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**CERTIFICATE OF RECORDATION**

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

**SUTTON WALK AT LEXINGTON CONDOMINIUM NO. 1**

**SUTTON WALK AT LEXINGTON CONDOMINIUM NO. 2**

**SUTTON WALK LAKESIDE CONDOMINIUM AT LEXINGTON NO. 3**

**AMENDED AND RESTATED ARTICLES OF INCORPORATION**

**AMENDED AND RESTATED BYLAWS**

**SUTTON WALK AT LEXINGTON CONDOMINIUM ASSOCIATION, INC.**

I HEREBY CERTIFY that the attached Amended and Restated Condominium Documents were duly adopted by the Association membership at the duly noticed Annual Members' Meeting of the Association on the 17<sup>th</sup> day of February 2011. The original Declaration of Condominium for Sutton Walk at Lexington Condominium No. 1 is recorded at O.R. Book 2773, at Page 3469 *et seq.*, of the Lee County Public Records. The original Declaration of Condominium for Sutton Walk at Lexington Condominium No. 2 is recorded at O.R. Book 3204, at Page 2506 *et seq.*, of the Lee County Public Records. The original Declaration of Condominium for Sutton Walk Lakeside Condominium at Lexington No. 3 is recorded at O.R. Book 3125, at Page 3018 *et seq.*, of the Lee County Public Records.

The Amended and Restated Declaration of Condominium for Sutton Walk at Lexington Condominium No. 1, Sutton Walk at Lexington Condominium No. 2 and Sutton Walk Lakeside Condominium at Lexington No. 3 are attached hereto. All previous site plans of record are incorporated by reference. Certain photocopies or summaries are recorded for reference as Exhibit "A" to the respective Amended and Restated Declarations of Condominium. A photocopy of the Deed for Association Property is recorded at Exhibit "A-1" to the Amended and Restated Declaration of Condominium for Sutton Walk at Lexington Condominium No. 1, and is incorporated by reference herein as an Exhibit to the Amended and Restated Declaration of Condominium for Sutton Walk at Lexington Condominium No. 2 and Sutton Walk Lakeside Condominium at Lexington No. 3. The Amended and Restated Articles of Incorporation of Sutton Walk at Lexington Condominium Association, Inc. are attached as Exhibit "B" to the Amended and Restated Declaration of Condominium for Sutton Walk at Lexington Condominium No. 1, and is incorporated by reference herein as an Exhibit to the Amended and Restated Declaration of Condominium for Sutton Walk at Lexington Condominium No. 2 and

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**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
SUTTON WALK AT LEXINGTON CONDOMINIUM NO. 1**

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**AMENDED AND RESTATED**

**DECLARATION OF CONDOMINIUM**

**OF**

**SUTTON WALK AT LEXINGTON CONDOMINIUM NO. 1**

**RECITALS:**

In a Declaration of Condominium recorded at O.R. Book 2773, Pages 3469, *et seq.* of the Lee County Public Records on December 17, 1996, the Condominium Developer did submit to condominium ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium Act, that property situated in Lee County, Florida, more particularly described as follows:

A PARCEL OF LAND SITUATION IN THE SOUTHEAST ONE QUARTER OF SECTION 9, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY FLORIDA, SAID PARCEL BEING PART OF THE LANDS PLATTED AS TRACT 37 OF "LEXINGTON COUNTRY CLUB" AS RECORDED IN PLAT BOOK 56, PAGES 59 – 68, AND BEING A PART OF TRACT 37-H OF LEXINGTON LAKES. (TO BE RECORDED) IN LEE COUNTY FLORIDA, AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS;

COMMENCING AT A CONCRETE MONUMENT ON THE WEST LINE OF TRACT 37 OF LEXINGTON COUNTRY CLUB, OF WHICH THIS IS A PART, SAID MONUMENT BEING LOCATED N 00°47'31" W, 1317.22 FEET FROM THE SOUTHWEST CORNER OF SAID TRACT 37, THENCE, SOUTH 00°47'31" EAST A DISTANCE OF 101.40 FEET ALONG WEST LINE OF TRACT 37 TO A POINT

THENCE NORTH 43°30'46" EAST, A DISTANCE OF 75.46 FT TO A POINT; THENCE NORTH 06°32'03" EAST, A DISTANCE OF 63.57 FT TO A POINT; THENCE NORTH 45°54'50" EAST, A DISTANCE OF 48.97 FT TO A POINT; THENCE AROUND A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 12°32'37", AN ARC DISTANCE OF 105.63 FT, A RADIUS OF 482.50 FT, A CHORD BEARING OF SOUTH 37°43'08" EAST, A DISTANCE OF 105.42 FT TO A POINT; THENCE AROUND A CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 40°35'26", AN ARC DISTANCE OF 455.57 FT, A RADIUS OF 643.07 FT, A CHORD BEARING OF SOUTH 51°44'33" EAST, A DISTANCE OF 446.11 FT TO A POINT MARKING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 24°52'49" WEST, A DISTANCE OF 210.17 FT TO A POINT; THENCE SOUTH 70°31'06" EAST, A DISTANCE OF 170.97 FT TO A POINT; THENCE NORTH 88°36'07" EAST, A DISTANCE OF 98.70 FT TO A POINT; THENCE NORTH 67°05'48" EAST, A DISTANCE OF 40.36 FT TO A POINT; THENCE SOUTH 81°59'02" EAST, A DISTANCE OF 112.22 FT TO A POINT; THENCE NORTH 84°22'44" EAST, A DISTANCE OF 99.12 FT TO A POINT; THENCE NORTH 74°31'31" EAST, A DISTANCE OF 87.36 FT TO A POINT; THENCE NORTH 09°27'23" EAST, A DISTANCE OF 83.99 FT TO A POINT; THENCE NORTH 16°53'32" WEST, A DISTANCE OF 100.47 FT A POINT; THENCE NORTH 26°19'02" WEST, A DISTANCE OF 94.14 FT TO A POINT; THENCE AROUND A CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 06°47'53", AN ARC DISTANCE OF 24.03 FT, A RADIUS OF 202.50 FT, A CHORD BEARING OF SOUTH 51°11'34" WEST, A DISTANCE OF 24.01 FT TO A POINT; THENCE AROUND A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 32°25'51", AN ARC DISTANCE OF 134.43 FT, A RADIUS OF 237.50 FT, A CHORD BEARING OF SOUTH 64°00'33" WEST, A DISTANCE OF 132.64 FT TO A POINT; THENCE AROUND A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF

27°44'17", AN ARC DISTANCE OF 311.23 FT, A RADIUS OF 643.07 FT, A CHORD BEARING OF NORTH 85°54'24" WEST, A DISTANCE OF 308.29 FT; TO THE POINT OF BEGINNING;

AND CONTAINING 2.822 ACRES MORE OR LESS.

Said Declaration was subsequently amended as follows:

Amendment recorded at O.R. Book 2836, Page 2316, *et seq.*, Lee County Public Records;

Amendment recorded at O.R. Book 3094, Page 2033, *et seq.*, Lee County Public Records;

Amendment recorded at O.R. Book 3240, Page 1780, *et seq.*, Lee County Public Records; and

Amendment recorded at Instrument No. 2009000128385, Lee County Public Records.

The submission of the land to the condominium form of ownership by those documents is and will remain effective. By adoption of this Amended and Restated Declaration of Condominium, the Association Members hereby adopt certain amendments to the Declaration of Condominium and hereby restate the Declaration of Condominium and its Exhibits in its entirety. By adoption of this Amended and Restated Declaration of Condominium, the Members of the Association ratify governance of the property described above and in Exhibit "A" hereto under the condominium form of ownership and the provisions of the Condominium Act.

**1. DEFINITIONS.** As used herein or elsewhere in the Condominium Documents, unless otherwise provided, the terms used shall be as defined in the Act and as herein provided:

**1.1 "Act" or "Condominium Act"** means the Condominium Act (Chapter 718, Florida Statutes, 2010), as it now exists or as it may be amended from time to time, including the definitions therein contained.

**1.2 "Articles"** means Articles of Incorporation as attached hereto as Exhibit "B", as they may be amended from time to time.

**1.3 "Assessment"** means a share of the funds required for the payment of Common Expenses, which from time to time is assessed against the Unit.

**1.4 "Association"** means SUTTON WALK AT LEXINGTON CONDOMINIUM ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of Sutton Walk at Lexington Condominium No. 1, Sutton Walk at Lexington Condominium No. 2, and Sutton Walk Lakeside Condominium at Lexington No. 3.

**1.5 "Association Property"** means all property owned by the Association for the use and benefit of the Unit Owners.

**1.6 “Board of Directors” or “Board” or “Directors”** means the representative body which is responsible for the administration of the Association’s affairs, and which is the same body that is sometimes referred to in the Condominium Act as the “Board of Administration.”

**1.7 “Building”** means the structures in which the Units are located.

**1.8 “Bylaws”** mean the Bylaws of the Association as attached hereto as Exhibit “C”, as they may be amended from time to time.

**1.9 “Charge”** means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Unit Owner, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents.

**1.10 “Common Elements”** mean and include:

**1.10.1** The portions of the Condominium Property not included within the Units.

**1.10.2** Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements.

**1.10.3** An easement of support in every portion of a Unit which contributes to the support of the Building, including but not limited to all load bearing interior walls within the Units.

**1.10.4** The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements and for the furnishing of wastewater treatment (sewer) services to the Units, provided that such properties and installations are located within the Condominium Property. All public or private (e.g. cable television) utility installations are excluded from the Common Elements.

**1.10.5** Any other parts of the Condominium Property designated as Common Elements in this Declaration.

**1.11 “Common Expenses of the Association”** means those expenses for which all Unit Owners are liable to the Association, including but not limited to, expenses of administration and operation of the Association and such other expenses as may be declared Common Expenses of the Association either by this Declaration, the Articles of Incorporation, the Bylaws or by the Board of Directors. Maintenance and repair of all Association Property is a Common Expense of the Association. Bulk interior pest control for Units, if provided by the Association, is a Common Expense of the Association. Common Expenses of the Association include, but are not limited to, such items as cost of premiums for public liability insurance, the operation, maintenance, repair, and reconstruction after casualty of recreational facilities available for use by Unit Owners in the three Condominiums operated by the Association, pool service, accounting and legal fees, and wages and fees for managerial and other services. Legal fees regarding the rights, liabilities, interests or affairs of the Association as an entity shall be a Common Expense of the Association. The expenses of communications services as defined in Chapter 202, Florida Statutes (2010), as amended from time to time, information services, or

Internet services, are specifically considered a Common Expense of the Association, if so designated by the Board. Common Expenses of the Association also include reasonable insurance for directors and officers, commonly used road maintenance and operation expenses, security services and other expenses which are reasonably related to the general benefit of the Unit Owners of the several Condominiums even if such expenses do not attach to the property or the Condominiums of the Association.

Common Expenses of the Association shall be shared 48/168 by Condominium No. 1 Owners, 48/168 by Condominium No. 2 Owners, and 72/168 by Condominium No. 3 Owners. Determining the allocation of the Common Expenses of the Association as opposed to Common Expenses of the Condominium shall be in the sole discretion of the Board of Directors of the Association.

