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DECLARATION OF CONDOMINIUM

OF

THE HARBOR TRAIL,  
a Condominium

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## DECLARATION OF CONDOMINIUM

## THE MARKET PLACE

	Page
I. Submission Statement	1
II. Definitions	1
III. Units; Appurtenances; Limited Common Elements; Possession and Enjoyment	3
IV. Restraint Upon Separation and Partition of Limited Common Elements and Common Elements	4
V. Common Elements	5
VI. Condominium Property	5
VII. Identification of Units, Ownership of Common Elements and Share of Common Surplus	6
VIII. Amendment to Declaration	6
IX. The Association; Its Powers and Responsibilities	7
X. By-Laws	8
XI. Maintenance; Limitation Upon Improvement	8
XII. Common Expenses	9
XIII. Assessments; Liability, Lien and Priority; Interest; Collection	10
XIV. Termination of Condominium	12
XV. Equitable Relief	12
XVI. Limitation of Liability	13
XVII. Liens	13
XVIII. Easements	14
XIX. Membership in the Association	14



	15
III. Managers and Assistants of the Developer	15
IV. Association of Members	15
V. Insurance	17
VI. Reconstruction or Repair After Casualty	20
VII. Utility Easements	23
VIII. Eminent Domain or Condemnation Proceedings	23
IX. Rules and Regulations	24
X. Management Agreement	25
XI. Provisions for a Phase Condominium	25
XII. Resident Manager's Unit	28
XIII. Additional Provisions	28



**EXHIBITS**  
**TO**  
**DECLARATION OF CONDOMINIUM**  
**THE BAREFOOT TRACE,**  
**a Condominium**

	<b>Page</b>
<b>Exhibit "A"</b> Legal Description of Condominium	
<b>Exhibit "B"</b> Plot Plan, Survey and Graphic Description	
<b>Exhibit "C"</b> Articles of Incorporation	<b>AI-1</b>
<b>Exhibit "D"</b> By-Laws	<b>BL-1</b>
<b>Exhibit "E"</b> Undivided Shares in Common Elements, Common Expenses and Common Surplus	
<b>Exhibit "F"</b> Legal Description and Plot Plans of Proposed Phases	
<b>Exhibit "G"</b> Consent of Mortgages	



**DECLARATION OF CONDOMINIUM****THE BAREFOOT TRACE, A CONDOMINIUM****PHASE I****I. SUBMISSION STATEMENT**

G.W.S., INC., a Texas corporation, authorized to do business in the State of Florida as G.W.S., Inc. of Texas, 501 Atlantic Bank Building, P. O. Box 170, St. Augustine, Florida 32085-0170, owns the fee simple title to that certain land in St. Johns County, Florida, legally described in Exhibit "A" annexed hereto. The Developer does hereby submit said land, and the improvements thereon and the appurtenances thereto, to condominium ownership pursuant to Chapter 718 of the Florida Statutes (the "Condominium Act"), and declares same a condominium known as THE BAREFOOT TRACE, a Condominium.

All restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and shall be binding on each unit owner, his heirs, personal representatives, successors and assigns. Both the burdens imposed and the benefits provided shall run with the title to each unit and their appurtenant interests in the common elements as defined herein.

**II. DEFINITIONS**

As used herein and in the By-Laws attached hereto and in all amendments thereto, unless the context requires otherwise:

2.1 "Assessment" means a share of the funds required for the payment of common expenses which from time to time are assessed against the unit owner.

2.2 "Association" or "Corporation" means THE BAREFOOT TRACE CONDOMINIUM ASSOCIATION, INC., a not-for-profit Florida corporation, the entity responsible for the operation of the Condominium.

2.3 "By-Laws" means the By-Laws of the Association, existing from time to time.



2.1 "Condominium Property" means and includes the lands and personal property that are subject to condominium ownership, whether or not contiguous, all improvements thereon, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

2.5 "Unit" or "Condominium Unit" means the part of the condominium property which is to be subject to exclusive ownership.

2.6 "Common Elements" means the portions of the Condominium property not included in the units.

2.7 "Limited Common Elements" means those common elements which are reserved for the use of certain unit or units to the exclusion of all other units, as specified in this Declaration, and its exhibits.

2.8 "Common Expenses" means all expenses and assessments properly incurred by the Association for the Condominium.

2.9 "Common Surplus" means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits and revenues on account of the common elements over the common expenses.

2.10 "Condominium" is that form of ownership of condominium property created pursuant to the provisions of Chapter 718, Florida Statutes, by which units of improvements are subject to ownership by different owners and there is appurtenant to each unit as part thereof, an undivided share in the common elements.

2.11 "Condominium Parcel" means a unit together with the undivided share in the common elements which is appurtenant to the unit.

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

2.13 "Institutional Lender" or "Mortgagee" means a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, pension fund, pension trust, or any other generally recognized institutional-type lender or its loan correspondent, or agency of the United States Government, holding a mortgage encumbering a condominium parcel.



Section 1.1. The Association, known as G.W.S., Inc., a Texas corporation, is authorized to do business in Florida as G.W.S., Inc. of Texas, its successors and assigns.

