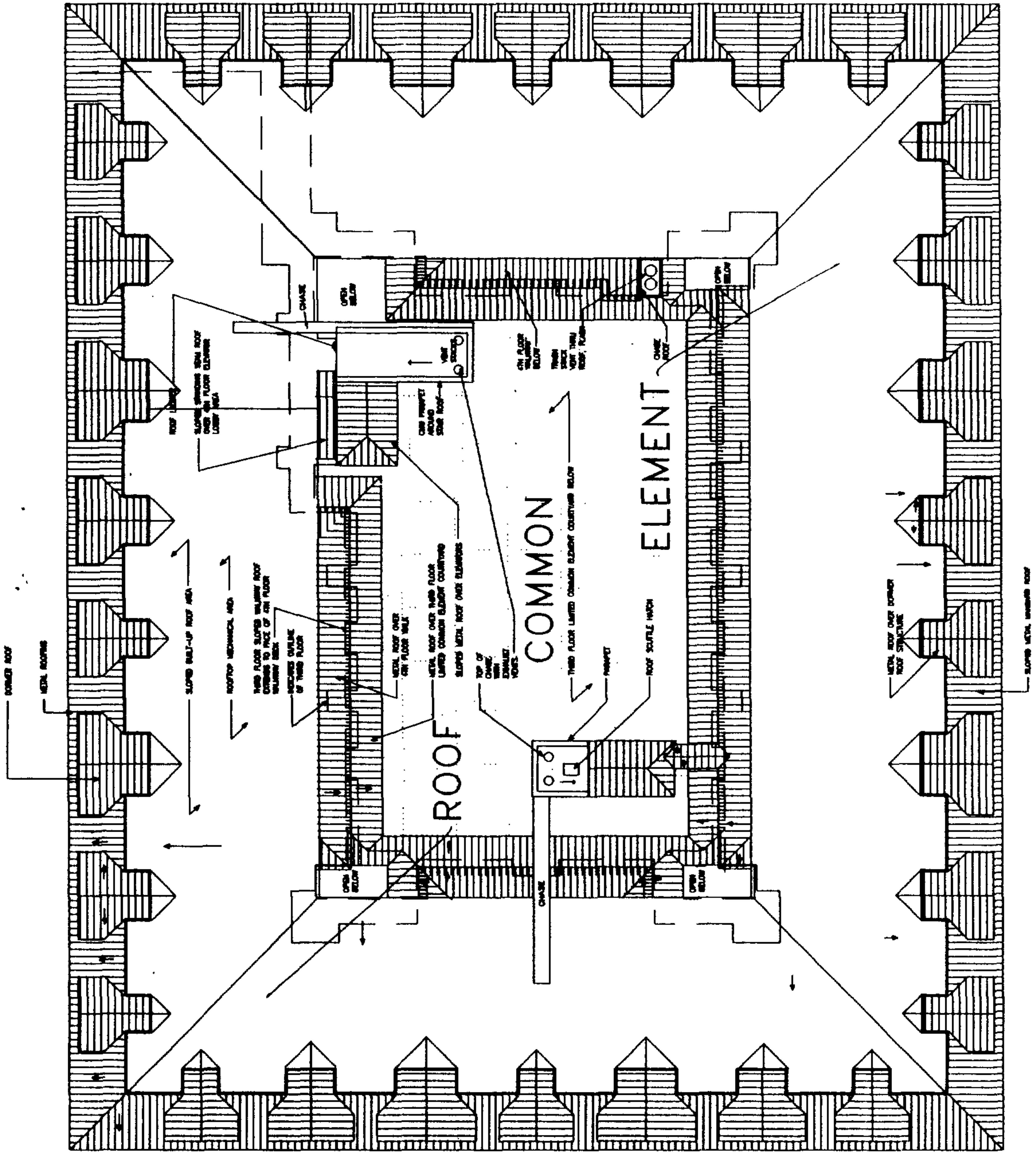
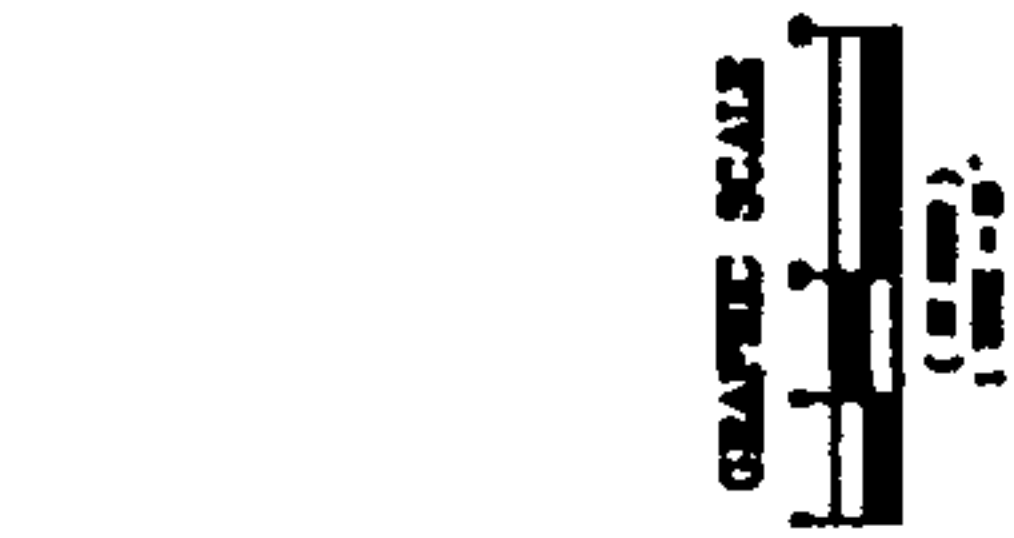
DAB SURVEYING, INC.  
111 PALMWOOD DRIVE  
APOLLO BEACH, FLORIDA 33771  
941-964-1000