**1.12 “Common Expenses of the Condominium”** means those expenses for which Unit Owners in the individual Condominiums are liable to the Association. Expenses pertaining to the maintenance, repair, and replacement of the Common Elements of the individual Condominiums is Common Expense of the Condominium. By way of example, but not limitation, building painting, roof repair, exterior ground maintenance and property insurance are Common Expenses of the Condominium. Water, sewer and common electrical service serving each of the separate Condominiums is a Common Expense of the Condominium. Legal fees involving matters relating to the physical property within a particular Condominium, including but not limited to assessment collection matters, shall be a Common Expense of the Condominium. Determining the allocation of the Common Expenses of the Condominium as opposed to Common Expenses of the Association shall be in the sole discretion of the Board of Directors of the Association. When the Association receives a single billing for an item that is declared a Common Expense of the Condominium the Board may allocate segments of said invoices to the individual Condominiums as the Board in its sole discretion deems fair and equitable. It is the intent of this Declaration that property insurance expenses and the allocation of deductibles shall be allocated on a Condominium-by-Condominium basis, and not consolidated, as permitted by Section 718.111(11)(g)5. of the Act. Common Expenses of the Condominium shall be shared by Condominium No. 1 Unit Owners on a 1/48 basis; by Condominium No. 2 Unit Owners on a 1/48 basis; and by Condominium No. 3 Unit Owners on a 1/72 basis. Reserves required by the Act and the Condominium Documents are a Common Expense of the Condominium.

**1.13 “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, above the amount of the Common Expenses. Common Surplus of the Condominium shall be determined in the same manner as Common Expenses of the Condominium. Common Surplus of the Association shall be determined in the same manner as Common Expenses of the Association.

**1.14 “Community Association”** means Lexington Community Association, Inc., a Florida corporation not for profit, being the entity responsible for the administration of the Community Covenants.

**1.15 “Community Covenants”** means the Declaration of Covenants for Lexington recorded in the Public Records of Lee County, Florida, which Declaration encumbers, *inter alia*, the Condominium Property, and when the context permits shall also mean the Articles of Incorporation and By-Laws of the Community Association, all as now or hereafter amended, modified or supplemented.

**1.16 “Condominium Documents”** means this Declaration; the Surveyor’s Plat and Site Plans, hereinafter collectively referred to as “the Plat” or “Condominium Plat”, copies of which are attached hereto as Exhibit “A;” Articles of Incorporation of Sutton Walk at Lexington Condominium Association, Inc. attached as Exhibit “B;” Bylaws attached hereto as Exhibit “C,” and Rules and Regulations. The Rules and Regulations need not (but may) be recorded in the County Public Records in order to be valid.

**1.17 “Condominium Parcel”** means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit and when the context permits, the term includes all of the appurtenances to the Unit.

**1.18 “Condominium Property”** means the land and property interests subjected to condominium ownership under this Declaration, all improvements on the land as depicted in the Surveyor’s Plat, or replacement thereof of like kind and quality, and alterations or additions made to the Common Elements or Association Property by the Association and all easements and rights appurtenant thereto intended for use in connection with the Condominium. Additions or alterations made to Units or Common Elements by Unit Owners (or their predecessors in title) are not part of the Condominium Property. References in these Condominium Documents to Condominium Property shall include Association Property, unless indicated otherwise.

**1.19 “County”** means the County of Lee, State of Florida.

**1.20 “Declaration” or “Declaration of Condominium”** means this instrument, and as it may be amended from time to time.

**1.21 “Domestic Partners”** means two adults who have chosen to share their lives in a committed relationship that includes a mutual and exclusive commitment to each other’s well-being, wherein each partner shares the same permanent address, have no blood relationship that would preclude marriage in the State of Florida, are of the age of legal majority, are jointly responsible for each other’s common welfare, share financial interdependence and mutual obligation akin to those of marriage. Domestic Partners shall be considered as married individuals for the purpose of the Declaration.

**1.22 “Family” or “Single Family”** shall refer to one (1) natural person or not more than two (2) natural persons cohabitating the Unit as a single housekeeping unit.

Further their child, children or grandchildren (hereinafter called children) shall be considered Family as defined hereby if they meet all of the following conditions (a) said children are age 23 or less; and (b) such children are not married or cohabitating with any third party; and (c) said children do not have custodial children of their own (i.e. grandchildren of the Owner or Tenant); and (d) said children reside with the Owner or Tenant on a permanent basis, or in the case of children enrolled as a college or graduate student or in military service, at such times as

the student resides in the Unit while away from the college or university or when the child is on leave from military service. In addition, developmentally disabled children of any age who permanently reside with an Owner or Tenant shall be considered Family as defined herein. Furthermore, an Owner of a Unit who is in military service shall be considered Family as defined herein when in residence in the Unit if they have declared the Unit as their domicile while in active military service.

**1.23 “Fractional Ownership” or “Unit Sharing”** means any arrangement (whether written or verbal) whereby multiple individuals, artificial entities, or other combinations acquire title to a Unit (or any other possessory or use right in a Unit) with the intention of allocating use rights among legal or beneficial owners, whether pursuant to verbal or written agreements, regarding the sharing of use and possession rights for a Unit.

**1.24 “Guest”** means any person who is not the Unit Owner or a Tenant or a Member of the Owner’s or Tenant’s Family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Owner or other legally permitted Occupant, without the payment of consideration.

**1.25 “Insurable Improvements”** shall mean the “Building” as defined in Section 1.7 of this Declaration, less upgrades or additions by Unit Owners (or their predecessors in title) and those portions of the Condominium Property required by the Act to be insured by the Association. If a Unit Owner has replaced any glass with impact glass which meets the applicable code at the time of such replacement, such glass and its related framework shall be considered part of the Insurable Improvements, unless prohibited by law.

**1.26 “Invitee”** a person or persons allowed entry for the purpose of conducting business with a Unit’s Occupant or otherwise entering the Condominium Property on a temporary basis at the express or implied consent of the Unit Owner, including but not limited to contractors, workmen, delivery persons, domestic assistants and health care assistants.

**1.27 “Lease”** when used in the context of the renting of Units, means the grant by a Unit Owner of a right of use of the Owner’s Unit for consideration.

**1.28 “Lien for Charges”** means a lien which is recorded to secure a Charge.

**1.29 “Limited Common Elements”** means those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of all other Units, as specified in the Declaration. Unless the context requires otherwise, all references in this Declaration to Common Elements shall include Limited Common Elements. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit, and where the area in question lies outside of the boundaries of the Unit, the delegation of maintenance responsibility for the area (by way of example, but not limitation, air conditioning compressors) shall serve to define the area as a Limited Common Element.

**1.30 “Limited Common Expense”** means those expenses affiliated with the maintenance, repair, replacement or reconstruction after casualty of a Limited Common Element, the costs of which are assessed only against the benefiting Unit Owner(s), as authorized by Section 718.113(1) of the Act, and if so provided in this Declaration.

**1.31 “Member”** means the record Owner(s) of legal title to a Unit.

**1.32 “Occupant”** when used in connection with a Unit, means a person who is physically present in a Unit on two or more consecutive days, including staying overnight for one night.

**1.33 “Primary Occupant”** means a natural person designated for occupancy of a Unit when title to the Unit is held in the name of two or more persons who are not husband and wife, or Domestic Partners, or by a trustee or a corporation or other entity which is not a natural person, except where the content clearly indicates otherwise, the term “Owner” shall include “Primary Occupant”.

**1.34 “Rules and Regulations”** means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of Units, Common Elements and Limited Common Elements, and the operation and administration of the Association, subject to any limits set forth in the Declaration of Condominium.

**1.35 “Tenant” or “Lessee”** means a person occupying a Unit, other than the Owners, whether pursuant to a verbal or written agreement, where said occupancy by the non-owner involves consideration, the payment of money, the exchange of goods and service, etc. The term “Tenant” shall be used interchangeably with “Lessee”.

**1.36 “Unit”** means a part of the Condominium Property subject to exclusive ownership.

**1.37 “Unit Owner” or “Owner”** means the record Owner of a Condominium Parcel.

**1.38 “Utility Services”** as used in the Condominium Act and as construed with reference to this Condominium, and as used in the Declaration and Bylaws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air conditioning and garbage and sewage disposal.

**1.39 “Voting Interests of the Association”** means and refers to the arrangement established in the Condominium Documents by which the Owners of each unit collectively are entitled to one vote in the Association matters. There are 168 units, so the total number of Voting Interests of the Association is 168. Matters affecting the entire Association (all Condominiums), as determined by the Board of Directors, shall be decided by the Voting Interests of the Association. By way of example, but not limitation, the election of Directors, the recall of Directors, the waiver of financial reporting requirements, alterations of Association Property, certain alterations of Common Elements, certain amendments to the Declaration of Condominium, amendments to the Articles of Incorporation, and amendments to the Bylaws, are decided by the Voting Interests of the Association. Determining whether a voting item involves the Voting Interests of the Association as opposed to the Voting Interests of the Condominium, shall be determined in the sole discretion of the Board of Directors of the Association.

**1.40 “Voting Interests of the Condominium”** means those voting items which are to be considered for vote by the Unit Owners in individual Condominiums in accordance with the

Class Quorum and Voting procedures specified in Section 2.11 of the Bylaws. By way of example, but not limitation, certain material alterations of Common Elements, certain amendments to the Declaration of Condominium, and the waiver or reduction of reserve funding shall be based upon the Voting Interests of the Condominium. Determining whether a voting item is a matter involving the Voting Interests of the Condominium, as opposed to Voting Interests of the Association shall be determined in the sole discretion of the Board of Directors of the Association.

**2. STATEMENT OF CONDOMINIUM DECLARATION.** WORTHINGTON COMMUNITIES, INC., submitted the property described in Exhibit "A" hereto and as described above to condominium ownership in accordance with Florida Statutes.

**3. CONDOMINIUM NAME.** The name by which this Condominium is identified is "Sutton Walk at Lexington Condominium No. 1".

**4. UNIT IDENTIFICATION.** The identification of each Unit shall be by number and shall be as indicated on the Surveyor's Plat, Exhibit "A."

**5. SURVEY AND GRAPHIC DESCRIPTION.** A survey of the land previously submitted to condominium ownership and a Plat thereof describing each Unit, Common Elements and their relative location and the approximate dimensions of each Unit are as shown on the Surveyor's Plat which is attached as Exhibit "A."

**6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The voting rights of the Owner of each Unit shall be 1/168<sup>th</sup> (one Voting Interest per Unit) for Association matters and 1/48<sup>th</sup> for individual Condominium voting issues. The sharing of Common Expenses and ownership of Common Elements and Common Surplus shall be on a 1/48<sup>th</sup> basis and for Common Expenses of the Condominium and a 1/168<sup>th</sup> basis for Common Expenses of the Association.

**7. COMMON ELEMENTS; EASEMENTS.**

**7.1 Definition.** The term "Common Elements" means all of the property submitted, and as defined in Section 1.10, to condominium ownership as described in Exhibit "A" that is not within the Unit boundaries set forth in Article 8 below.

**7.2 Easements.** The following easements are hereby created (in addition to any easements created under the Act):

**7.2.1 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.

**7.2.2 Utility and Other Services; Drainage.** Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television, communications and security systems, and other services and drainage in order to serve the Condominium. The Association shall have the right of access to each Unit during reasonable hours when necessary for maintenance, repair or replacement of any common



elements or of any portion of a unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.

**7.2.3 Encroachments.** If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements made by or with the consent of the Association; or (iv) 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, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.

**7.2.4 Ingress and Egress.** A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, shall exist for pedestrian 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; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes. None of the easements specified in this Section 7.2.4 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 with respect to such easements.