**UNITED APPURTENANCES, LIMITED COMMON ELEMENTS, POSSESSION AND ENJOYMENT**

3.1 Each condominium unit is graphically described on Exhibit "A" annexed hereto and shall extend to the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding the unit, but shall not be deemed to include pipes, wires, conduits or other public utility lines running through the condominium unit which are utilized for or service more than one condominium unit, which items are by these presents hereby made a part of the common elements. A unit shall be deemed to include the interior walls and partitions which are contained within the condominium unit, and also shall be deemed to include the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings of the condominium unit, including plaster, paint, wallpaper, etc.

3.2 There shall pass with each unit as an appurtenance thereto:

3.2.1 An undivided interest in the common elements.

3.2.2 The right of exclusive use of the limited common elements appurtenant to the unit.

3.2.3 An undivided share in the common surplus.

3.2.4 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 from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

3.2.5 Such other easements, rights or privileges which, pursuant to the provisions to this Declaration and of law, are deemed appurtenances to the condominium parcel.

3.2.6 Membership for the owner in the Association subject to the rights and obligations of membership therein.



3.3 The owner of a unit is entitled to the exclusive possession of his unit. He shall be entitled to use the common elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of owners of other units. There shall be a joint use of the common elements (other than limited common elements) and a joint mutual easement for that purpose is hereby created.

3.4 Balconies, patios, front doors, windows, fireplaces, flues and chimneys adjoining any unit, and any sliding glass door connection any condominium unit to the adjoining balcony or patio area are all deemed to be Limited Common Elements of that unit. The owner of a condominium unit shall have the exclusive use of the appurtenant limited common elements which may adjoin his condominium unit. Each owner shall pay the cost of maintenance, repair and replacement of the appurtenant sliding glass, front doors, windows and window operators, screening, wiring, electrical outlets and fixtures which are wholly within the unit; and of ordinary cleaning and maintenance of the balconies, patios, fireplaces, flues and chimneys. Rules and regulations regarding the uniform maintenance and appearance of all exterior facing parts of the improvements may be promulgated by the Association from time to time.

3.5 The air-conditioning machinery and piping serving solely the unit are hereby designated as Limited Common Elements of the appurtenant unit. The cost of maintenance and repair of the appurtenant air-conditioning machinery and piping shall be the responsibility of each unit owner and shall not be a common expense.

3.6 All parking spaces shall be common elements. Parking spaces on the lower level shall be assigned by the Association for use by individual unit owners. Parking spaces on the upper level shall be available for uses designated by the Board of Directors of the Association from time to time.

3.7 A unit may be used only for residential purposes. No unit may be partitioned or subdivided.

**IV. RESTRAINT UPON SEPARATION AND PARTITION OF LIMITED COMMON ELEMENTS AND COMMON ELEMENTS**



The shares in the common elements and the undivided share appurtenant to a unit shall not be separated, sold, and shall pass with the title to the unit, whether or not separately described.

A share in the common elements and limited common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

The shares in the common elements and limited common elements appurtenant to the unit shall remain undivided, and there shall be no action for partition.

**V. COMMON ELEMENTS**

Common elements includes within its meaning the following items:

5.1 All parts of the condominium property which are not included within the units, including those parts designated as limited common elements.

5.2 Easements through units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to units and the common elements.

5.3 An easement of support in every portion of a unit which contributes to the support of the building.

5.4 Installations for the furnishing of utility services to more than one unit or to the common elements or to a unit other than the unit containing the installation.

5.5 A non-exclusive easement for ingress and egress over the walks and other rights of way of the common elements of this condominium.

5.6 The property and installations in connection therewith required for the furnishing of services to more than one unit or to the common elements.

**VI. CONDOMINIUM PROPERTY**

6.1 The title to the condominium property being herewith submitted to condominium ownership shall be hereby subject to: taxes and assessments for the year in which the Declaration is filed and subsequent years; conditions, restrictions, limitations, covenants and easements, utility agreements and other matters of record.



6.2. Annexed hereto as Exhibit "B" is a Surveyor's Certificate, sketch of survey of the lands being submitted to condominium ownership, together with a plot plan and graphic description of the improvements in which the units are located.

6.3. Together with this Declaration Exhibit "B" is an accurate representation of the location and dimensions of the improvements and the identification, location, and dimensions of the common elements and of each unit can be determined from those materials. The legends and notes contained in Exhibit "B" are incorporated herein and made a part hereof by reference.

**VII. IDENTIFICATION OF UNITS; OWNERSHIP OF COMMON ELEMENTS AND SHARES OF COMMON SURPLUS; VOTING RIGHTS**

7.1. Each unit has been given a numerical designation for purposes of identification so that no unit has the same designation as any other unit. Each unit's designation is set forth in Exhibit "B" annexed hereto.

7.2. The share of the common elements and common surplus appurtenant to each unit is set forth in Exhibit "E", and may not be changed.

7.3. Each unit shall be entitled to one vote to be cast by its owner(s) in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association.