# UNION STREET STATION CONDOMINIUM

SECTION 4, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA



DAB SURVEYING, INC.  
111 PLUMMER AVENUE  
APALACHIN, FLORIDA 32007  
913-444-2888



NOTES:  
1) REFER TO DECLARATION OF CONDOMINIUM FOR DEFINITIONS OF COMMON ELEMENTS, STRUCTURAL COLLISIONS AND APPLICABLE FLAT AS TOWNSHIP CODES, ETC.  
2) DIMENSIONS ARE GIVEN IN FEET AND INCHES UNLESS OTHERWISE NOTED. DIMENSIONS WILL BE CONSIDERED TO CONFORM TO TOLERANCES UNLESS OTHERWISE NOTED.  
3) -> - BIRTH WAY TO INDIVIDUAL UNIT.  
4) DIMENSIONS ARE GIVEN IN FEET AND INCHES UNLESS OTHERWISE NOTED.  
5) REFER TO DECLARATION OF CONDOMINIUM FOR DEFINITIONS OF COMMON ELEMENTS, STRUCTURAL COLLISIONS AND APPLICABLE FLAT AS TOWNSHIP CODES, ETC.

**ARTICLES OF INCORPORATION  
OF  
UNION STREET STATION CONDOMINIUM ASSOCIATION, INC.**

THE UNDERSIGNED INCORPORATOR, being a natural person competent to contract, for the purpose of forming a corporation not-for-profit under the laws of the State of Florida, does hereby adopt, subscribe and acknowledge the following Articles of Incorporation.

**ARTICLE I. NAME**

The name of the corporation shall be UNION STREET STATION CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Corporation."

**ARTICLE II. PURPOSE AND POWERS**

Section 1. Purpose. The purpose for which the Corporation is organized is to provide an entity for the operation and governance of Union Street Station Condominium (the "Condominium"), located upon lands in Alachua County, Florida, said property being described in the duly recorded Declaration of Condominium applicable thereto.

The Corporation shall not be operated for profit and shall make no distribution of income to its members, directors or officers.

Section 2. Powers. The Corporation shall have all of the common-law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of these Articles.

The Corporation shall have all of the powers and duties contemplated in the Declaration of Condominium and the Florida Condominium Act together with all of the powers and the duties reasonably necessary to operate the Condominium pursuant to the Declaration as it may be amended from time to time, and such other documents or agreements that may exist from time to time pertaining to the Condominium. The powers and duties, which the By-Laws may set forth in more detail, shall include, but shall not be limited to, the following specific powers and duties:

(a) To make and collect Assessments against members as Unit Owners to defray the costs, expenses and losses of the Condominium, and to make such other Special Assessments against Unit Owners as the Declaration of Condominium shall provide, and to enforce such levy of Assessments through a lien and the foreclosure thereof or by other action pursuant to the Declaration of Condominium.

(b) To use the proceeds of the Assessments in the exercise of its powers and duties, and as provided in the Declaration of Condominium.

(c) To maintain, repair, replace and operate the Condominium Property.

(d) To purchase insurance and enter into contracts for services, utilities and other purposes as may be deemed appropriate.

(e) To reconstruct improvements after casualty and further improve the Condominium Property.

(f) To make and amend reasonable rules and regulations.

(g) To perform such functions as may be specified in the Declaration of Condominium and the By-Laws.

**EXHIBIT NO. 2 TO DECLARATION OF CONDOMINIUM**

(h) To enforce by legal means the provisions of the Florida Condominium Act, the Declaration of Condominium, these Articles, the By-Laws of the Corporation and such rules and regulations as may be promulgated.

(i) To employ personnel to perform the services required for proper operation of the Condominium.

(j) To lease, maintain, repair and replace the Common Elements as same are defined in the Declaration of Condominium.

(k) To acquire or enter into agreements acquiring leaseholds, memberships or other possessory or use interests in lands or facilities and to pay the rental, membership fees, operational, replacement and other expenses as Common Expenses.

(l) To purchase a Unit or Units of the Condominium for any purpose and to hold, lease, mortgage or convey such Units on terms and conditions approved by the Board of Directors.

(m) To exercise such other power and authority to do and perform every act and thing necessary and proper in the conduct of its business for the accomplishment of its purposes as set forth herein and as permitted by the applicable laws of the State of Florida.

(n) To contract for the management and maintenance of and the provision of services to the Condominium Property (which shall be deemed to include, but shall not necessarily be limited to, the provision of trash removal from all or portions of the Condominium Property and the provision of pest control and/or internet connectivity services to all or portions of the Condominium Property) and to authorize a management agent to assist the Corporation in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, and other sums due from Unit Owners, preparation of records, enforcement of rules and maintenance, repair and the replacement of the Common Elements with funds as shall be made available by the Corporation for such purposes. The Corporation and its officers shall, however, retain at all times the powers and duties granted by the Condominium documents and the Florida Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Corporation.

(o) To bring suit as may be necessary to protect the Corporation's interests, the interests of the Corporation's Members, or the Condominium Property.

**ARTICLE III. DEVELOPER**

McGum Investment Company, a Florida corporation, shall make and declare or has made and declared a certain Declaration of Condominium submitting to condominium ownership certain property described therein under the terms, covenants, and conditions expressed more fully therein; the Condominium is to be known as UNION STREET STATION CONDOMINIUM.

**ARTICLE IV. TERM**

The term for which this Corporation shall exist shall be perpetual.