**7.2.5 Other Condominiums; Community Association.** The Community Association shall have all easements provided it in the Community Covenants including, without limitation, those over "Lots" (as defined therein). Additionally, the Community Association shall have a perpetual easement over the Common Elements to perform the maintenance, repair and replacement functions described in this Declaration.

Any recreation or other commonly-used facilities located within the Condominium Property or on Association Property shall be subject to a perpetual, non-exclusive easement in favor of the Owners of Units in any other Condominium operated by the Association, provided that (i) the use of such easement shall be subject to a reasonable regulation by the Association and (ii) such Unit Owners shall share in the expenses of such facilities in the manner provided in Section 1.11 hereof.

Each Owner, in any Unit in a Condominium operated by the Association, shall also have a perpetual easement of ingress and egress for vehicular and pedestrian use over all portions of the Common Elements reasonably suited for such purposes.

**7.2.6 Additional Easements.** The Association, by and through the Board of Directors on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar

installations pertaining thereto), or relocated any such existing easements or drainage facilities, in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Association shall deem necessary or desirable, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

**7.3 Restraint Upon Separation and Partition.** The undivided share of ownership on the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately hypothecated. As long as the Condominium exists, the Common Elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned by a Unit Owner, pledged or transferred except as an appurtenance to the Units.

**8. CONDOMINIUM UNITS AND APPURTENANCES.** Condominium Units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyor's Plat, Exhibit "A." The horizontal and vertical boundaries of the Condominium Units shall be as follows:

**8.1 Unit Boundaries.** Each Unit shall include that part of the Condominium Property containing the Unit that lies within the following boundaries:

**8.1.1 Upper and Lower Boundaries.** The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

**8.1.1.1 Upper Boundaries.** The horizontal plane of the unfinished lower surface of the ceiling of the Unit.

**8.1.1.2 Lower Boundaries.** The horizontal plane of the unfinished upper surface of the floor of the Unit.

**8.1.1.3 Interior Divisions.** Except as provided in subsections 8.1.1.1 and 8.1.1.2 above, nonstructural interior walls shall not be considered a boundary of the Unit.

**8.1.2 Perimetrical Boundaries.** The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

**8.1.3 Apertures.** Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks thereof; provided, however, that exterior surfaces made of glass or other transparent material, and the exterior of doors, shall not be included in the boundaries of the Unit and shall therefore be Common Elements.

**8.1.4 Exceptions.** In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth in Exhibit "A" hereto shall control in

determining the boundaries of a Unit, except that the provisions of Section 8.1.3 above shall control unless specifically depicted otherwise on such survey.

**8.2 Exclusive Use.** Each Unit Owner shall have the exclusive use of his Unit.

**8.3 Appurtenances.** The ownership of each Unit shall include, and there shall pass with each Unit as appurtenances thereto whether or not separately described, all of the rights, title and interest including but not limited to:

**8.3.1 Common Elements.** An undivided share in the Common Elements and Common Surplus;

**8.3.2 Easement to Airspace.** An exclusive easement for the use of airspace 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, provided that an easement in airspace which is vacated shall be terminated automatically;

**8.3.3 Association Membership.** Membership in the Association with full voting rights appurtenant thereto; and

**8.3.4 Limited Common Elements.** The exclusive right to use such portion of the Common Elements as may be provided in this Declaration, including the applicable Limited Common Element garage. Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto:

**8.3.4.1 Balconies and Terraces.** Any balcony or terrace (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s). The boundaries of same shall be (i) lower: the upper unfinished surface of the slab of the balcony or terrace, (ii) upper: the lower unfinished surface of any overhanging slab, (iii) perimetrical: the exterior surface of any adjoining Common Element wall or, where there is no wall on a first floor terrace, the edge of the concrete slab facing the terrace and (iv) other perimetrical: any sliding glass door(s) or fixed glass panel(s) abutting the balcony or terrace.

**8.3.4.2 Garages.** Each Unit is hereby assigned the exclusive right to use the garage bearing the same number as the Unit, same being a Limited Common Element thereof. The boundaries of a garage Limited Common Element shall be determined in the same manner as those of a Unit.

**8.3.4.3 Conveyance of a Unit.** A conveyance of a Unit shall automatically include all Limited Common Elements appurtenant to that Unit unless otherwise specified in the instrument of such conveyance.

**8.3.4.4 Miscellaneous Areas, Equipment.** Any fixtures or equipment (e.g., an air conditioning unit located adjacent to the Unit and related lines and equipment) serving a Unit or Units exclusively and any area upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s).

**8.3.5 Common Driveway Easement.** The Owners of the Units in the Condominiums No. 1 and No. 2 and their Family members, Tenants, Guests, and Invitees have been granted and herein affirm an easement over that portion of the common driveway serving both Condominiums. The Association shall maintain the portion of such driveway within the Condominium Property; provided, however, that the Association shall allocate driveway maintenance expenses to the two Condominiums on a fifty percent each basis.

**9. MAINTENANCE, ALTERATION AND IMPROVEMENTS.** Responsibility for the maintenance of the Condominium Property, and restrictions upon the alteration and improvement thereof, shall be as follows:

**9.1 Association Maintenance.** The maintenance, repair and replacement of all Common Elements (except those Limited Common Elements for which this Declaration delegates responsibility to the Unit Owner) and Association Property shall be performed by the Association, and the cost is a Common Expense, except as may otherwise be specifically noted with respect to Limited Common Elements.

**9.1.1 General Exterior Maintenance.** The Association's maintenance repair and replacement responsibility shall include, but not be limited to, exterior painting, roofing, and maintaining portions of the Condominium Property exposed to the elements, but shall not include maintenance, repair and replacement of railings, screen frames or screening or balcony enclosures, nor any alteration or addition to the Condominium Property made by a Unit Owner or his predecessors in title, nor any portions of the Condominium Property exposed to the elements for which this Declaration delegates responsibility to the Unit Owner. Maintenance of the outdoor parking spaces and carports shall be the responsibility of the Association as a Common Expense of the Condominium.

**9.1.2 Plumbing and Electrical.** The Association's maintenance, repair and replacement responsibility includes, except as may be specifically otherwise provided to the contrary, without limitation, all electrical conduits and installations located from the electrical breaker box outward; electrical conduits and installations located within or outside a Unit for the furnishing of utilities to another Unit, more than one Unit, or the Common Elements; plumbing fixtures and installations located within or outside a Unit for the furnishing of utilities to another Unit, more than one Unit, or the Common Elements. The Association's maintenance, repair, and replacement responsibility does not include electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the Unit and serving only that Unit.

**9.1.3 Incidental Damage.** If, in connection with the discharge of its maintenance, repair and replacement responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the Unit Owner is required to maintain, repair, or replace, the Association shall be responsible for reinstallation or replacement of that item, including cabinetry, drywall and moldings, to its unfinished state, and excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, and other finishes, provided that the Association's obligations are limited to the replacement of items that were part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality, and except in cases of casualty repair, which shall be governed by

Article 13 of this Declaration. Repair or replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the Unit Owner, specifically including but not limited to hurricane shutters which the Association must remove in connection with the maintenance of the Building, although the Association may have such shutter reinstallation work performed by its contractor, and the Unit Owner will be responsible for reimbursement to the Association as a Charge.

**9.2 Unit Owner Maintenance.** Each Unit Owner is responsible, at his own expense, for all maintenance, repair, and replacement of his own Unit and those Limited Common Elements serving his Unit, if so provided herein, whether ordinary or extraordinary including, without limitation:

**9.2.1 Windows and Enclosures.** The Unit Owner shall maintain, repair and replace the window installations. Same includes the window frame and encasement, the plate glass, and all caulking thereof. The Unit Owners shall be responsible for interior window locking and opening mechanisms, the window sill and glass breakage due to any cause.

**9.2.2 Screens and Frames.** The Unit Owner shall maintain, repair and replace all window screens, screen doors or balcony screens (including hardware and framing).

**9.2.3 Drywall.** The Unit Owner shall maintain, repair and replace all drywall within the Unit, the finishes thereof (including trim), and the structural framing related thereto including studs and insulation, except that the Association shall maintain, repair and replace drywall on the exterior boundary walls.

**9.2.4 Electrical.** The Unit Owner shall maintain, repair and replace all electrical fixtures/facilities located within the Unit, which service only the individual Unit plus all electrical facilities from the electrical breaker box (including the box and breakers) inward, which service only that Unit.

**9.2.5 Sliding Glass Doors.** The Unit Owner shall maintain, repair and replace sliding glass doors and the structural components thereof (including framed and fixed panels), including trim and caulking.

**9.2.6 Unit Front Entry Doors.** The Unit Owner shall maintain the interior of the Unit front entry door, and the Association shall maintain the exterior of said doors, and be responsible for the repair and replacement of said doors (excluding locks and hardware, which shall be the Unit Owner's responsibility).

**9.2.7 Other Doors.** The Unit Owner shall maintain, repair and replace all other doors and the framing and structural components thereof (including trim, caulking, locks and hardware) within or servicing the Unit.

**9.2.8 Plumbing and Mechanical.** The Unit Owner shall maintain, repair and replace the electrical, mechanical and plumbing fixtures and outlets (including connections) within a Unit and serving only that Unit including sinks, toilets, tubs, showers, shower pans, and all related fixtures and installations.

**9.2.9 Appliances.** The Unit Owner shall maintain, repair and replace appliances.

**9.2.10 Heating and Air Conditioning Equipment; Ductwork.** The Unit Owner shall maintain, repair and replace all portions of the heating and air conditioning equipment (including compressors, air handlers, ductwork, freon lines and discharge lines) and utility installations and connections serving an individual Unit, no matter where located, dryer vents to the point of termination (even if exterior to the Unit), air conditioner discharge lines to the point of termination or connection to another discharge (even if exterior to the Unit).

**9.2.11 Floor Coverings.** The Unit Owner shall maintain, repair and replace carpeting and other floor covering (including balcony areas).

**9.2.12 Hardware and Locks.** The Unit Owner shall maintain, repair and replace door and window hardware and locks.

**9.2.13 Other Facilities and Fixtures.** The Unit Owner shall maintain, repair and replace all other facilities or fixtures located or contained entirely within a Unit which serve only that Unit. The Association shall maintain, repair and replace television and telephone wiring located outside of the Unit to the extent not maintained, repaired or replaced by the service provider or the Master Association.

**9.2.14 Plumbing (Incoming).** The Unit Owner shall maintain, repair and replace all incoming plumbing from the shut-off valve (at hot water) inward.

**9.2.15 Plumbing (Outgoing).** The Unit Owner shall maintain, repair and replace outbound plumbing until the point of connection to a vertical disposal, even if outside the Unit boundary.

**9.2.16 Hurricane Shutters.** The Unit Owner shall be responsible for the insurance, maintenance, repair, replacement, and reconstruction after casualty of all hurricane shutters which are installed to cover the windows, doors, balconies or terraces serving the Unit.

**9.2.17 Garages.** The Unit Owner shall be responsible for the maintenance, repair and replacement of garage doors (and all affiliated hardware and mechanisms) and garage door openers (and affiliated controls and electronics).

**9.2.18 Additions to the Condominium Property.** The Unit Owners shall insure, maintain, repair, replace and reconstruct after casualty any additions or upgrades made to the Condominium Property, whether within the Unit or on the Common Elements made by a Unit Owner (or his predecessor in title) for the benefit or use of the Unit.

All said areas, if located outside of the boundaries of the Unit, are declared Limited Common Elements.