**VIII. AMENDMENT TO DECLARATION**

This Declaration may be amended at any regular or special meeting of the unit owners of this Condominium called or convened in accordance with the By-Laws, by the affirmative vote of owners owning not less than 75% of the units. All amendments shall be recorded and certified, as required by the Condominium Act.

8.1. No amendment shall change any condominium parcel nor a unit owner's proportionate share of the common elements, its common expenses and common surplus, nor the voting rights appurtenant to any unit, unless the record owner(s) thereof and all record owners of mortgages or other liens thereon shall join in the execution of the amendment.



9.1 No amendment shall be passed which shall impair or prejudice the rights and priorities of mortgagees.

Notwithstanding anything to the contrary herein, the Developer reserves the right to amend the Declaration and its Exhibits so as to correct any errors or omissions, or to change or add provisions to this Declaration for the purpose of meeting the requirements of governmental agencies, so long as such amendments do not materially affect the rights of unit owners, lienors or mortgagees. Such Amendments need be executed and acknowledged by the Developer only, and need not be approved by the Association, unit owners, lienors or mortgagees of units, whether or not elsewhere required for amendments. Any amendments filed to add additional phases to this Condominium shall be governed by the provisions of Article XXIX of this Declaration, and not by the provisions of this Article.

#### IX. THE ASSOCIATION; ITS POWERS AND RESPONSIBILITIES

9.1 The Condominium is governed and administered by the Association, the Articles of Incorporation of which are annexed hereto and made a part hereof as Exhibit "C".

9.2 The powers and duties of the Association shall include those set forth in the By-Laws referred to in Article X below but, in addition thereto, the Association shall have all of the powers and duties set forth in the Condominium Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including:

9.2.1 The irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein or limited common elements appurtenant thereto, or for making emergency repairs therein necessary to prevent damage to the common elements or to any other unit.

9.2.2 The power to make and collect assessments from appropriate sources and to lease, maintain, repair and replace the common elements, and the limited common elements.

9.2.3 The duty to maintain account records according to good accounting practices, which shall be open to inspection by unit owners at reasonable times during normal business hours.



9.2.4 The power to enter into contracts with others, for a valuable consideration, for maintenance and management, including the normal maintenance and repair of the common elements. The duty and responsibility to maintain and preserve the landscaping, gardening, painting, repairing and replacement of the common elements shall not relieve the condominium unit owner of his personal responsibility to maintain and preserve the interior surface of the condominium units and the limited common elements, and to paint, clean, decorate, maintain and repair the individual condominium units.

9.2.5 The power to adopt reasonable rules and regulations for the maintenance and conservation of the condominium property and for the health, comfort, safety and welfare of the condominium unit owners, all of whom shall be subject to such rules and regulations.

9.2.6 The duty to properly maintain, repair and replace all of the common elements, and in general the performance of all necessary, periodic, routine and preventative maintenance and the scheduling and performance of all deferred maintenance on those parts of the common elements such as the roofs and the paved areas that may not require periodic maintenance.

9.2.7 The power to purchase and mortgage a unit at the Condominium for use by the Association as a resident manager's unit.

9.2.8 The power to assign parking spaces on the lower level for use by individual unit owners and designate the use of parking spaces on the upper level.

#### **X. BY-LAWS**

The operation of the condominium property shall be governed by the By-Laws of the Association, a copy of which is attached hereto and made a part hereof as Exhibit "D". No modification of or amendment to these By-Laws shall be deemed valid unless set forth in or annexed to a duly recorded amendment. No amendment to said By-Laws shall be adopted which would affect or impair the validity or priority of any mortgage encumbering any condominium parcel.

#### **XI. MAINTENANCE; LIMITATION UPON IMPROVEMENT**



11.1 The maintenance of the common elements in accordance with the standards set forth in Article IX above so as to keep the improvements in good, habitable and useable condition shall be the responsibility of the Association. The Association shall be empowered to maintain existing improvements regardless of any present or future encroachment of the common elements upon any unit. The cost of maintenance, repair and replacement of the limited common elements shall be the responsibility of the unit owners but all such work shall be performed under the supervision, direction and control of the Association.

11.2 There shall be no alterations or additions to the common elements or to the limited common elements, except in a manner provided in the Insurance Article herein, or with the written approval of the Board of Directors of the Association.

11.3 No unit owner shall make any alterations in the portions of the improvements of the condominium which are to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do any work which would jeopardize the safety or soundness of the building containing his unit or impair any easement. No limited common elements shall be improved or altered except with the express written permission of the Association. The Association shall not permit any improvement or alteration of any parts of the condominium property that is visible from outside of any unit that would detract from the uniformity of appearance of the condominium property, notwithstanding anything to the contrary contained in this Declaration or its Exhibits.

#### XII. COMMON EXPENSES

12.1 Common expenses shall include expenses of the operation, maintenance, repair or replacement of the common elements, costs of carrying out the powers and duties of the Association, and any other expenses designated as common expenses by this Declaration or the By-Laws, as they may be amended from time to time. The expense of water and sewer for the individual units shall not be a common expense of the Condominium. The Association, however, shall be empowered to establish appropriate amounts for each unit for water and



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and to collect same together with the monthly maintenance payment since there will be a single water and sewer bill rendered to the Condominium. The Association shall have the same rights to enforce payment of this item as it has for common expenses.