**ARTICLE V. INCORPORATOR**

The name and address of the incorporator of this Corporation is as follows:

Robert S. Freedman  
Carlton, Fields, Ward, Emmanuel,  
Smith & Cutler, P.A.  
One Harbour Place  
Tampa, Florida 33602

**ARTICLE VI. OFFICERS**

The officers of the Corporation shall be a President, Vice President, Secretary and Treasurer and such other officers as the Board of Directors may from time to time determine. The officers of this Corporation shall be elected for a term of one year, and until a successor shall be elected and qualified, by the Board of Directors at their annual meeting and in accordance with the provisions provided therefor in the By-Laws of the Corporation. Until transfer of the control of the Corporation to the Unit Owners other than the Developer has been accomplished, the officers need not be directors or members.

The names of the persons who shall serve as the first officers are:

Kenneth R. McGurn	President
Jeffrey R. Dollinger	Vice President
Linda C. McGurn	Secretary-Treasurer

**ARTICLE VII. DIRECTORS**

The affairs of the Corporation shall be managed by a Board of Directors composed of not less than 3 directors. Until control of the Corporation is transferred to Unit Owners other than the Developer, the Developer shall be entitled to designate non-member directors to the extent permitted by the Florida Condominium Act. Except for non-member directors appointed by the Developer, all directors shall be elected at the annual membership meeting of the Corporation.

The first Board of Directors shall be comprised of 3 persons who shall serve until their respective successors are elected (or designated) and qualified. The names and addresses of the members of the Board of Directors who shall serve as the first directors are:

Kenneth R. McGurn	101 S.E. 2 <sup>nd</sup> Place, Suite 202 Gainesville, FL 32601
Jeffrey R. Dollinger	1 S.E. 1 <sup>st</sup> Avenue Gainesville, FL 32601
Linda C. McGurn	101 S.E. 2 <sup>nd</sup> Place, Suite 202 Gainesville, FL 32601

Notwithstanding anything in these Articles of Incorporation, or the By-Laws to the contrary, the Developer shall be entitled to elect or designate from time to time all or a part of the directors that will manage the affairs of the Corporation until such time as the Developer is no longer entitled to elect or designate directors or a director pursuant

to the Condominium Act in effect on the date of the creation of the Corporation. The Developer shall be entitled to elect or designate all of the directors of the Corporation as long as members other than the Developer own less than 15% of the Units that will be operated ultimately by the Corporation. Unit Owners other than the Developer, at such time as such Unit Owners own 15% or more of the Units in the Condominium, are entitled to elect not less than one-third of the members of the Board of Directors. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors (a) 3 years after 50% of the Units in the Condominium have been conveyed to purchasers; (b) 3 months after 90% of the Units in the Condominium have been conveyed to purchasers; (c) when all the Units that will be operated ultimately by the Corporation have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; (d) when some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; or (e) 7 years after recordation of the Declaration. After such time that the members other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors, the Developer shall be entitled to elect at least one member of the Board of Directors (unless such right is waived in writing by the Developer in its discretion) as long as the Developer holds for sale in the ordinary course of business at least 5% of the Units.

#### ARTICLE VIII. BY-LAWS

The initial By-Laws of the Corporation shall be attached as an exhibit to the Declaration of Condominium for the Condominium and shall be adopted by the first Board of Directors.

#### ARTICLE IX. MEMBERS

Membership in the Corporation shall automatically consist of and be limited to all of the record owners of Units in the Condominium. Transfer of Unit ownership, either voluntary or by operation of law, shall terminate membership in the Corporation and said membership is to become vested in the transferee. If Unit ownership is vested in more than one person then all of the persons so owning said Unit shall be members eligible to hold office, attend meetings, etc., but the Owner(s) of each Unit shall only be entitled to one vote as a member of the Corporation. The manner of designating voting members and exercising voting rights shall be determined by the By-Laws.

#### ARTICLE X. AMENDMENTS

Amendments to these Articles of Incorporation shall be made in the following manner:

(a) The Board of Directors shall adopt a resolution setting forth the proposed amendment and, if there are members of the Corporation, the Board shall direct that it be submitted to a vote at a meeting of the members, which may be either the annual or a special meeting. If there are no members of the Corporation, the amendment shall be adopted by a vote of the majority of directors and the provisions for adoption by members shall not apply.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member of record entitled to vote thereon within the time and in the manner provided herein for the giving of notice of meetings of members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of 75% of the total voting interests in the Association.

No amendment to these Articles of Incorporation shall be made which affects any of the rights and privileges provided to the Developer in the Condominium documents without the written consent of the Developer.

**ARTICLE XI. PRINCIPAL PLACE OF BUSINESS**

The principal place of business of the Corporation shall be at the offices of McGurn Investment Company, 101 S.E. 2<sup>nd</sup> Place, Suite 202, Gainesville, FL 32601, or at such other place or places as may be designated from time to time.

**ARTICLE XII. REGISTERED OFFICE AND AGENT**


The street address of the initial registered office of the Corporation and the name of the initial registered agent at that address are:

Linda C. McGurn  
101 S.E. 2<sup>nd</sup> Place, Suite 202  
Gainesville, Florida 32601

**ARTICLE XIII. INDEMNIFICATION**

The Corporation shall indemnify every director and every officer, his heirs, executors and administrators, against all loss, cost and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Corporation, including reasonable counsel fees, except as to matters wherein he shall be finally adjudged in such action, suit or proceedings to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

**IN WITNESS WHEREOF**, the subscribing Incorporator has hereunto set his hand and seal and caused these Articles of Incorporation to be executed this 28<sup>th</sup> day of August, 2000.