**9.3 Balconies and Terraces.** Any balcony or terrace (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s). The boundaries of

same shall be (i) lower: the upper unfinished surface of the slab of the balcony or terrace, (ii) upper: the lower unfinished surface of any overhanging slab, (iii) perimetrical: the exterior surface of any adjoining Common Element wall or, where there is no wall on a first floor terrace, the edge of the concrete slab facing the terrace and (iv) other perimetrical: any sliding glass door(s) or fixed glass panel(s) abutting the balcony or terrace. The Unit Owner who owns or has the right to the exclusive use of a balcony or terrace shall be responsible for the maintenance, care and preservation of: balcony or terrace floor coverings (the Board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural preservation of the building); storm shutters and other enclosures; fixed and/or sliding glass doors and affiliated framing and hardware thereof; the wiring, electrical outlet(s) and fixture(s) on or servicing the balcony or terrace; ceiling fans; and the replacement of light bulbs. The Association shall be responsible for structural maintenance, repair and replacement of balcony or terrace floors, ceilings, and also the Building walls enclosed by the balconies. Unit Owners may not puncture (by nails, hooks, screws or otherwise) balcony floors, walls, or ceilings, without obtaining the prior written approval of the Board of Directors.

**9.4 Unit Owner Obligations in Connection with Maintenance, Repair and Replacement.** In connection with his maintenance, repair and replacement obligations, the Unit Owner shall have the responsibility to obtain the prior written approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement which requires: changes or alterations to the physical appearance of the Condominium Property visible from any exterior vantage; excavation; access to the Building roof; removal, modification or relocation of any interior partitions or walls, whether load-bearing or not; relocation of cabinets or appliances; relocation of utility, plumbing, or electrical installations or fixtures or ductwork; the use of heavy or noisy equipment; such other actions as may cause concern for the peace and safety of the Condominium and its residents or the aesthetics of the Condominium Property, as determined by the Board. The Association may condition such approval on criteria as the Board deems reasonable, including but not limited to:

- Preservation of uniformity of appearance;
- Use of contractor(s) that are properly licensed and fully insured, and that the Owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance. Unit Owners are responsible for the actions of their contractors and warrant to the Association, whether or not specifically made a condition of Association approval (or in cases where no Association approval is required) that all persons coming into the Condominium Property to perform work on or services for the Unit hold all proper licenses, have obtained all proper permits, and carry such insurance as may be required by law or the Board;
- Right (but not duty) of oversight by the Association or its agent;
- The Unit Owner submitting plans as to the scope of the contemplated repair;
- Restrictions as to hours of work;

- Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of year.
- Restrictions regarding equipment that may be parked or stored on or near the Condominium Property during construction.
- Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed and restrictions regarding the use of Common Elements for performance of the work.

Unit Owners may not engage in “extensive” remodeling work or “heavy” construction activity, except with prior approval of the Board of Directors, and then, only during the months of May through October, inclusive. “Extensive” remodeling and “heavy” construction shall be as defined by the Board of Directors from time to time, but, whether so defined or not, shall include, but not be limited to, activities involving the following:

- Activities involving the use of power equipment such as jackhammers, drills, saws, and the like, which create substantial noise, as determined by the Board.
- Activities resulting in the creation of substantial noise that can be heard outside of the Unit, regardless of whether power equipment is used or not, as determined by the Board.
- Activities rendering the Unit uninhabitable during the performance of the work.
- Activities requiring the storage of materials or equipment on the premises outside of the Unit.
- Activities involving the presence of work crews or significant numbers of workers, as determined by the Board.
- Activities requiring the use of scaffolding, booms, or other forms of exterior access.

The Board may waive the prohibition against such work being done in the months of November through April in the case of an emergency, in *de minimus* cases, or in hardship situations, as determined by the Board, and may permit the temporary staging of scaffolding for maintenance and repair of hurricane shutters.

Nothing shall preclude the Association from acting as the Owner’s agent and obtaining the services of contractors to perform Unit Owner maintenance responsibilities in the event of an emergency, or in non-emergency situations, provided that in non-emergency situations, the Association and the Owner so agree, or absent such agreement when such work is deemed necessary, as determined by the Board to facilitate projects involving the Association’s maintenance of the Condominium Property. In all such cases the Unit Owner shall be deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting Common Expenses under these Condominium Documents through a Lien for Charges. Unit Owners shall at all times be responsible to ensure, whether or not Association approval is required for work being done within the Unit, that all contractors and other persons performing services for the Unit Owner are properly licensed and insured, including required Worker’s



Compensation insurance, and that the Condominium Property is kept free from liens. The Unit Owner shall hold the Association harmless from any claim of any nature arising out of failure to comply with these requirements.

**9.5 Modifications or Alterations by Unit Owners.** No Owner may make or permit the making of any modifications or alterations to any portion of his Unit visible from the exterior, or in any manner change the appearance of any portion of the Common Elements, or undertake any structural work or structural modification or alteration, without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or whole. "Structural" modifications or alterations include, but are not limited to: relocation of existing electrical, plumbing, ductwork, air conditioning or heating installations; relocation of existing fixtures or appliances such as toilets, sinks, tubs, showers, dishwashers, refrigerators, or ranges; the removal or modification of any partition, door, window or screen; raising ceilings; or relocating kitchen or bathroom cabinetry. For purposes of this provision, the term "structural" work shall also include the addition, removal, or relocation of any duct work, plumbing line or fixture, any electrical line or fixture, or the removal, modification or creation of any interior partition. Replacement of cabinetry, appliances and fixtures, with substantially equivalent installations, in the same location, shall not be deemed "structural" and shall not require approval of the Association, unless a building or other permit is required. Further, "structural" modifications or alterations shall include any and all work that requires a building permit, an electrical permit, a plumbing permit, a mechanical permit, or similar permit from the appropriate governmental agency, whether or not mentioned above.

The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested structural modification, alteration or addition to the Condominium Property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in Sutton Walk at Lexington Condominiums, and the Lexington development, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any modification or alteration which is visible from the exterior of the premises, from any vantage, said modification or alteration must also be approved by the Unit Owners in the manner provided in Section 9.6 of the Declaration of Condominium, regardless of the cost or expense of such modification or alteration. If any Unit Owner requests approval of any structural modification or alteration, the Association may permit such modification or alteration if same would not materially affect or interfere with the utility services constituting Common Elements, if any, located therein, the structural integrity of the Building or create a nuisance or disturbance to neighboring Units. Approval by the Association shall not constitute approval of the Community Association, which may be separately required by the Community Covenants.

Once the Unit Owner has obtained the Board's consent, such consent must be forwarded to the Community Association, together with the requested addition, alterations and improvement and any additional information, for review by the Architectural Review Committee as provided in the Community Covenants. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all

governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. 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 his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and its Board of Directors, the Community Association and members of the Architectural Review Committee 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 thereof from and after that date of installation or construction thereof as may be required by the Association.

**9.6 Material Alterations or Substantial Additions by the Association.** There shall be no material alterations or substantial additions to the Common Elements or Association real property, except as authorized by the Board of Directors. Provided, however, that if any such alteration or addition to Association real property or commonly used recreation facilities requires the expenditure of more than ten percent of the Association's total budget for the fiscal year in which the work is authorized, including reserves, the Board shall obtain approval of a majority of the Voting Interests of the Association present (in person or by proxy) and voting at an Association meeting, or by written agreement of a majority of the entire Voting Interests of the Association. Material alterations or substantial additions to the Common Elements of individual Condominiums shall be authorized as follows. The Board of Directors may authorize any alteration or addition which does not exceed ten percent of the total budget for the Condominium for which the alteration or addition is proposed. Any material alteration of or substantial addition to Common Elements of a Condominium exceeding that amount shall be approved by a majority of the Voting Interests of the Condominium present (in person or by proxy) and voting at a meeting of the Association at which a Class Quorum has been obtained. Necessary maintenance of the Common Elements, or Association real property regardless of the level of expenditure, is the responsibility of the Board of Directors. Cellular antennae and similar apparatus may be placed on the Condominium Property as determined by the Board in agreements with third parties, and subject to the Community Covenants, if applicable.

**9.7 Enforcement of Maintenance.** If, after reasonable notice, the Owner of a Unit fails to maintain the Unit or other portions of the Condominium Property as required by this Declaration, the Association shall have, without waiver of other remedies, the right to enter the Owner's Unit or Common Element (including Limited Common Elements) and perform or cause performance of the necessary work, and/or institute legal proceedings at law or in equity to enforce compliance, and/or to take any and all other lawful actions to remedy such violation, in which event the Unit Owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

**9.8 Damage Caused by Conditions of the Condominium Property.** Each Unit Owner shall be liable to the Association and/or other Unit Owners for the expenses of any maintenance, repair or replacement of the Condominium Property, made necessary by his intentional act or negligence, or by that of any Member of his Family or his or their Occupants, Guests, Tenants or Invitees. If any condition, defect or malfunction existing within a Unit or Common Elements which the Unit Owner is obligated to insure, maintain, repair or replace if

caused by the Owner's (or his Family member's, Occupant's, Guest's, Tenant's or Invitee's) acts, negligence, or failure to comply with the Condominium Documents or applicable law, shall cause damage to the Common Elements, Association Property, or to other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible) and without waiver of any insurer's subrogation rights, provided that such responsibility shall be conditioned on the neighboring Unit(s) being adequately insured based on local standards and conditions. Further, any claim of a Unit Owner against the Association or another Unit Owner relative to damage to the Condominium Property, to the extent the Association or other Unit Owner might otherwise be liable pursuant to the Condominium Documents or applicable law, shall be predicated upon the Unit Owner making the claim being adequately insured based on local standards and conditions, whether or not individual Unit Owner insurance is mandated by the Act. Should any Unit Owner fail to maintain such insurance, any claim will be reduced to the extent such Unit Owner's insurance, if obtained pursuant to the above-described standards, would have provided coverage or compensation for the loss and without waiving any other remedy of the Association regarding Unit Owner insurance requirements. The requirement that the individual Unit Owner obtain insurance shall not be construed to confer any additional liability on the Association or other Unit Owners, but is intended to require Unit Owners and the Association to respectively insure risks that are customarily experienced in Condominiums located in Florida's coastal communities, Condominiums in general, including but not limited to damages occasioned by windstorms, hurricanes, tornadoes, floods, rainstorms, bursting pipes, water seepage and leakage, and mold and mildew, regardless of whether such insurance is legally required. If one or more of the Units involved is not occupied at the time a damage incident is discovered (regardless of the cause), the Association may enter the Unit(s) without prior notice to the Owner(s) and take reasonable action to mitigate damage or prevent its spread, at the Unit Owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the Owner, in the event of an emergency, and the Owner shall be responsible for reimbursement of the Association, with the cost being secured by a Lien for Charges. Unit Owners are required to shut off all water valves when the Unit will be unoccupied on an overnight basis, and failure to do so will create a presumption of negligence.

Unit Owners are also required to ensure that electricity, and if separately metered, water and sewer, are always available to service the Unit. If Unit Owner fails to maintain Utility Services to Unit, the Association shall have, without waiver of other remedies, the right to enter into the Owner's Unit and Limited Common Element and take any and all lawful actions to make the utilities available to service the Unit, in which event the Unit Owner shall be charged for such activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

**9.9 Combination of Units.** Separate Units may not be combined in to a single living space.

**10. ASSESSMENTS AND CHARGES.** Assessments against Owners shall be made by the Board of Directors of the Association, in the manner provided in the Bylaws and as follows, and shall be borne by the Unit Owners on the basis set forth in Article 6 and elsewhere in these Condominium Documents.