12.2 Common expenses shall be shared by the unit owners in accordance with their respective interests in the common elements and ownership of common surplus, all as set forth in Exhibit "E".

12.3 The Developer shall not be required to pay the share of common expenses and assessments related to units owned by the Developer in the Condominium, until the first day of the fourth calendar month following the month in which the closing of the sale of the first unit occurs. However, during the aforesaid period, the Developer must pay the portion of common expenses incurred which exceed the amount assessed against all other unit owners.

12.4 The Developer shall not be required to pay the share of common expenses and assessments related to units owned by the Developer in the Condominium during the period commencing on the first day of the fourth calendar month following the month in which the closing of the sale of the first unit occurs and ending when the Developer owns no further units in the condominium, provided, during said period, the Developer guarantees to other unit owners that the assessment for common expenses of the condominium imposed upon unit owners shall not increase over \$135.00 per unit, per month, and any amount of common expenses incurred during said period and not produced by the \$135.00 per unit monthly assessments received from other unit owners, shall be paid by the Developer when due.

**XIII. ASSESSMENTS; LIABILITY, LIEN AND PRIORITY; INTEREST; COLLECTIONS**

13.1 The Association, through its Board of Directors, shall have the power to fix and determine from time to time, the sums necessary to provide for the common expenses of the Condominium. A unit owner, regardless of how title is acquired shall be liable for all assessments coming due while he is the owner of a unit. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter



... of the common expenses up to the time of such voluntary ...

... liability for assessments may not be avoided by abandonment of a unit, or by waiver of the use of any common elements or other property which an owner is entitled to use or enjoy.

13.3 Assessments and installments thereon not paid within ten (10) days of when due shall bear interest from the date when due until paid at the rate of ten percent (10%) per annum until paid. Payments made shall be applied to interest first and then to principal. The Association shall furnish to the mortgagee of any unit upon its request, written notification of any default in assessment payments of the owner whose unit is encumbered by that mortgage.

13.4 The Association shall have a lien on each condominium parcel for any unpaid assessment and interest thereon against the owner of such condominium parcel until paid. Such lien shall also include a reasonable attorney's fee incurred by the Association incident to the collection of such assessment or enforcement of such lien. Such liens shall be executed and recorded in the Public Records of St. Johns County, Florida, in the manner provided by law, but such liens shall be subordinate to the lien of any mortgage or any other lien recorded prior to the time of the recording of the claim of lien by the Association. The Board of Directors may take such action as it deems necessary to collect assessments by personal action or by enforcing and foreclosing said lien, as provided in the Condominium Act, and may settle and compromise same if in the best interest of the Association. Said lien shall be effective as and in the manner provided by the Condominium Act and shall have the priorities established by said Act.

13.5 Liens for assessments may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property. The Association may bid at any sale and apply as a cash credit against its bid all sums due the Association covered by the lien being enforced.



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13.6 Where the mortgagee of any mortgage of record or other purchaser of a condominium unit obtains title to the condominium parcel as a result of foreclosure of the mortgage, or as a result of a deed given in lieu of foreclosure, such acquiror of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association pertaining to such condominium parcel or chargeable to the former unit owner of such parcel which became due prior to the acquisition of title as a result of foreclosure, unless such share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including such acquiror, his successors and assigns. No unit owner may be excused from the payment of his proportionate share of the common expense of the Condominium unless all unit owners are likewise proportionately excused from such payment.

13.7 The Association, acting through its Board of Directors, shall have the right to assign its claim and lien rights for the recovery of any unpaid assessments to the Developer or to any unit owner or group of unit owners, or to any third party.

#### XIV. TERMINATION OF CONDOMINIUM

If all unit owners and the holders of all liens and mortgages affecting any of the Condominium parcels execute and duly record an instrument terminating the Condominium property, or if "major damage" occurs as defined in the insurance clauses hereunder, said property shall be deemed to be subject to termination and thereafter owned in common by unit owners. The undivided interest of each former unit owner in the property shall be the percentage of the undivided interest of his common elements in the terminated condominium subject to the rights set forth herein in favor of other unit owner.

#### XV. EQUITABLE RELIEF

In the event of major damage to or destruction of all or a substantial part of the condominium property, and in the event the property is not repaired, reconstructed or rebuilt within a



...shall have the right to petition a court of equity having jurisdiction in and for St. Johns County, Florida, for suitable relief, which may, but need not necessarily include a request for termination of the Condominium and partition.

**XVI. LIMITATION OF LIABILITY**

16.1 The liability of the owner of a unit for common expenses shall be limited to the amounts for which he is assessed from time to time in accordance with this Declaration or the By-Laws (including any interest, penalties, costs or fees provided for therein in the event of delinquency).