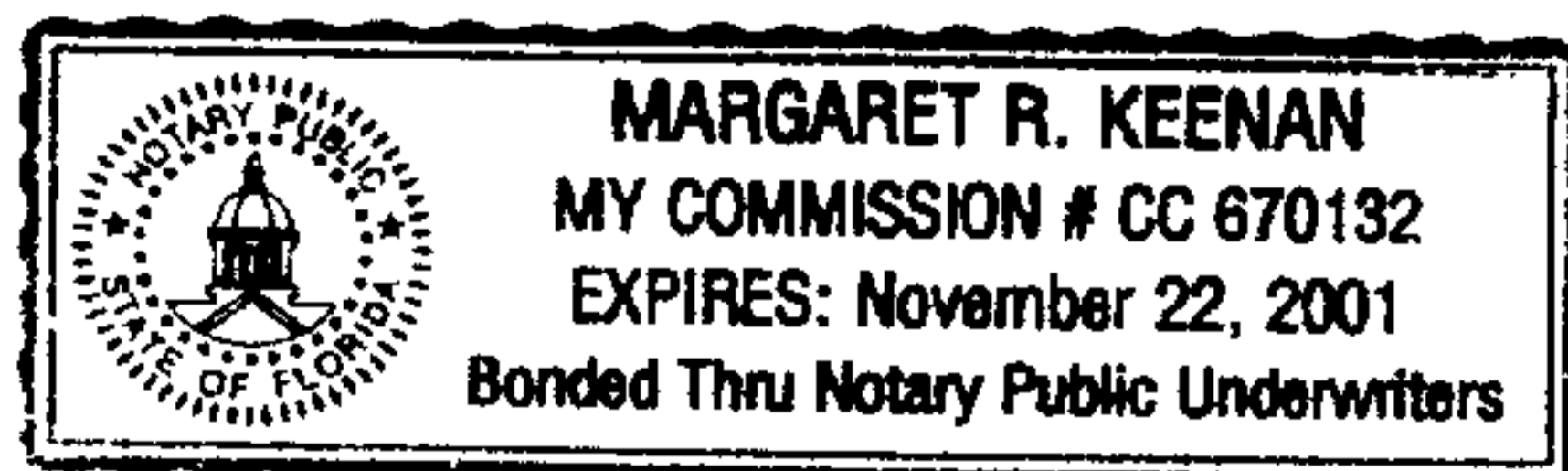
  
Robert S. Freedman, Incorporator


STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of August, 2000, by Robert S. Freedman, being known to me to be the person who executed the foregoing Articles of Incorporation of UNION STREET STATION CONDOMINIUM ASSOCIATION, INC. He is personally known to me.

My Commission Expires:

(AFFIX NOTARY SEAL)



  
(Signature)

Name: \_\_\_\_\_

(Legibly Printed)

Notary Public, State of Florida

\_\_\_\_\_  
(Commission Number, if any)

ACCEPTANCE OF DESIGNATION OF REGISTERED AGENT

The undersigned, having been named as registered agent and to accept service of process for UNION STREET STATION CONDOMINIUM ASSOCIATION, INC., hereby accepts the appointment as registered agent and agrees to act in such capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of his duties and is familiar with and accepts the obligations of his position as registered agent.

  
Linda C. McGurn, Registered Agent

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of UNION STREET STATION CONDOMINIUM ASSOCIATION, INC., a Florida corporation, filed on August 29, 2000, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H00000045221. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N00000005679.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Twenty-ninth day of August, 2000

Authentication Code: 600A00046047-082900-N00000005679-1/1



CR2EO22 (1-99)

*Katherine Harris*

Katherine Harris  
Secretary of State

# State of Florida



## Department of State

I certify from the records of this office that UNION STREET STATION CONDOMINIUM ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on August 29, 2000.

The document number of this corporation is N00000005679.

I further certify that said corporation has paid all fees due this office through December 31, 2000, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 600A00046047-082900-N00000005679-1/1, noted below.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Twenty-ninth day of August, 2000

Authentication Code: 600A00046047-082900-N00000005679-1/1



CR2EO22 (1-99)

*Katherine Harris*

Katherine Harris  
Secretary of State

**BY-LAWS OF  
UNION STREET STATION CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE I: IDENTITY**

UNION STREET STATION CONDOMINIUM ASSOCIATION, INC. ("Association") is a not-for-profit corporation, organized and existing pursuant to the laws of the State of Florida for purposes of operating and administering Union Street Station Condominium located in Alachua Florida ("Condominium").

Section 1. Principal Office. The principal office of the Association shall be at the offices of McGurn Investment Company, 101 S.E. 2<sup>nd</sup> Place, Suite 202, Gainesville, FL 32601, or at such other place as may be subsequently designated by the Board of Directors.

Section 2. Definitions. As used herein, the word "Condominium Association" shall be the equivalent of "Association," as defined in the Declaration of Condominium to which these By-Laws are attached, and all other terms shall have the same definitions as attributed to them in said Declaration of Condominium. The terms "Board of Directors" and "Board of Administration" shall be synonymous.

**ARTICLE II: MEMBERSHIP AND VOTING PROVISIONS**

Section 1. Membership in the Association. Membership in the Association shall be limited to Owners of Units in the Condominium. Transfer of Unit ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership shall become vested in the transferee. If Unit ownership is vested in more than one person, then all of the persons owning said Unit shall be members eligible to hold office, attend meetings, etc., but, as hereinafter indicated, the vote of a Unit shall be cast by the Voting Member (as defined in Section 5). If Unit ownership is vested in a corporation, general partnership, limited partnership, limited liability company or other entity (collectively defined as an "Entity"), said Entity shall designate an individual as its Voting Member.

Section 2. Voting.

(A) The Owner(s) of a Unit shall be entitled to cast votes equal to the Unit's percentage ownership interest in the Common Elements, rounded to the nearest hundredth. The allocation of percentage ownership interests in the Common Elements is contained in Exhibit No. 5 to the Declaration. Any 2 or more Residential Units which have been combined into one combined living area shall be deemed to be separate Residential Units (as if they had not been so combined) and shall be entitled to cast the number of votes allocated to such Residential Units. The votes attributable to a Unit shall not be divisible.