**10.1 Liability for Assessments and Charges.** A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments and Charges coming due while he/she is the Unit Owner. Except as provided in Section 10.5, any person or entity which acquires title to a Unit shall be jointly and severally liable with their predecessor in title for all unpaid Assessments and Charges against the predecessor for his/her share of the Charges and Assessments, including attorney's fees and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid by the transferee. The liability for Assessments or Charges 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 or Charges are made.

**10.2 Default in Payment of Assessments for Common Expenses or Charges.** Assessments and installments thereof not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors which, unless otherwise specified, shall be the maximum allowed by law. The Board may accelerate unpaid Assessments in the manner prescribed by law. The Association has a statutory lien on each Condominium Parcel for any unpaid Assessments on such parcel, and a common law and contractual Lien for Charges, with interest, late fees and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. Except as otherwise provided in the Florida Condominium Act (2010), no lien may be filed by the Association against a Condominium Unit until thirty (30) days after the date on which a notice of intent to file a lien has been delivered to the Owner pursuant to Section 718.121(4), Florida Statutes (2010), as amended from time to time. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an Officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment the Condominium Parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for Assessments or Charges in the manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments or Charges without waiving any claim of lien. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law.

**10.3 Notice of Intention to Foreclose Lien.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments or Charges. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments or Charges, including those which have been accelerated (if applicable) and those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. 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 attorney's fees and costs as permitted by law. The notice requirements of this provision are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

**10.4 Attachment of Rental Income When Unit is Delinquent.** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association shall have the following options when payment of Assessments or Charges are in default (more than ten days in arrears). The Association may, without order of the Court, direct rental income (by written notice to the Tenant with copy to Unit Owner) from Units in default to be paid directly to the Association until all outstanding Assessments, Charges, interest, late fees, costs, collection expenses, attorney's fees and receiver's fees, if applicable, are satisfied. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action as the Board deems appropriate without same constituting a waiver or election of remedies.

**10.5 First Mortgagee.** The priority of the Association's lien and the obligation for payment of past due Assessments or other sums due in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Florida Condominium Act, Chapter 718, Florida Statutes (2010), as amended from time to time.

**10.6 Possession of Unit.** Any person who acquires an interest in a Unit, except first mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including without limitation persons acquiring title by operation of law, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid Assessments and other sums due and owing by the former Owner, if any, have been paid. Possession shall be subject to all other Association requirements pertaining thereto.

**10.7 Certificate of Unpaid Assessments or Charges.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments or Charges against him/her with respect to his/her Unit. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information, in amounts established by the Board, or in a management agreement between the Association and a Community Association Management Firm, or based on reasonable and customary fees charged by legal counsel.

**10.8 Lien for Charges.** There is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Unit Owner or expenses which the Association incurs in regard to a Unit Owner and which is not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a Lien for Charges exists to secure repayment to the Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner insurance, maintenance, repair or replacement responsibility in connection with the Association's discharge of its Common Element maintenance responsibilities, or address emergency situations, such as water extraction from a Unit. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorney's fees, costs and expenses of collection.

**10.9 Other Remedies.** The Board of Directors shall have the authority to impose such other remedies or sanctions permitted by the Act pertaining to non-payment of monetary obligations to the Association. Without limitation, same include suspension of use rights in

Common Elements and Association Property; suspension of voting rights; suspension of the right to serve on the Board; the attachment of rental income; denial of lease approval requests; and acceleration.

**11. ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM.** The administration and management of the Condominium shall be by the Association, which shall have by and through its Officers and Directors, such powers, authority and responsibilities as are vested in the Officers and Directors of a corporation not-for-profit under the laws of the State of Florida, including but not limited to those set forth more specifically elsewhere in the Condominium Documents. The Association shall have authority to enter into management and other agreements concerning the matters of common interest through its Officers. The management of the Association and election of the Members to the Board of Directors shall be as set forth in the Bylaws. Without limiting the foregoing, the Association shall have the following rights and powers:

**11.1 Access.** The irrevocable right of access to each Unit and its appurtenant Limited Common Elements during reasonable hours as may be necessary for the maintenance, repair or replacement of the Condominium Property, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements, or to any Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. The Association may require that a pass key be posted for each Unit and may, if determined advisable by the Board, implement a master key system.

**11.2 Assessments and Charges.** The power to make and collect regular and special Assessments and other Charges against Unit Owners and to lease, maintain, repair, and replace the Common Elements and Association Property.

**11.3 Delegation.** The power to enter into contracts with others, for valuable consideration, for maintenance and management of the Condominium Property and Association Property and in connection therewith, or to its Officers and agents, to delegate the powers and rights herein contained, including, without limitation, the making and collecting of Assessments and other Charges against Unit Owners, and perfecting liens for non-payment thereof.

**11.4 Regulations.** The power to adopt and amend Rules and Regulations covering the details of the operation of the Association and use of the Condominium Property and Association Property.

**11.5 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property.** The power to acquire real property, and transfer real property owned by the Association or otherwise convey and mortgage real property for the use and benefit of its Members with the same approval of Unit Owners as needed to amend the Declaration. No Unit Owner approval shall be required to acquire, purchase, or mortgage a Unit in connection with foreclosure of a lien or a deed in lieu of foreclosure, nor to dispose of such Unit. No Unit Owner approval shall be required for the acquisition of real property that is curative in nature, including but not limited to the correction of title defects, boundary disputes, and confirmation of intended ownership of commonly used recreational facilities. Leasing of Units, Common Elements or

Association Property may be approved by the Board of Directors, as well as the lease fees, use fees, and other fees permitted by the Act or the Condominium Documents.

**11.6 Membership Agreements.** The power to enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities with the same approval of Unit Owners as needed to amend the Declaration.

**11.7 Fees for Use of Common Elements; Other Fees and Deposits.** The power to set fees, pursuant to Section 718.111(4), Florida Statutes (2010), as amended from time to time, the Board of Directors shall have the authority to set use fees for private use of Common Elements or Association Property, as well as the regulations and policies pertaining to such use. The Board of Directors may also establish other fees and deposits determined necessary by the Board. Without limitation, same include: fees for the issuance of parking passes or decals; move in-move out fees and damage deposits (if Association agents or personnel have to prepare the elevators, watch the movers, etc.); pet deposits or registration fees when pets are housed in a Unit; fees for architectural/engineer review of renovation/alteration plans; contractor damage deposits; fees for hurricane preparation (moving furniture from balcony, then closing and opening shutters when Owner's away); and internet service, facsimile service and other services using Association equipment. Nothing in this Declaration shall be construed as obligating the Association to provide any of the aforementioned services.

**11.8 Lease of Association Property or Common Elements.** The power to lease Association Property or Common Elements, as authorized by the Board of Directors, including, but not limited to, the lease of the Building roof area and other Common Elements for antennas or other telecommunications equipment. No use fee may be charged against a Unit Owner for use of the Common Elements or Association Property except fees set by the Board pertaining to an Owner having exclusive use of the Common Elements or Association Property, or as agreed by the Association and the party leasing Association Property or Common Elements, pursuant to an oral or written Lease agreement, or fees authorized by this Declaration of Condominium.

**11.9 Limitation Upon Liability of Association.** Notwithstanding the duty to insure, maintain, repair or replace parts of the Condominium Property, the Association is not liable to Unit Owners or any other person for injury or damage, other than for the cost of maintenance and repair of items for which the Association is otherwise responsible, caused by any latent or unknown 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 alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not same shall have been approved by the Association pursuant to the provisions hereof.

Notwithstanding anything contained herein or in the Condominium Documents or any other document governing or binding the Association, 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, Tenants, Invitees or for any property of any such persons. Without limiting the generality of the foregoing:

**11.9.1** It is the express intent of the Condominium Documents that the various provisions thereof which are enforceable by the Association, and which govern or regulate the use 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; and

**11.9.2** 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, Lee County, and/or any other jurisdiction or the prevention of tortious or criminal activities; and

**11.9.3** Any provisions of the Condominium 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 and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property 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 within its meaning all of the Association's Directors, Officers, Committee Members, and other persons the Association may be required to indemnify, to the extent and limit of such indemnity, and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer.

**11.10 Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew.** The Unit Owner acknowledges that the Condominium is located in a hot, humid climate, which is conducive to the growth of mold and/or mildew. The Board of Directors shall have the authority to adopt reasonable Rules and Regulations regarding maximum or minimum temperatures for Units and/or require that the air conditioning to the Units be set within certain temperature and/or humidity ranges and may require Owners to take such further actions as the Board deems advisable to control humidity and mold and/or mildew growth.

The Association shall not be responsible for the prevention of mold and/or mildew or any damages, including, but not limited to any special or consequential damages, property damages, personal injury, loss of income, emotional distress, death, loss of use, loss of income diminution or loss of value of the Unit, economic damages, and adverse health effects relating to, arising from or caused by mold and/or mildew accumulation regardless of the cause of said mold/or mildew.

Each Unit Owner and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property shall be bound by this provision and shall be deemed to have automatically waived any and all claims, obligations, demands, damages, causes of action, liabilities losses and expenses, whether now known or hereafter known, foreseen or unforeseen, that such person has, or may have in the future, in law or in equity against the



Association, its Officers, Directors, and Committee Members (and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer) arising out of, relating to, or in any way connected with indoor air quality, moisture, or the growth, release, discharge, dispersal or presence of mold and/or mildew or any chemical or toxin secreted therefrom.

**11.11 Restraint Upon 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 his/her Unit.

**12. INSURANCE.** The insurance which shall be carried upon the Condominium Property, including the Units, Common Elements, and Association Property shall be as follows:

**12.1 Authority to Purchase Insurance.** All insurance policies shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.

**12.2 Named Insured.** 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.

**12.3 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 upon request to each first mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished to those first mortgagees who so request not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

**12.4 Coverage.** The Association shall maintain insurance covering the following:

**12.4.1 Property Insurance.** Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general property, vandalism, malicious mischief, other risks customarily insured by condominiums in the locality and standard extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements, the Units, and the personal property of the Association, for the replacement value thereof, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude landscaping and exterior improvements not customarily insured by condominium associations in the locality, and foundation and excavation costs, in its discretion. The Association shall insure air conditioning and heating equipment if required by the Act. The Association shall determine the replacement value of the Insurable Improvements through independent appraisal, at least every 36 months, so long as required by the Act. The Board shall establish the deductible annually, at a duly noticed meeting of the Board, and shall give notice of such meeting, and determine the deductible, as required by the Act, so long as required by the Act. Notwithstanding the foregoing requirement, the Association, through its Board of

Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be reasonably available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11), Florida Statutes (2010), as amended from time to time. The original policy of insurance shall be held by the Association, and mortgagees shall be furnished, upon request, mortgage endorsements covering their respective interests. The word "Building" or "Insurable Improvement" in every hazard policy issued to protect a Condominium building does not include: personal property in the Unit or Limited Common Elements; Unit floor, wall, or ceiling coverings; Unit or balcony electrical fixtures; appliances; water heaters; water filters; built-in cabinets or countertops; window treatments, including curtains, drapes, blinds, hardware and similar window treatment components; and replacements of any of the foregoing, which are located within the boundaries of a Unit and serve only one Unit. The Unit Owners shall also be responsible to insure all alterations, modifications or additions made to the Unit, Limited Common Elements, or Common Elements by said Unit Owner, or his predecessor in interest or title.