16.2 The owner of a unit shall have no personal liability for any damages caused by the Association on or in connection with the use of the common elements beyond the extent of his pro rata share of that liability in the same percentage as his interest in the common elements. A unit owner shall be liable for injuries or damages resulting from an accident in his own unit to the same extent and degree that the owner of a single family detached dwelling would be liable for an accident occurring within his single family detached dwelling.

**XVII. LIENS**

17.1 No liens of any nature may be created subsequent to the recording of this Declaration against the condominium property as a whole (as distinguished from individual units) except with the unanimous consent of the unit owners.

17.2 Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to the Mechanics' Lien Law against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the Association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the



...of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

17.2 In the event a lien against two or more condominium parcels becomes effective, each owner thereof may relieve his condominium parcel of the lien by paying the proportionate amount attributable to his condominium parcel. Upon such payment, it shall be the duty of the lienor to release the lien of record for such condominium parcel.

**XVIII. EASEMENTS**

18.1 Owners of units, their family, guests and invitees shall have a perpetual easement for ingress and egress to and from their units, over private roads, walks and other common elements of the Condominium, all subject to the obligations and limitations set forth elsewhere in these condominium documents.

18.2 The condominium property shall be subject to perpetual easements for encroachments presently existing or which may hereafter be caused by settlement or movement of the building or minor inaccuracies in construction, which easements shall continue until such encroachment no longer exists. If the condominium property is destroyed and then rebuilt, encroachments due to construction shall be permitted and a valid easement for said encroachments and the maintenance thereof shall exist. If any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachments exists.

**XIX. MEMBERSHIP IN THE ASSOCIATION**

The Association has been formed to perform the acts and duties desirable in connection with the management of the units and common elements defined and described in this Condominium Declaration, and to levy and enforce collection of assessments necessary to perform such acts and duties. All unit owners shall



shall automatically be members of the Association, and said membership shall terminate when they no longer own said units.

### XX. ADMINISTRATION

20.1 The Board of Directors of the Association shall approve annual budgets in advance for each fiscal year, which budget shall project anticipated income and estimated expenses in sufficient detail to show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to those expenses required by the Condominium Act, Florida Statutes Chapter 718.

20.2 Annual assessments shall be due and payable in advance monthly installments unless the Board of Directors provides otherwise. In addition, the Association has the power to levy special assessments against each unit in their respective shares, if a deficit should develop in the treasury for the payment of common expenses.

20.3 The annual assessment shall include sums to establish reasonable reserves for deferred maintenance unless waived as allowed by law.

### XXI. SALE, SUCCESSORS AND ASSIGNS OF THE DEVELOPER

Notwithstanding any other provisions herein, the Developer is hereby irrevocably empowered to sell condominium units to any purchasers. The Developer shall have the right to transact any business necessary to consummate sales of said units, including, but not limited to, the right to maintain model apartments, have signs, employees in the offices, use the common elements and show units. Sales office signs and all items pertaining to sale shall not be considered common elements and shall remain the property of the Developer. All rights of the Developer shall inure to the benefit of the successors and assigns of the Developer who are developers as defined in the Condominium Act, Florida Statutes Chapter 718.

### XXII. OBLIGATIONS OF MEMBERS

22.1 In addition to other obligations and duties heretofore set out in this Declaration, each unit owner shall:



22.1.1 Promptly pay the assessments levied by the Association.

22.1.2 Maintain in good condition and repair his unit and all interior surfaces within his unit.

22.1.3 Not permit or suffer anything to be done or kept in his unit which will increase the insurance rates on his unit or the common elements, or which will obstruct or interfere with the rights of other unit owners or annoy them by reasonable noises or otherwise.

22.1.4 Conform to and abide by the By-Laws and uniform rules and regulations in regard to the use of the unit and common elements which may be adopted in writing from time to time by the Board of Directors of the Association, and to see that all persons using owner's property by, through or under him do likewise.

22.1.5 Make no alteration, decoration, repair, replacement or change of the common elements or to any outside or exterior portion of the building, except as set forth in Article XI above.

22.1.6 Show no sign, advertisement or notice of any type on the common elements or his unit, except as may be provided for in the rules and regulations of the Association.

22.1.7 Make no repairs to any plumbing or electrical wiring except within a unit. Plumbing and electrical repairs within a unit shall be the financial obligation of the owner of the unit and paid for forthwith. The Association shall pay for and be responsible for plumbing repairs and electrical wiring within the common elements.

22.1.8 Return the "condominium parcel" for the purposes of ad valorem taxes to the respective taxing authorities having jurisdiction over them for separate assessment against his condominium parcel.

22.1.9 One dog or cat under 30 pounds may be kept in a unit by the unit owner.



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22.1.10. All leases and any lease agreement for the rental of a portion of a unit. All leases shall be in writing and shall provide that they are subject to the provisions of this Declaration and its Exhibits, and that any failure of the lessee and occupants of the units to comply with these documents shall be a default under the lease, entitling the Association to terminate the lease.