(B) A majority of the voting interests who are present in person or by proxy pursuant to applicable Florida law and are entitled to vote under Section 5 of this Article at a meeting at which a quorum is present shall decide any question (except the election of members of the Board of Directors which must be by written ballot or voting machine), unless the Declaration, Articles of Incorporation, By-Laws, or agreement entered into by the Association provides otherwise, in which event the voting percentage required in said documents shall control.

Section 3. Quorum. The presence in person, or by limited or general proxy pursuant to applicable Florida law, of at least 40% of the total voting interests in the Association eligible to cast votes shall constitute a quorum.

Section 4. Proxies. Votes may be cast in person or may be cast by limited or general proxy in certain circumstances in accordance with applicable Florida law. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5) and shall be filed with the secretary of the Association not

later than commencement of the meeting at which they are to be used. Proxies shall be valid only for the particular meeting designated therein. Where (a) a Unit is owned jointly by two or more persons, (b) they have not designated one of them as a Voting Member, and (c) they elect to designate a third party to cast a vote or votes on their behalf, a proxy must be signed by all owners to so designate the third party.

Section 5. Designation of Voting Member. If a Unit is owned by one person, such person's right to vote shall be established by the recorded title to the Unit. If a Unit is owned by more than one person, the person entitled to cast the vote for the Unit shall be designated in a certificate, signed by all of the recorded Owners of the Unit and filed with the secretary of the Association. If a Unit is owned by an Entity, the individual entitled to cast the vote of the Unit for such Entity shall be designated in a certificate for this purpose, signed by (a) in the case of a corporation, the president or vice president, (b) in the case of a general partnership, a general partner, (c) in the case of a limited partnership, the general partner(s) thereof on behalf of the limited partnership (if the general partner is a corporation, the president or vice president of such corporation shall execute such certificate), (d) in the case of a limited liability company, the manager thereof, or (e) in the case of a legal entity other than as described above, the individual authorized to execute the certificate in accordance with such legal entity's governing documents. Such certificate shall be filed with the secretary of the Association. The person designated in such certificate who is entitled to cast the vote for a Unit shall be known as the "Voting Member." If such a certificate is required and is not filed with the secretary of the Association for a Unit owned by more than one person or by an Entity, the vote of the Unit concerned may not be cast and shall not be considered in determining the requirement for a quorum or for any purpose requiring the approval of a person entitled to cast the vote for the Unit. Unless the certificate shall otherwise provide, such certificates shall be valid until revoked or until superseded by a subsequent certificate, or until a change in the ownership of the Unit concerned. Notwithstanding the foregoing, if a Unit is owned jointly by two or more persons, the following 3 provisions are applicable thereto:

- (A) They may, but they shall not be required to, designate a Voting Member by certificate.
- (B) If they do not designate a Voting Member, and if more than one person is present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting.
- (C) Where they do not designate a Voting Member, and only one is present at a meeting, the person present may cast the Unit vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

### ARTICLE III: MEETINGS OF THE MEMBERSHIP

Section 1. Place. All meetings of the Association membership shall be held at such place and at such time as shall be designated by and stated in the notice of the meeting.

Section 2. Notices. It shall be the duty of the secretary to mail or hand deliver a written notice of each annual or special meeting, stating the time and place thereof and an identification of agenda items to each Unit Owner of record at least 14 but not more than 30 days prior to such meeting, and to post at a conspicuous place on the property a copy of the notice of said meeting at least 14 continuous days preceding said meeting. Notice of any annual or special meeting shall state the purpose thereof and said meeting shall be confined to the matters stated in said notice. All notices shall be mailed to or served at the address of the Unit Owner last furnished to the Association and posted as hereinbefore set forth. An officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed or hand delivered in accordance with this section, to each Unit Owner at the address last furnished to the Association.

Section 3. Annual Meeting. The annual meeting for the purpose of electing directors and transacting any other business authorized to be transacted by the members shall be held once in each calendar year at such



time and on such date as the Board of Directors shall determine. At the annual meeting, the members shall elect a Board of Directors and shall transact such other business as may have been stated in the notice for said meeting. The election of the Board of Directors shall be conducted in accordance with applicable provisions of the Florida Condominium Act. Cumulative voting shall be prohibited.

Section 4. Special Meeting. Special meetings of the members for any purpose(s), unless otherwise prescribed by statute, may be called by the president, and shall be called by the president or secretary at the request in writing of a majority of the Board of Directors. Except for the purpose of removing a director governed by the provisions of Section 3 of Article IV, a special meeting must be called by the president or secretary on the request in writing of Voting Members representing 10% of the total voting interests in the Association, which request shall state the purpose(s) of the proposed meeting. Business transacted at all special meetings shall be confined to the matters stated in the notice.

Section 5. Waiver and Consent. Any approval by Unit Owners called for by the Florida Condominium Act, the Declaration or these By-Laws shall be made at a duly noticed meeting of Unit Owners and shall be subject to all requirements of the Florida Condominium Act or the Declaration relating to Unit Owner decision making, except that Unit Owners may take action by written agreement, without meetings, on any matters for which the vote of members at a meeting is required or permitted by any provision of these By-Laws, or on matters for which action by written agreement without meeting is expressly allowed by the Declaration, or any Florida statute which provides for Unit Owner action.

Section 6. Adjourned Meeting. If any meeting of members cannot be organized because a quorum of Voting Members is not present, either in person or by proxy, the meeting may be adjourned until a quorum is present.