Every property insurance policy obtained by the Association shall have the following endorsements: (i) agreed amount and inflation guard and (ii) steam boiler coverage (providing at least \$50,000 coverage for each accident at each location), if applicable.

**12.4.2 Liability Insurance.** The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate, but with combined single limit liability of not less than \$1,000,000 per occurrence with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa, if reasonably available. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage.

**12.4.3 Worker's Compensation.** Such worker's compensation coverage as may be required by law, or deemed advisable by the Board.

**12.4.4 Flood Insurance.** The Association shall purchase flood insurance as may be required by law. Excess insurance may be carried by unit owners, if available, and may be carried by the Association, but is optional.

**12.4.5 Other Insurance.** Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to coverage for changes in building code, Errors and Omissions Officers and Directors Liability insurance coverage, and insurance for the benefit of its employees.

**12.5 Deductible and Other Insurance Features.** The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features, as it

deems desirable and financially expedient, in the exercise of its business judgment, and in the method provided by the Act. The deductible shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the Condominium Property is situated.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association 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 upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, a committee of the Board of Directors or members of any such committee, one or more Unit Owners or as a result of contractual undertakings (including duties performed in connection with the Association's obligations to the Community Association as set forth in the Community Covenants). 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 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.

**12.6 Additional Provisions.** All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units.

**12.7 Premiums.** Premiums upon property insurance policies purchased by the Association shall be paid by the Association as a Common Expense of the Condominium, or if applicable, a Limited Common Expense.

**12.8 Insurance Shares or Proceeds.** All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear. Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

**12.8.1 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 Expenses appurtenant to the Unit.

**12.8.2 Unit; Proceeds On Account Of Damage To Units Shall Be Held In The Following Undivided Shares.**

**12.8.2.1 When The Condominium Building Is To Be Restored.** For the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

**12.8.2.2 When The Condominium 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 Expenses appurtenant to the Unit.

**12.8.2.3 Common Elements and Units.** When both Common Elements and those portions of the Unit insured by the Association are damaged by a common occurrence, the proceeds of insurance shall be allocated between damage to Common Elements, Limited Common Elements, and Units as the Board of Directors shall determine. It shall be presumed that when there are insurance proceeds received on account of a common casualty, but insufficient proceeds for casualty repair (including but not limited to shortfalls occasioned by the existence of a deductible), that such shortfalls shall first be applied to Common Elements damage, and then to damage to Units, it being the intent of this provision that when there is a common casualty loss causing significant damage to the premises, the shortfalls occasioned by deductibles shall be first apportioned to all Unit Owners in proportion to their share of the Common Elements and not applied first to Unit damage

**12.8.3 Mortgages.** In the event a mortgage endorsement has been issued as to a Unit, the share of that 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.

**12.9 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed in the following manner:

**12.9.1 Reconstruction or Repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the 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.

**12.9.2 Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided 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 12.8 above, and distributed first to all First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.

**12.10 Association as Agent.** The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Condominium Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim. The appointment herein made is coupled with interest.

**13. RECONSTRUCTION AFTER CASUALTY.** 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:

**13.1 Determination to Reconstruct or Repair.** Subject to the immediately following paragraph, in the event of damage to or destruction of the Condominium Property insured by the Association, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Property and 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, measured in terms of replacement cost, of the insured Condominium Property is substantially damaged or destroyed and if 80% of the Voting Interests of the Condominium duly and promptly resolve not to proceed with the repair or restoration thereof and a majority of first mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the insured Condominium Property other than that portion of the insured Condominium Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association; provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this Section the words "promptly repair" are used, it shall mean that the repairs are to begin not more than one hundred eighty (180) days from the date the Board of Directors holds sufficient proceeds of insurance and assessments on account for such damage or destruction sufficient to pay the entire estimated cost of such work.

**13.2 Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, as set forth in the plans and specifications for the Building, or if not, then according to plans and specifications approved by the Board of Directors, regardless of whether it is a material alteration or substantial addition as described in Section 9.6 and no vote of the Unit Owners shall be required.

**13.3 Responsibility.** All reconstruction work after a casualty for damaged items that the Association insures shall be undertaken by the Association, except that a Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board of Administration. However, such work, and the disbursement of insurance proceeds, may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, the contract that is used for that purpose, and reasonable verification of appropriate steps to ensure that the work is done and that the contractor is paid for the performance of said work. Unit Owners shall be responsible for reconstructing those items that the Unit Owners are required to insure. All required governmental permits and approvals must be obtained prior to commencing reconstruction. Assessments for the cost of the work shall be set forth in Section 13.6 below. If an Owner fails to repair and reconstruct those items that the Unit Owner is responsible for under this Declaration, the Association shall have, without waiver of other remedies, the right to proceed in accordance with Section 9.7, in which event the Unit Owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by such rights as exist for collecting Common Expenses under these Condominium Documents i.e., a Lien for Charges.

**13.4 Estimates of Costs.** After a determination is made to rebuild or repair damage to property for which the Association or Unit Owner has the responsibility of reconstruction and repair, the Association or Unit Owner shall obtain promptly reliable and detailed estimates of the cost to rebuild or repair.

**13.5 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:

**13.5.1 Association – Lesser Damage.** If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request by a First Mortgagee which is 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.

**13.5.2 Association- Major Damage.** If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

**13.5.3 Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to 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.

**13.6 Assessments.** The cost of reconstruction after casualty for those portions of the Condominium Property required to be insured by the Association shall be considered a Common Expense of the Condominium, pursuant to Section 718.111(11)(j), Florida Statutes (2010), as amended from time to time.

**13.7 Termination of Condominium if Not Reconstructed.** If the Owners vote not to reconstruct the Condominium by vote described above, the Condominium shall be terminated in accordance with the procedures set forth in Article 18 hereof.

**13.8 Additional Board Authority.** In addition to Board authority granted by law and the Condominium Documents, the Board shall have the following power and authority in connection with emergency conditions:

**13.8.1** To determine after a casualty whether the Units can be safely occupied, which decision shall not be conclusive as to the determination of habitability described above. Such decision shall be based upon the advice of emergency management officials or a licensed professional.

**13.8.2** To declare any portion of the Condominium Property or Association Property unavailable for occupation by Owners, Family members, Tenants, or Guests after a casualty, including during the rebuilding process. Such decision by the Board shall be based upon the advice of emergency management officials or a licensed professional (such as an engineer) and can be made only if necessary to protect the health, safety, or welfare of the Association, Owners, Family members, Tenants, or Guests.

**13.8.3** To mitigate damage and take action to prevent the spread of fungus (including but not limited to mold and mildew) by tearing out wet drywall and carpet (even if the Unit Owner is obligated to insure and/or replace those items) and to remove personal property from the Unit and dispose of damaged property or store such property onsite or at an offsite location, with Owners responsible for reimbursing the Association for items for which the Owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.

**13.8.4** To contract on behalf of Unit Owners, with said Owners responsible to reimburse the Association, for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes, debris removal, dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in the Units. The Unit Owner shall be responsible to reimburse the Association within ten (10) days of the Association's invoice. The Association's right to payment shall be secured by a Common Expense Lien as provided in the Act and actions to collect such sums shall entitle the Association to recover interest, late fees, attorney's fees, and other costs and expenses of collection.

**13.8.5** To implement a disaster plan prior to, during or after an impending disaster including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.

**13.8.6** To adopt, by Board action, emergency assessments with such notice deemed practicable by the Board.

**13.8.7** To adopt emergency Rules and Regulations governing the use and occupancy of the Units, Common Elements, Limited Common Elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

**13.8.8** To enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

**13.8.9** To exercise all emergency powers set forth in the Act.

**14. USE RESTRICTIONS.** Use of the Condominium Property shall be in accordance with the following use restrictions and reservations:

**14.1 Occupancy of Units; Single Family Residence.** A Condominium Unit shall be used only as a Single Family residence by a Unit Owners (or Primary Occupant where designation of a Primary Occupant is required by Article 16 hereof), the Unit Owner's Family as defined in Section 1.22 hereof, Tenants approved by the Association as provided in Article 17

hereof (and their Families as defined in Section 1.22 hereof), and Guests (as provided in Article 15 hereof). No more than five (5) persons may permanently occupy a two (2) bedroom Unit and no more than seven (7) persons may permanently occupy a three (3) bedroom Unit. For purposes of these Condominium Documents, "permanently occupy" means to sleep in the Unit for more than thirty (30) nights during a calendar year. No Unit may be divided or subdivided into a smaller Unit nor any portion sold or otherwise transferred. Visitation by Guests is governed by Article 15 of this Declaration of Condominium.

Units may not be used for commercial or business purposes, except incidental commercial purposes as described below. Unit Owners (and their Family Members and Tenants) may use Units for "home office" or "telecommuting" purposes, provided that such uses do not involve customers or clients coming onto the Condominium Property, the posting of any signage in the Condominium, the storage of equipment, products, or materials in the Condominium, nor more than two regular deliveries per day of correspondence or similar items from customary express delivery services. Any Owner may use his residence for incidental commercial purposes, so long as (i) property is not used for manufacturing, construction or installation of materials sold or advertised to be sold, whether to retail or wholesale customers; (ii) the nature of the business activity does not invite or permit suppliers, customers or vendors to visit or frequent the Unit, even on isolated occasions; (iii) the business activity within the Unit is limited to telephone calls and written correspondence in and from the Unit; and (iv) no employees or contractors, other than those who regularly reside within the Unit may perform any work or other services to the business at the Unit.

**14.2 Garages.** Garages shall be used only for the storage of the Unit Owner's or Tenant's vehicle, the storage of a golf cart (which shall be kept only in the Garage) and the storage of other property of the Owner thereof (provided that the storage of such other property cannot prevent the use of the Garage for vehicle and golf cart (if applicable) storage).

**14.3 Children.** Children shall be permitted to reside in Units, subject to reasonable supervision.

**14.4 Pets.** Each Unit Owner or Tenant (regardless of the number of joint Owners or Tenants) may maintain two (2) pets total. Only dogs and cats are permitted to be kept as pets. No pet shall be kept, bred or maintained for any commercial purpose, shall not become a nuisance or annoyance to neighbors. Pets must be registered with the Association. Guests may not bring pets onto the Condominium Property. No vicious breed of dog (including but not limited to Staffordshire Terriers a/k/a "Pit Bulls", Dobermans, Rottweilers, Chows, Presa Canarios, Akitas, Wolf hybrids, Huskies, and similar types of dogs) may be kept at the Condominium nor "exotic" pets such as snakes, lizards, feral animals and the like. The Board of Directors shall have the authority to determine if a breed of dog is considered "vicious" or if any other type of pet is "exotic". No reptiles or wildlife shall be kept in or on the Condominium Property (including Units). Pet owners must pick-up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be kept on a leash no more than six (6) feet in length at all time when outside the Unit and shall not be permitted on outdoor recreational areas (e.g., pool decks). No pets may be kept in or on balconies when the Owner is not in the Unit. Without limiting the generality of other provisions of this Declaration, a violation of the provisions of this paragraph shall entitle the Association to all rights and remedies, including, but



not limited to, the right to fine Unit Owners or Tenants (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property. This Section shall not prohibit the keeping of fish in aquariums, or service animals, as provided by law.