22.1.11 Permit no installation and maintenance of waterbeds or water mattresses except on ground floors.

### **XXIII. INSURANCE**

23.1 Purchase of Insurance: The Association shall obtain fire and extended coverage, and flood insurance if the condominium is designated to be within a flood hazard zone, insuring all of the insurable improvements within the condominium, together with all property constituting common elements of the condominium, together with public liability, workmen's compensation and such other insurance as the Association deems necessary, or which may be required by governmental agencies guaranteeing, insuring, originating or purchasing mortgages on units in the Condominium. Insurance shall be obtained from companies whose ratings meet the financial and policyholder's standards of the institutional mortgagee having the greatest number of mortgages encumbering units in the condominium. The named insured shall be the Association, individually and as agent for the unit owners, without naming them.

The Association shall obtain a single policy covering all of the Condominium.

Provisions shall be made for the issuance of mortgagee endorsements to the mortgagees of units. Unit owners may obtain additional insurance coverage at their own expense upon their own personal property and for their personal liability and living expense.

### **23.2 Coverage**



23.2.1 Casualty. All buildings and improvements on the Condominium property shall be insured in an amount equal to at least 80% of the insurable replacement value, excluding foundation and excavation costs, and all personal property included in the common elements shall be insured for its replacement cost, all as determined annually by the Board of Directors of the Association.

23.2.2 Public liability in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to, hired automobile and non-owned automobile coverages, and with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

23.2.3 Workmen's compensation policy to meet the requirements of law.

23.2.4 Such other insurance as the Board of Directors of the Association shall determine desirable from time to time.

23.3 Insurance Trustee; share of proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee, which shall be designated by the Board of Directors and which may be any trust company, bank or savings and loan association in Florida having trust powers. 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 elsewhere stated herein and for the benefit of the unit owners and their mortgagees in the following shares:

23.3.1 Common elements. Proceeds on account of damage to common elements - an undivided share for each unit owner, such share being the same as the undivided share in the common elements appurtenant to his unit.



shall jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by such mortgagee.

23.4.3 Failure to reconstruct or repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of the mortgagee of a unit and may be enforced by such mortgagee.

23.4.4 Certificate. In making distribution to unit owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its president and secretary as to the names of the unit owners and their respective shares of the distribution.

23.5 Unit owners obligation. The insurance purchased by the Association does not cover claims against an owner due to accidents occurring within his condominium unit nor does it cover casualty or theft loss to the contents of an owner's unit. It shall be the obligation of the individual unit owner to purchase and pay for insurance as to all such risks.

#### XXIV. RECONSTRUCTION OR REPAIR AFTER CASUALTY

24.1 Determination to reconstruct or repair. If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

24.1.1 Common elements. If the damaged improvement is a common element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

24.1.2 Buildings.

24.1.2.1 Lesser damage. If the damaged improvement is a building, and if more than 75% of the units in the condominium is found by the Board of Directors of the Association to be tenantable, the damaged property shall be



reconstructed or repaired unless within sixty (60) days after the casualty, it is determined by agreement in the manner elsewhere provided that the Condominium shall be terminated.

24.1.2.2 Major damage. If the damaged improvement is a building, and if more than 75% of the units in the condominium is found by the Board of Directors to be not tenantable, then the damaged property will not be reconstructed or repaired and the Condominium will be terminated without agreement as elsewhere provided, unless within sixty (60) days after the casualty, the owners of 80% of all the units in the condominium agree in writing to such reconstruction or repair; provided, however, that all mortgagees shall be given prompt written notice by the Association in the event of substantial damage to or destruction of any unit or any part of the common elements, and the written agreement of all mortgagees must be obtained before the condominium may be terminated.

24.2 Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building; or if not, then according to plans and specifications approved by the Board of Directors of the Association, and not by less than 80% of the unit owners including the owners of all damaged units, whose approval shall not be unreasonably withheld.

24.3 Responsibility. If the damage is only to those parts of one unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

24.4 Estimate of costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.



The amount by which an award of insurance proceeds is reduced on account of a deductible clause in an insurance policy shall be assessed against all unit owners in proportion to their shares in the common elements. If the proceeds of such assessments and of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair are insufficient, assessments shall be made against the unit owners in the case of damage to common elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against unit owners for damage to units shall be in proportion to the cost of reconstruction and repair of their respective units. Such assessments on account of damage to common elements shall be in proportion to the owner's share in the common elements.

24.6 Construction funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance and funds collected by the Association from assessments against unit owners, shall be disbursed by the Insurance Trustee in the following manner:

24.6.1 Association - Lesser damage.  
If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$10,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Association. Proof of reconstruction shall be promptly furnished to all mortgagees by the Association.

24.6.2 Association - Major damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$10,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.



Unit Owner. In instances where the unit owner is not to be terminated, the portion of insurance proceeds representing damage for which the responsibility for reconstruction and repair lies with a unit owner shall be paid by the Insurance Trustee to the unit owner, or if there is a mortgagee endorsement as to such unit, then to the unit owner and the mortgagee jointly, who shall use such proceeds to reconstruct the unit.

24.6.4 Surplus. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution that is contributed by the unit owner directly by virtue of an assessment shall not be made payable to any mortgagee.