Section 7. Approval or Disapproval. Approval or disapproval of a Unit Owner on any matter, whether or not the subject of an Association meeting, shall be by the Voting Members; provided, however, that where a Unit is owned jointly by a husband and wife, and they have not designated one of them as a Voting Member, their joint approval or disapproval shall be required where they are both present, or if only one is present, the person present may cast the vote without establishing the concurrence of the absent person.

#### ARTICLE IV: DIRECTORS

Section 1. Number, Term and Qualifications; Transfer of Control. The affairs of the Association shall be governed by a Board of Directors, the members of which shall serve without compensation. Until such time as transfer of control of the Association occurs pursuant to Section 718.301, Florida Statutes, the Board of Directors shall be composed of 3 members, and the Developer shall be entitled to elect directors in accordance with Section 718.301, Florida Statutes. All directors appointed or designated by the Developer shall serve at the pleasure of the Developer and shall not be required to be Members of the Association. The Developer shall be entitled to replace its appointed directors on written notice to the Association.

Upon transfer of control of the Association, in connection with the turnover meeting, the Board of Directors shall be automatically expanded to 5 directors, 3 of which shall be elected by the Members who own Residential Units, and 2 of which shall be elected by the Members who own Commercial Units. The term of each director's service shall extend until such term expires, and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 3 below. All directors shall be members of the Association and shall belong to the class of membership of their electors. The individual designated as the Voting Member for a Unit owned by an Entity shall be deemed to be a member of the Association so as to qualify to become a director of the Association.

In accordance with the Florida Condominium Act, Unit Owners other than the Developer, at such time as such Owners own 15% or more of the Units in the Condominium, are entitled to elect no less than one-third of the members of the Board of Directors. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors of the Association (a) 3 years after 50 percent of the Units have been conveyed to purchasers; (b) 3 months after 90 percent of the Units have been conveyed to purchasers; (c) when all the Units have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; (d) when some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; or (e) 7 years after recordation of the Declaration.

At the meeting of the members at which transfer of control of the Association to the non-Developer members occurs, 2 directors shall be elected by the Owners of the Residential Units for a term of office to end at the second subsequent annual meeting of the members of the Association and 1 director shall be elected by the Owners of the Commercial Units for a term of office to end at the second subsequent annual meeting of the members of the Association. The remaining directors shall be elected by the applicable Unit Owners for a term of office to end at the subsequent annual meeting of the members of the Association. Following the initial election of non-Developer members, subsequent elections to the Board shall be for a 2 year term of office in order to maintain staggered terms, unless otherwise provided herein.

Section 2. First Board of Directors. The first Board of Directors named in the Articles of Incorporation shall hold office and serve until their successors have been elected and qualified.

Section 3. Removal of Directors. Any removal of a director or directors of the Board by recall shall be done in accordance with the provisions of Section 718.112(2)(j), Florida Statutes, or the rules promulgated thereunder, or in accordance with any other applicable provisions of the Florida Condominium Act.

Section 4. Vacancies on Directorate. If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification or otherwise or should a vacancy be created by an enlargement of the Board or should a director be removed by the procedure of Section 3 of this Article and a successor not be elected at the meeting, a majority of the remaining directors, though less than a quorum, shall choose a successor or successors, who shall hold office for the balance of the unexpired term in respect to which such vacancy occurred. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors. Notwithstanding the above, only the Developer may elect to fill a vacancy on the Board previously occupied by a Board member elected or appointed by the Developer, in which case a quorum for purposes of that election shall consist of a majority of the voting interests owned by the Developer. Only Unit Owners other than the Developer may elect to fill a vacancy on the Board previously occupied by a Board member elected or appointed by Unit Owners other than the Developer, and votes at such election shall only be cast by Unit Owners entitled to elect the office of director that is vacant.

Section 5. Disqualification and Resignation of Directors. Any director may resign at any time by sending a written notice of such resignation to the secretary of the Association. Unless otherwise specified therein, such resignation shall take effect upon receipt by the secretary. Commencing with the directors elected by the Unit Owners other than the Developer, the transfer of title of the Unit owned by a director shall automatically constitute a resignation.

Section 6. Regular Meetings. The Board of Directors may establish a schedule of regular meetings to be held at such time and place as the Board of Directors may designate. Notice of such regular meetings (which shall specifically incorporate an identification of agenda items) shall, nevertheless, be given to each director personally or by mail, telephone or telegraph at least 5 days prior to the day named for such meeting and shall be posted in accordance with the procedures of Section 718.112, Florida Statutes.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the president, and, in his absence, by the vice president or secretary, or by a majority of the members of the Board of Directors, by giving at least 10 days' written notice which shall specifically incorporate an identification of agenda items, to all of the members of the Board of Directors of the time and place of said meeting and shall be posted in accordance with the procedures of Section 718.112, Florida Statutes. All notices of special meetings shall state the purpose of the meeting.

Section 8. Directors' Waiver of Notice. Before, at or after any meeting of the Board of Directors, any director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all of the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. Owners shall be given proper notice pursuant to applicable Florida law.

Section 9. Quorum. At all meetings of the Board of Directors, a majority of the directors constitute a quorum for the transaction of business, and the acts of the majority of the directors present at such meetings at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting. At such adjourned meeting, and provided a quorum is then present, any business may be transacted which might have been transacted at the meeting as originally called. Proper notice of any adjourned meeting shall be given in accordance with applicable Florida law.

Section 10. Notice of Board Meetings. All Board meetings, regular or special, shall be properly noticed pursuant to applicable Florida law.

Section 11. Notice to Developer. Until December 31, 2005, the Developer shall be entitled to attend the director's meetings and it may designate such person(s) as it desires to attend such meetings on its behalf. Such entitlement may be cancelled by Developer by delivering written notice to the Association.