**14.5 Alterations.** Without limiting the generality of Article 9 hereof, and subject to the proviso contain therein as to hurricane shutters and subject to Section 718.113(5), Florida Statutes (2010), no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common elements appurtenant thereto or Common Elements, including, but not limited to, painting or other decorating of any nature (other than to the interior of the Unit), installing any electrical wiring, television antenna, machinery, or air conditioning units or in any manner changing the appearance of any portion of the Building, without obtaining the prior written consent of the Association, in the manner specified in Article 9 hereof.

**14.6 Use of Common Elements.** The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the used and occupancy of Units.

**14.7 Nuisances.** No public or private nuisances (as reasonably determined by the Board of Directors) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants.

**14.8 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, elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 14.8.

**14.9 Hurricane Protection.** No type of hurricane protection may be installed in or around the Units other than hurricane shutters meeting the specifications (including as to location) adopted by the Board of Directors as required by the Act. Hurricane protections, including hurricane shutters shall be the Unit Owner's responsibility for purposes of insurance, maintenance, repair, replacement and/or reconstruction after casualty.

**14.10 Exterior Improvements; Landscaping.** Without limited the generality of other Articles of this Declaration, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Buildings (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment), nor to plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Board of Directors.

**14.11 Vehicle Restrictions.** Except as permitted below, no vans, trucks, commercial vehicles, campers, mobile homes, recreational vehicles, boats or trailers shall be kept on the Condominium Property. For purposes of the foregoing, "commercial vehicles" shall mean those not designed or used for customary personal/family purposes, and as may further be defined in the Rules and Regulations. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether the same is a commercial vehicle. The foregoing shall not prohibit, however, (i) the parking of otherwise prohibited vehicles on the Condominium Property in the course of providing services to the Condominium Property, the Occupants thereof or the Association, (ii) unmarked, non-commercial pick-up trucks of less than 7,000 pound Gross Vehicle Weight parked in Garages or (iii) vans with windows which contain seating for at least four (4) persons, provided that no vehicles may bear commercial-type lettering or graphics. All vehicles kept on the Condominium Property shall be operational and in good condition. In the event of doubt or dispute as to whether a vehicle is prohibited by this Section, the good-faith determination of the Board of Directors shall be binding and conclusive. Golf carts shall be permitted, subject to regulations by the Association, the Community Association, and applicable laws. Vehicles brought onto Condominium Property in violation of this provision may be towed away at the expense of the vehicle owners, without limiting other remedies.

All Unit Owners shall use at least one (1) space in their respective Garages for the parking of a vehicle. If a Unit at any time has two or more vehicles affiliated with said Unit (Owner, Tenant, Guest or Invitee) parked overnight on the Condominium Property, one such vehicle must be parked in the Garage. Garage doors shall be kept closed at all times except when in actual use and during reasonably limited periods when the Garage is being cleaned or other activities are being conducted therein which reasonably require the doors to be left open.

All persons are hereby advised to consult with the Association and the Community Association (which may have its own vehicle restrictions) prior to bringing any vehicle upon the Condominium Property.

**14.12 Relief by Association.** The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Article 14 for good cause shown.

**14.13 Changes in Permitted Uses.** No amendments to this Article 14, any other provision of this Declaration governing the use of Units or Common Elements or to any rules or regulations of the Association shall operate to prohibit the keeping of a pet, parking of a vehicle or leasing or occupancy of a Unit where the same was (i) permitted prior to the effectiveness of the amendment, (ii) is being conducted in reliance on such permissibility and (iii) is continuing with the same pet, same vehicle, same lessee or same occupant as existed prior to the effectiveness of the amendment. However, such changes may be applied on a prospective basis. Likewise, no improvement made to or about any Unit (e.g., the installation of hurricane shutters) which was permitted at the time of its making shall be required to be removed by virtue of a change in the permissibility of such types of improvements.

**14.14 Flooring.** All Units must have anti-fracture membrane installed beneath any hard surface floor covering. The structural integrity of balconies and terraces constructed of steel reinforced concrete is affected adversely by water intrusion and rust aggravated by the water

retention qualities of indoor-outdoor carpet, river rock, and unglazed ceramic tile and its grout. For this reason, no indoor-outdoor carpet or river rock may be used on balconies or terraces, and all tile and its bedding and grout must be of adequate material and be applied as to be waterproof. Any flooring installed by a Unit Owner on a balcony or terrace of a Unit must be installed so as to ensure proper drainage.

**14.15 Additional Restrictions.** Additional use restrictions are contained in the Rules and Regulations, which may be amended from time to time by the Board of Directors. Amendments to the Rules and Regulations may, but need not be recorded in the Public Records. Additional use restrictions are also contained elsewhere in the Condominium Documents.

**15. GUEST OCCUPANCY.** A "Guest" is defined as a person who enters upon the Condominium Property at the invitation of a Unit Owner or Tenant, (or their respective families) for the purpose of visiting the Unit Owner or tenant (or their respective families), occupying the Condominium Unit for less than thirty (30) days during any calendar year, or utilizing the Condominium Property. Use or visitation without consideration (payment) distinguishes a Guest usage from a tenancy. There are various types of Guest uses, which are regulated as follows:

**15.1 Non-Overnight Visitation by Guests When Unit Owner or Tenant is in Residence.** There is no restriction against this type of Guest usage, provided that same does not create a nuisance or annoyance to other Condominium residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict or prohibit Guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Non-overnight Guests need not be registered with the Association. Non-overnight Guests shall be entitled to use the Condominium facilities only when accompanied by the Unit Owner or Tenant (or an adult, resident Member of the Unit Owner's or Tenant's Family), unless otherwise approved by the Board of Directors. The Board may establish additional restrictions on non-overnight Guest usage of Condominium facilities, including but not limited to the maximum numbers of Guests who may use common facilities.

**15.2 Overnight Guests When Unit Owner or Tenant is in Residence.** Unit Owners and Tenants (and their respective Families) may have related or unrelated overnight Guests, so long as the Unit Owner or Tenant is in simultaneous residence. There is no requirement for registration of overnight Guests with the Board. The Association may restrict or prohibit Guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Under no circumstances may more than eight (8) persons (including the Unit Owners, Tenants, their Families, Guests or any other Occupants) sleep overnight in a two (2) bedroom Unit and no more ten (10) persons in a three (3) bedroom Unit.

**15.3 Non-Overnight Guests in the Absence of the Unit Owner or Tenant.** Unit Owners and Tenants are not permitted to have non-overnight Guests when the Unit Owner or Tenant is absent from the Condominium. Unit Owners and Tenants may have Units inspected by caretakers, friends or relatives. However, such individuals shall not be permitted to use Condominium facilities, such as recreational facilities (including but not limited to the pool, parking areas, and beach access).

**15.4 Overnight Guests in the Absence of the Unit Owner or Tenant.** Tenants are not permitted to have overnight Guests (related or non-related) in the absence of the Tenants' simultaneous residence. Unit Owners are permitted to have overnight Guests in the absence of the Unit Owner subject to the following conditions, and such other Rules and Regulations as may be deemed necessary by the Board to effectuate the residential, non-transient nature of this Condominium.

**15.4.1 Non-Related Overnight Guests** in the absence of the Unit Owner will be limited to two (2) occupancies per calendar year. The limitation on Unit density in Section 14.1 applies.

**15.4.2 Related Overnight Guests** may occupy a Unit in the absence of the Unit Owner. For the purpose of this provision, "related" means all persons who are staying in the Unit on an overnight basis, in the absence of the Unit Owner, are related to the Unit Owner or Primary Occupant (by blood, marriage, domestic partnership or adoption) to the following degree: parent, grandparent, child, grandchild, or sibling. The limitation on Unit density in Section 14.1 applies.

**15.5 Additional Board Authority.** The Board may promulgate such rules, policies, and procedures as are necessary to implement this Article. In the event that Unit Owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as guest occupancies, the Association may require proposed Guest Occupants to submit proof of familial relationship, an affidavit as to absence of payment for the right to occupy the premises, or other proof that the leasing provisions of Article 16 are not being violated.

**16. MAINTENANCE OF COMMUNITY INTERESTS.** In order to maintain a community of congenial Unit Owners who are financially responsible, and thus protect the value of the Units, the use and transfer of Units by any Owner shall be subject to the following provisions as long as the Condominium exists upon the land, which provisions each Unit Owner covenants to observe:

**16.1 Ownership by Individuals.** A Unit may be owned by one natural person.

**16.2 Co-Ownership.** Co-ownership of Units is permitted. If the co-owners are other than husband and wife or Domestic Partners, the Unit Owners must designate to the Board one natural person as "Primary Occupant." The use of the Unit by other persons shall be as if the Primary Occupant was the only actual Owner. No more than one change in Primary Occupant will be approved in any twelve (12) month period. No time share estates may be created. "Unit Sharing" by multiple families and "Fractional Ownership" are prohibited.

**16.3 Ownership by Corporations, Partnerships, Limited Liability Companies, Trusts, or Other Artificial Entities.** A Unit may be owned in trust, or by a corporation, partnership, limited liability company, or other entity which is not a natural person. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the Unit may be used as a short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Unit, fractional ownership, or used as Guest accommodations for employees, customers, or Guests of Units owned by business entities, religious, or charitable organizations, and the like. The Owners of a Unit owned by a

partnership, trustee, or corporation, limited liability company, or other entity as a Unit Owner shall designate to the Board one natural person to be the "Primary Occupant." The use of the Unit by other persons shall be as if the Primary Occupant were the only actual Unit Owner. The Primary Occupant shall be the person entitled to vote on behalf of the Unit, and exercise rights of membership. No more than one change in designation of Primary Occupant will be approved in any twelve (12) month period.

**16.4 Life Estate.** A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant shall be the only Member from such Unit, and occupancy of the Unit shall be as if the life tenant were the only Owner. The life tenant shall be liable for all Assessments and Charges against the Unit. Any vote, consent, or approval required by the Condominium Documents or law may be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

**16.5 Sales and Other Conveyances of Title.** No conveyance of a Unit shall be valid unless a certificate executed and acknowledged by an officer of the Association, stating that all Assessments levied against such Unit have been paid in full, is recorded together with the instrument of conveyance. The Board of Directors shall furnish such certificate upon 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. The new Owner may not take occupancy of the Unit until he has delivered a copy of his deed to the Unit to the Association.

**17. LEASING.** The lease of a Unit is defined as occupancy of the Unit by any person other than the Unit Owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration (the payment of money, the exchange of goods or services, or any other exchange of value). The term "leasing" and "renting" shall be used interchangeably for the purpose of this Declaration of Condominium. The term "Tenant" and "Lessee" shall likewise be used interchangeably. All leases must be in writing. Should a Unit Owner wish to lease his Unit, he shall comply with the approval requirements of the Community Association. No individual rooms may be rented and no transient tenants may be accommodated. "Rent-sharing" and subleasing are prohibited. All leases shall be for a minimum period of thirty (30) days. This section shall apply to all Unit Owners, regardless of when the Unit was purchased.