24.6.5 Certificate. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to a unit owner.

**XV. UTILITY EASEMENTS**

The Condominium property of this Condominium shall be subject to such easements for utilities as may be required to properly and adequately serve this Condominium. Each of said easements, whether heretofore or hereafter created, shall constitute a covenant running with the land of the Condominium and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with its proper and intended use and purpose and shall survive the termination of the Condominium.

**XVI. EMINENT DOMAIN OR CONDEMNATION PROCEEDINGS**



If eminent domain or condemnation proceedings are successfully litigated against all or any part of the condominium property, the entire eminent domain or condemnation award is to be secured to the Association in accordance with the ratio of ownership herein provided as it pertains to the common elements, and disbursed to unit owners and their mortgagees as their interests appear of record. The Association shall give prompt written notice to each holder of a mortgage of record of any such eminent domain or condemnation proceedings, and shall take no action in any such proceedings that will disturb any mortgagee's first lien priority.

#### **XXVII. RULES AND REGULATIONS**

**27.1 As to Common Elements.** The Board of Directors may, from time to time, adopt or amend previously adopted administrative rules and regulations governing the details of the operation, use, maintenance and control of the common elements of the Condominium and any facilities or services made available to the unit owners. The Board of Directors shall, from time to time, post in a conspicuous place on the Condominium property, a copy of the rules and regulations adopted, from time to time, by the Board of Directors.

**27.2 As to Condominium Units.** The Board of Directors may, from time to time, adopt or amend previously adopted rules and regulations governing and restricting the use and maintenance of the Condominium Unit(s) provided, however, that copies of such rules and regulations are furnished to each unit owner prior to the time the same become effective, and where applicable or desirable, copies thereof shall be posted in a conspicuous place on the Condominium property.

**27.3 Rules and Regulations.** The rules and regulations shall be deemed in effect until amended by the Board of Directors, and shall apply to and be binding upon all unit owners. The unit owners shall, at all times, obey said rules and regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, invitees,



servants, licensees and persons over whom they exercise control or supervision. In order to change, amend or vary old or present rules and regulations and/or adopt new rules and regulations, the same shall be duly passed by at least a 51% majority vote or consent of the Board of Directors; however, no vote of the membership is required. A change, amendment or adoption of a rule and regulation does not require an amendment to the Declaration of Condominium or of the By-Laws.

**XIVIII. MANAGEMENT AGREEMENT**

The Board of Directors of the Association may enter into a contract with a corporation or other agent for the management, maintenance and repair of the Condominium property. However, the Association shall retain at all times the powers and duties to be exercised by or under the authority of the Board of Directors.

**XXIX. PROVISIONS FOR A PHASE CONDOMINIUM**

This Declaration is Phase I of what will become a phase project, pursuant to and in accordance with The Condominium Act, Chapter 718, Florida Statutes, in the event the Developer elects to add phases to the condominium. The required description of all anticipated phases is as follows:

29.1 It is anticipated that the Condominium will have three phases. The anticipated location and improvements for each phase is set forth on Exhibit "F" attached hereto. Each phase, if added, must be completed within eighteen months of the completion of the immediately preceding phase.

29.2 Exhibit "F" contains the legal description of the land on which this condominium is being declared and of each of the anticipated later phases to this Condominium. Exhibit "F" also contains the plot plans and surveys for this Condominium and for each phase.

29.3 The number of units in each anticipated phase is as follows:



11671-927

Phase	Number of Units in the Phase	Number of Units in the Phase
1	1	18
2	1	24
3	1	24

The anticipated general size of each unit to be included in each phase is as follows:

Type of Unit	Bathrooms/ Bedrooms	Square Footage (Living Area Exclusive of Patio and Balcony Area)
A	2/2	1459
B	2/2	1397
C	2/2	1488
D	2/2	1397
E	2/2	1548
F	2/2	1456
G	2/2	1488

29.4 To the extent permitted by law, the Developer reserves the right to change the number of each type of unit in buildings in subsequent phases.

In the event that anticipated phases are added as part of the condominium then each unit's share of ownership of the common elements will be as follows:

Phases	Number of Units Upon Adding Phase	Percentage of Ownership in the Common Elements
1	18 units	1/18
2	24 units	1/42
3	24 units	1/66

29.5 There shall not be any additional recreational facilities or personal property to be provided by the Developer. In the event of any additional phase being added to this Condominium, the membership vote in the Association for



...shall be equal to the per unit as each phase is added. However, since the total number of voters shall increase with the addition of the additional units, the significance of each vote shall decrease in each phase in the manner set forth above in subsection 29.4 setting forth decreasing shares of ownership of the common elements. The shares of ownership in the Association shall decrease in an identical manner.

29.6 If one or more phases is not built, the units which are built will be entitled to a one hundred percent (100%) ownership of all common elements, as well as votes in and ownership of the Association within the phases actually developed and added as a part of the condominium.

29.7 Developer will not be required, under this Declaration of Condominium or otherwise, to convey an additional lands or facilities to the condominium after the completion of construction of Phase I, or after the completion of any subsequent phase, in the event a later phase(s) is added to the condominium.