Section 12. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by the Declaration, or these By-Laws, directed to be exercised and done by Unit Owners. These powers shall specifically include, but shall not be limited to, the following:

(A) To exercise all powers specifically set forth in the Declaration, the Articles of Incorporation, these By-Laws, and in the Florida Condominium Act, and all powers incidental thereto.

(B) To adopt a budget and make and collect Assessments, enforce a lien for nonpayment, and use and expend the Assessments to carry out the purposes and powers of the Association, subject to the provisions of the Declaration to which these By-Laws are attached and, where applicable, recognizing obligations of the Association contained in the provisions of the Declaration. The Board of Directors shall also have the power to levy a fine against the Owner of a Unit for the purposes specified in the Declaration.

(C) To employ, dismiss and control the personnel necessary for the maintenance and operation of the Condominium, including the right and power to employ attorneys, accountants, contractors, and other professionals, as the need arises, subject to any applicable provisions of the Declaration.

(D) To make and amend regulations respecting the operation and use of the Common Elements and Condominium Property and facilities and the use and maintenance of the Units therein.

(E) To contract for the management and maintenance of the Condominium Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such

functions as the submission of proposals, collection of Assessments and other sums due from Unit Owners, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association, its directors and officers shall, however, retain at all times the powers and duties granted by the Condominium documents and the Florida Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

(F) To enter into agreements acquiring leaseholds, memberships or other possessory or use interests regarding recreation area(s) and facilities for the use and enjoyment of the members of the Association as provided for in the Declaration.

(G) To further improve the Condominium Property, both real and personal, and the right to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and the right to acquire and enter into agreements pursuant to the Florida Condominium Act, subject to the provisions of the Declaration and these By-Laws.

(H) To enter into such agreements or arrangements, as deemed appropriate, with such firms or companies, as it may deem necessary for and on behalf of the Unit Owners, to provide certain services and/or maintenance which would otherwise be the individual responsibility of the Unit Owners and to increase the Assessments due or otherwise charge each Unit Owner a share of the amount charged for said maintenance and service.

(I) To designate one or more committees which shall have the specific enumerated powers provided in the resolution designating and/or creating such committee. Such committee shall consist of at least 3 members of the Association. The committee or committees shall have such name(s) as may be determined by the Board of Directors, and said committee(s) shall keep regular minutes of their proceedings and report the same to the Board of Directors.

(J) To comply with the terms set forth in any maintenance manual or schedules of maintenance delivered by the Developer or its agent and to perform all activities prescribed therein so as to ensure proper upkeep and maintenance of the Common Elements.

Section 13. Proviso. The validity of any delegation of power and/or duty by the Board of Directors, as hereinbefore provided, shall not affect the remainder of said delegations, or the other provisions of these By-Laws or the Condominium documents and its exhibits.

#### ARTICLE V: OFFICERS

Section 1. Elective Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors and shall serve without compensation. One person may not hold more than one of the aforementioned offices, except one person may be both Secretary and Treasurer. The President and Vice President shall be members of the Board of Directors. Notwithstanding the foregoing, the restriction as to one person holding only one of the aforementioned offices or the President and Vice President being members of the Board of Directors shall not apply until control of the Association shall be transferred to the Unit Owners other than the Developer.

Section 2. Election. The officers of the Association designated in Section 1 above shall be elected annually by the Board of Directors at the organizational meeting of each new Board following the annual meeting of the members. Officers may be elected by secret ballot pursuant to applicable Florida law.

Section 3. Appointive Officers. The Board may appoint assistant secretaries and assistant treasurers and such other officers as the Board of Directors deems necessary.

Section 4. Term. The officers of the Association shall hold office until their successors are chosen and qualified in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors; provided, however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. The President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Unit Owners and of the Board of Directors. He shall have executive powers and general supervision over the affairs of the Association and other officers. He shall sign all written contracts to perform all of the duties incident to his office and which may be delegated to him by the Board of Directors.

Section 6. The Vice President. The Vice President shall perform all of the duties of the President in his absence and such other duties as may be required of him by the Board of Directors.

Section 7. The Secretary. The Secretary shall issue notices of all Board of Directors' meetings and all meetings of the Unit Owners; he shall attend and keep the minutes of same; he shall have charge of all of the Association's books, records and papers, including roster of members and mortgagees except those kept by the Treasurer. If appointed, an assistant secretary shall perform the duties of the Secretary when the Secretary is absent. Although the Secretary shall be responsible in the manner provided in this Section, the Secretary, as authorized by the Board, may delegate some or all of its duties to the Management Firm.

Section 8. The Treasurer.

(A) The Treasurer shall have custody of the Association's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association in such depositories as may be designated by the Board of Directors. The books shall reflect an account for each Unit which shall designate the name and current mailing address of the Unit Owner, the amount of each Assessment, the dates and amounts in which the Assessment came due, the amount paid on the account and the balance due.

(B) The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these By-Laws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of his transactions as the Treasurer and of the financial condition of the Association.

(C) The Treasurer shall collect the Assessments and shall promptly report the status of collections and of all delinquencies to the Board of Directors.

(D) The Treasurer shall give status reports to potential transferees on which reports the transferees may rely.

(E) If appointed, an assistant treasurer shall perform the duties of the Treasurer when the Treasurer is absent.

(F) Although the Treasurer shall be responsible in the manner provided in this Section, the Treasurer, as authorized by the Board, may delegate some or all of its duties to the Management Firm.

Section 9. Proviso. Notwithstanding any provisions to the contrary in these By-Laws, the Association shall maintain separate accounting records for this Association, shall keep such records according to good accounting practices, shall open such records for inspection by Unit Owners or their authorized representatives at reasonable times and shall supply written summaries of such records at least annually to the Unit Owners or their authorized representatives. In the event the Board of Directors designates a Management Firm to operate the Condominium on behalf of the Association, said Management Firm shall be required to follow the aforesaid provisions.