29.8 Time-share estates will not be created with respect to units in any phases.

29.9 Notwithstanding anything else to the contrary herein, Amendments to the Declaration of Condominium adding any phase to the condominium shall not require the execution of such amendments or consents thereto by unit owners, mortgagees, lienors or by the Association. Any such Amendments shall be effective upon the recording in the public records of an appropriate Certificate of Amendment executed only by the Developer.

29.10 The Developer has no obligation or responsibility to cause any additional phase or its improvements to be constructed. In the event that any additional phases are added to this condominium, then the Developer shall have the right to change the number of bedrooms, bathrooms and other interior configuration in the units in any such additional phase, the Developer also reserves the right to select the sequence of the addition of any such additional phases. The addition of any such



23.3.1 Units. Proceeds on account of damage to units shall be held in the following undivided shares:

23.3.2.1 When the building is to be restored - for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Association.

23.3.2.2 When the building is not to be restored - an undivided share for each unit owner, such share being the same as the undivided share in the common elements appurtenant to his unit.

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

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

23.4.1 Expense of the trust. All expenses of the Insurance Trustee shall be first paid or provision made therefor.

23.4.2 Reconstruction or repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittance to unit owners and their mortgagees being pay-



changes is not anticipated to have any substantial impact on prior phases.

**XIX. RESIDENT MANAGER'S UNIT**

30.1 The Association will purchase Unit 109 of the Condominium for use by the Association as a Resident Manager's Unit. The Developer has agreed to sell this Unit to the Association for \$128,000.00 and will make arrangements for financing 80% of the purchase price with an institutional lender at the prevailing rate of interest. The Association will pay all closing costs incident to the purchase of the unit. The Resident Manager's unit shall be used and may be resided in, by the Manager employed by the Association to manage the affairs of the Condominium. The Association shall be responsible for all maintenance assessments imposed upon the Resident Manager's Unit and for all utility charges incurred by reason of the use of the Resident Manager's Unit. The Association shall procure general liability and personal property damages insurance in amounts sufficient to protect the interests of the Association, and each unit owner.

**XXXI. ADDITIONAL PROVISIONS**

31.1 Should any dispute or litigation arise between any of the parties whose rights and/or duties are affected or determined by this Declaration or any of the Exhibits attached hereto, said dispute or litigation shall be determined pursuant to the laws of the State of Florida.

31.2 In the event that any of the terms, provisions or covenants of this Declaration or any of the Exhibits attached hereto are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holdings will not affect, alter, modify, or impair in any manner whatsoever, any of the other terms, provisions, or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable herein.



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31.3 Notwithstanding anything to the contrary herein contained, unless institutional mortgagees have given their prior written approval, the Association shall not be entitled to: (1) change the pro rata interest or obligations of any unit for purposes of levying assessments and charges and determining shares of common elements and proceeds of the Condominium; (2) partition or subdivide any unit or the common elements of the Condominium; nor (3) by act or omission seek to abandon the Condominium regime, except as may be provided by statute in case of substantial loss to the units and common elements of the Condominium.

31.4 Should the Association find it necessary to bring court action to bring about the compliance with the law, this Declaration and By-Laws, upon a finding by the Court that the violation complained of is willfull and deliberate, the unit owner so violating shall reimburse the Association for reasonable attorney's fees incurred by it in bringing such action, as determined by the Court.

31.5 Whenever the context so permits, the use of the plural shall include the singular, and any gender shall be deemed to include all genders.

31.6 Notwithstanding anything to the contrary herein, nothing shall prevent the combining of units in the condominium, but said combined units shall retain their original appurtenant shares of the common elements, expenses, surplus and voting rights.

31.7 Captions used in these documents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of the documents.

31.8 Upon written request, mortgagees of the units herein shall have the right to examine the books and records of the Association and to require the submission of annual reports and other financial data.



11671-831

G.W.S., INC., a Texas corporation, authorized to do business in the State of Florida as G.W.S., INC. OF TEXAS, has caused these presents to be signed in its name by its designated authorized signatories and its seal to be affixed this 15th day of April, 1985.

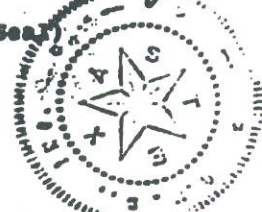
Witnesses:

Kelly Cantor  
[Signature]

G.W.S., INC., a Texas corporation, authorized to do business in the State of Florida as G.W.S., INC. OF TEXAS

By: Herman L. Strother  
Herman L. Strother, President

Attest: James F. Womeldurf  
James F. Womeldurf, Secretary  
(Corporate Seal)



STATE OF Texas

COUNTY OF Garza

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgements, personally appeared Herman L. Strother and James F. Womeldurf, as President and Secretary, respectively of G.W.S., INC., a Texas corporation, authorized to do business in the State of Florida as G.W.S., INC. OF TEXAS, known to me to be the persons described in and who executed the foregoing Declaration of Condominium as such officers, and they acknowledged before me that they executed same for the uses and purposes therein expressed and same is the act and deed of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 15th day of April, 1985

Dayle Thomas  
Notary Public, State of Texas

My Commission Expires: 8/8/85