#### **ARTICLE VI: FINANCES AND ASSESSMENTS**

Section 1. Depositories. The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors upon resolutions approved by the Board of Directors and shall be withdrawn only on checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association shall be signed by an officer of the Association; provided, however, that the provisions of any Management Agreement, entered into by the Association and a Management Firm designated by the Association to operate the Condominium, relative to the subject matter in this Section 1 shall supersede the provisions hereof. The foregoing is further subject to the applicable provisions under the Declaration.

Section 2. Fidelity Bonds. The Association shall obtain fidelity bonds for officers and directors of the Association and other individuals only to the extent required by applicable Florida law.

Section 3. Fiscal Year. The Association shall be on a fiscal year basis beginning on the first day of **August** of each year. Notwithstanding the foregoing, the Board of Directors is authorized to change to a different fiscal year in accordance with the provisions and regulations prescribed by the Internal Revenue Code of the United States of America at such time as the Board of Directors deems it advisable. The setting of a fiscal year, as provided herein, shall not affect the applicable provisions of Article III, Section 3, of these By-Laws requiring an annual meeting in each calendar year.

#### Section 4. Determination of Assessments.

(A) The Board of Directors shall fix and determine the sum(s) necessary and adequate for the Common Expenses. Common Expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements in the manner described in the Declaration, cost of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, obligations of the Association pursuant to the Declaration, water and sewer and any other expenses designated as Common Expenses from time to time by the Board of Directors, or under the provisions of the Declaration. The Board of Directors is specifically empowered, on behalf of the Association, to make and collect Assessments and to lease, maintain, repair and replace the Common Elements and Limited Common Elements; provided, however, the Association shall not charge any fee (which shall not be deemed to be akin to an Assessment) against a Unit Owner in order to permit the use of a specific portion of the Common Elements or Association Property unless such use is the subject of a lease between the Association and the Unit Owner. Funds for the payment of Common Expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing Common Expenses as provided in the Declaration, and as provided in the Declaration with regard to certain Limited Common Elements that are appurtenant to either the Residential Units as a whole or the Commercial Units as a whole or certain or all of the Commercial Units. The General Assessment and any Limited Common Element Assessments shall be payable monthly in advance and shall be due on the first (1st) day of each month in advance unless otherwise ordered by the Board of Directors. Special Assessments, should such be required by the Board of Directors, shall be levied in the same manner provided for General Assessments and shall be payable in the manner determined by the Board of Directors.

(B) All funds due from Unit Owners not as Common Expenses (either as General Common Expenses or Limited Common Expenses) may be collected by the Association or its agents pursuant to any applicable agreement.

(C) An annual budget and level of Assessment for the Common Expenses (both General Common Expenses and Limited Common Expenses) sufficient to fund such budget shall be proposed and adopted by the Board of Directors. The Board shall mail, or cause to be mailed, or hand deliver, or cause to be hand delivered, notice of the meeting of the Unit Owners or Board of Directors at which the budget will be considered not less than 14 days prior to said meeting. Evidence of compliance with this 14 day notice requirement shall be made by an affidavit executed by an officer of the Association, an authorized employee of the Management Firm, or other person providing notice of the meeting and filed among the official records of the Association. Such notice shall include a copy of the proposed annual budget and Assessment. If the Association shall fail for any reason to adopt a budget and authorize an Assessment prior to the beginning of the new fiscal year, the budget and Assessment for the previous year shall be increased by 15% and shall continue in effect until changed by the Association.

If the adopted budget requires an Assessment against the Unit Owners in any fiscal year exceeding 115% of the Assessments for the preceding year, the Board, upon written application of 10% of the total voting interests in the Association, shall call a special meeting of the Unit Owners within 30 days on not less than 10 days' written notice to each Unit Owner. At this special meeting, Unit Owners shall consider and enact a budget on the vote of the members representing a majority of the total voting interests in the Association. If a special meeting of the Unit Owners has been called pursuant to this section and a quorum is not attained or a substitute budget is not adopted by the Unit Owners, the budget adopted by the Board goes into effect as scheduled. In determining whether Assessments exceed 115% of the Assessments levied in the preceding fiscal year, any authorized provisions for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or Assessments for betterments to the Condominium Property must be excluded from the computation in all regards. However, as long as the Developer is in control of the Board of Directors, the Board may not impose an Assessment for any year greater than 115% of the prior fiscal year's Assessment without prior approval of the members representing a majority of the total voting interests in the Association.

(D) All Assessments shall be payable to the Association, subject, however, to the provisions of a Management Agreement for as long as it shall remain in effect providing for collection of such Assessments directly by the Management Firm, and also subject to any specific applicable provisions in the Declaration.

Section 5. Application of Payments and Commingling of Funds. Reserve and operating funds collected by the Association or by the Management Firm may not be commingled in a single fund except for purposes of investment, in which event separate accountings must be maintained for each fund and the combined account cannot at any time, be less than the amount identified as reserve funds in the combined account. All Assessment payments collected shall be applied (a) pursuant to the applicable provisions of the Declaration, or (b) as provided by a Management Agreement as long as the Management Agreement remains in effect, or thereafter, as the Board of Directors determines in its sole discretion. All funds shall be maintained in a separate account in the name of the Association. If so designated by the Board, a Management Firm shall maintain separate accounting records for each condominium it manages pursuant to the provisions of such Management Agreement and the Florida Condominium Act.

Section 6. Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment of any Assessment, the Management Firm or the Board of Directors may accelerate the monthly installments for the remainder of the current fiscal year upon the filing of a claim of lien against the Unit Owner and, thereupon, the unpaid installments of the Assessment together with the monthly Assessments for the remainder of the current fiscal year shall become due and owing.