**17.1 Tenant Conduct; Remedies.** All leases will provide, or be deemed to provide that the Tenants have read and agreed to be bound by the Declaration of Condominium, Articles of Incorporation, Bylaws, and Rules and Regulations as the same may be amended from time to time (the "Condominium Documents"). The lease shall further provide or be deemed to provide that any violation of the Condominium Documents shall constitute a material breach of the lease and subject the Tenant to eviction as well as any other remedy afforded by the Condominium Documents or Florida law. If a Tenant, other Unit Occupant, Guest or Invitee fails to abide by the Condominium Documents, the Unit Owner(s) shall be responsible for the conduct of the Tenants, Occupants, Guests and Invitees and shall be subject to all remedies set forth in the Condominium Documents and Florida law, without waiver of any remedy available to the Association as to the Tenant. The Unit Owner shall have the duty to bring his Tenant's conduct

(and that of the other Unit Occupants, Guests and Invitees) into compliance with the Condominium Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the Unit Owner fails to bring the conduct of the Tenant into compliance with the Condominium Documents in a manner deemed acceptable by the Association, the Association shall have the authority to act as agent of the Unit Owner to undertake whatever action is necessary to abate the Tenants' noncompliance with the Condominium Documents (or the other noncompliance of other Occupants, Guests or Invitees), including without limitation the right to institute an action for eviction against the Tenant in the name of the Association in its own right, or as agent of the Unit Owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions, from the Unit Owner which shall be secured by a continuing lien in the same manner as assessments for Common Expenses, to wit, secured by a Lien for Charges.

**18. METHOD OF AMENDMENT OF DECLARATION.** Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

**18.1 Proposal of Amendments.** An amendment may be proposed by either a majority of the Directors or by twenty-five percent (25%) of the Voting Interests of the Association.

**18.2 Proposed Amendment Format.** Proposals to amend the existing Declaration of Condominium shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM. SEE ARTICLE NUMBER \_\_\_ FOR PRESENT TEXT."

**18.3 Notice.** Copies of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**18.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3rds) of the Voting Interests of the Condominium present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds (2/3rds) of the entire Voting Interests of the Condominium. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for membership vote.

**18.5 Effective Date.** An amendment when adopted shall become effective after being recorded in the Lee County Public Records according to law.

**18.6 Proviso.** Unless otherwise provided specifically to the contrary in this Declaration (e.g., in Article 20 hereof), no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) thereof, all record owners

of mortgages or liens thereon and the Owners of a majority of all other Units, shall join in the execution of the amendment.

**19. TERMINATION.** The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80% of the applicable interests in the Common Elements and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of termination and said certificate shall be recorded among the public records of the County.

This Article may not be amended without the consent of the Primary Institutional First Mortgagee, which consent shall not be unreasonable withheld.

**20. CONDEMNATION.**

**20.1 Deposits of Awards with Insurance Trustee.** The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee (if appointed). Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, the amount of that award shall be set off against any sums hereafter payable to that Owner.

**20.2 Determination Whether to Continue Condominium.** Whether the Condominium will be continued after condemnation will be decided in the manner provided 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.

**20.3 Distribution of Funds.** If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments 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 the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Article 20 specifically provided.

**20.4 Units Reduced but Habitable.** If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium:

**20.4.1 Restoration of Unit.** The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be payable by the Owner of the Unit.

**20.4.2 Distribution of Surplus.** The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.

**20.4.3 Adjustment of Shares in Common Elements.** If the floor area of a Unit is reduced by the taking, the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the share of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:

**20.4.3.1** Add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and

**20.4.3.2** Divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

**20.5 Unit Made Uninhabitable.** If the taking is of the entire Unit or so reduces the size of the Unit that it cannot be made habitable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

**20.5.1 Payment of Award.** The award shall be paid first to the applicable First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third; jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.

**20.5.2 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 of the Association; provided that if the cost of the work thereof shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.



**20.5.3 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 equally among the reduced number of Unit Owners (and among reduced Units).

**20.5.4 Assessments.** If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changed 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.

**20.5.5 Arbitration.** If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of taking.

**20.6 Taking of Common Elements.** Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, 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 to the Unit Owners in the shares in which they own Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

**20.7 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 of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.

## **21. COMPLIANCE AND DEFAULT.**

**21.1 Duty to Comply; Right to Sue.** Each Unit Owner, his Family, Tenants, Guests, Invitees and all Unit Occupants and the Association shall be governed by and shall comply with the provisions of the Condominium Act and the Condominium Documents. Action for damages

or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against:

**21.1.1** The Association;

**21.1.2** A Unit Owner; or

**21.1.3** Anyone who occupies a Unit as a Unit Owner, Family member, Tenant, Occupant or Guest. Unit Owners shall be jointly and severally liable for violations of the Condominium Documents by their Family members, Tenants, Guests, Invitees and Unit Occupants.

**21.2 Attorney's Fees.** In any legal proceeding arising out of an alleged failure of a Unit Owner, Family member, Tenant, Guest, Invitee Unit Occupant or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial and on appeal.

**21.3 No Election of Remedies.** All rights, remedies and privileges granted to the Association or Unit Owners under any terms, provisions, covenants, or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, or at law or in equity.

**21.4 Waiver of Application of Condominium Documents.** The Association shall have the right to waive the application of one or more of the covenants or restrictions of the Condominium Documents, or to permit a deviation from said covenants or restrictions, as to any Unit where, in the discretion of the Board, hardship circumstances exist which justify such waiver or deviation. In the event of any such waiver or permitted deviation, or in the event the Association fails to enforce violation of said covenants or restrictions, such actions or inactions shall not be deemed to prohibit nor restrict the right of the Association, or any other person having the right to enforce said covenants or restrictions, from insisting upon strict compliance with respect to all other Units, nor shall any such actions be deemed a waiver of any of the covenants or restrictions contained in the Condominium Documents as same may be applied in the future.

**21.5 Notice of Lien or Suit.**

**21.5.1 Notice of Lien.** A Unit Owner shall give to the Association written notice of every lien upon his Unit other than for permitted first mortgages, taxes, and special assessments, within five (5) days after the Unit Owner receives actual notice of the attachment thereof.

**21.5.2 Notice of Suit.** A Unit Owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his Unit, or impose liability on the Association, such notice to be given five (5) days after the Unit Owner receives actual knowledge thereof.

**21.5.3 Failure to Comply.** Failure of an Owner to comply with this Section 20.5 will not affect the validity of any judicial suit; however, the failure may render the Owner liable to any party injured by such failure.

**22. THE COMMUNITY ASSOCIATION.** Lexington Community Association, Inc. (same being defined herein as the "Community Association") has been created to administer the Community Covenants and, generally, to operate, administer, regulate the use of, and maintain and repair the "Common Areas" of all types under the Community Covenants. In addition to the Unit Owners, Owners of other residential units (and possibly other parties) will be Members of the Community Association and, as such, shall have the right of access to and use of the Common Areas. The following provisions have been included herein, and shall be interpreted and enforced, in order to further the purposes of the Community Association and the Community Covenants:

**22.1 Maintenance.** The Community Association shall, per the Community Covenants, maintain the following portions of, or installations with, the Common Elements: grass and landscaping, pavement (including painting thereon), curbs and parking bumpers (if any), the common irrigation system, street lights and directional and identifying signage.

**22.2 Assessments and Collections.** Assessments levied by the Community Association are the responsibility of the Unit Owners individually and not Common Expenses hereunder. However, the Association may enter into an agreement with the Community Association whereunder the Association may collect the Assessments of the Community Association for Unit Owners, or vice versa.

**22.3 Amendments.** Notwithstanding anything contained in this Declaration or the Articles of Incorporation, By-Laws or rules and regulations of the Association to the contrary, no amendment to any of said documents shall be effective as against the Community Association if same alters, impairs or prohibits the rights of the Community Association or its Members unless the Community Association consents thereto.

**22.4 Non-Discrimination.** Neither the provisions of this Declaration nor those of the Articles of Incorporation, By-Laws or Rules and Regulations of the Association shall be interpreted or enforced in a manner which discriminates against the Community Association or its Members (particularly, but without limitation, its Members who are not Unit Owners) or Members of the Association entitled to use any portion of the Common Elements.

**22.5 Community Association Representative.** The Sutton Walk Voting Member and/or Board Representative for the Community Association shall be elected or seated as provided in the Community Covenants and Articles of Incorporation and By-Laws of the Community Association.

## **23. MISCELLANEOUS PROVISIONS.**

**23.1 Covenants Running with the Land.** The covenants and restrictions as herein contained, or forming a part of the Condominium Documents, shall be deemed to run with the land.

**23.2 Savings Clause.** If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, or other governmental agency with proper authority to so hold, the validity of the remainder of said Condominium Documents shall remain in full force and effect.

**23.3 Heirs, Successors and Assigns.** These Condominium Documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all Unit Owners.

**23.4 Notices.** All notices shall be given as provided in the Bylaws.

**23.5 Compliance with Fair Housing Laws.** There shall be no limitation upon sale, lease, or occupancy of any Unit based upon race, creed, color, sex, religion, national origin, handicap, or familial status. The Association may make reasonable accommodations, including reasonable waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the Condominium premises, or to comply with other legal requirements.

**23.6 Rights of Institutional Mortgagees.**

**23.6.1** "Institutional First Mortgagee" shall mean a bank, savings and loan association, insurance company, 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 Mortgagees of Units to which at least fifty-one percent (51%) of the Voting Interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant. "Primary Institutional First Mortgagee" shall mean 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. Institutional First Mortgagees have the right, upon written request to the Association to: (a) examine the Condominium Documents and the Association's books and records; (b) receive a copy of the Association's financial statement for the immediately preceding fiscal year; (c) receive notices of and attend Association meetings (however, the Association's failure to notify any mortgagee shall not affect any meeting, action or thing that was to have been the subject of the notice or affect the validity thereof, and shall not be the basis of the Association's liability); (d) receive notice of an alleged default in any obligations hereunder by any Unit Owner, on whose Unit such Mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to the Unit Owner; and, (e) receive notice of any substantial damage or loss to any portion of the Condominium Property.

**23.6.2** Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of: (a) any condemnation or casualty loss affecting a material portion of the Condominium Property or the affected mortgaged Unit; (b) a sixty (60) days delinquency in the payment of the Assessments on a mortgages Unit; (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity

bond maintained by the Association; (d) any proposed termination of the Condominium; and, (e) any proposed action which requires the consent of a specified number of mortgage holders.

**23.6.3** The approval of a majority of Institutional First Mortgagees shall be required to effect an amendment to the Declaration which: changes the configuration or size of any Unit in any material fashion; materially alters or modifies the appurtenances to the Unit; changes the proportion or percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Surplus; or permits time share estates to be created in any Unit.

**23.7 Conflicts.** In the event of a conflict between any provision of the Condominium Documents and the Condominium Act, the Condominium Act shall control, except in cases where the Act permits the Condominium Documents to regulate the subject, in which case the Condominium Documents will control. In the event of a conflict between this Declaration and the other Condominium Documents, same shall be governed as provided in the Bylaws.

**23.8 Interpretation.** Notwithstanding any rule of law to the contrary, the provisions of this Declaration and the Condominium Documents will be liberally construed to effect the purposes herein expressed with respect to the proper operation of the Association and the Condominium Property, the preservation of the value of Units, and the promotion of the right to quiet and peaceful enjoyment of the Condominium Property by Unit Owners, their Families, Tenants, Guests and Invitees. The Board of Directors shall be responsible for interpreting the provisions of the Condominium Documents. The Board's interpretations shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Association's legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the interpretation is valid.

**23.9 Captions and Headings.** The headings and captions used in the Condominium Documents are solely for convenience sake and shall not be considered a limitation of any nature in interpreting the Condominium Documents.

**23.10 Waiver.** No provisions contained in this Condominium Documents or Rules and Regulations shall be deemed to have been waived because of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

**23.11 Plurality; Gender.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

ACTIVE: 2175826\_5

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF**

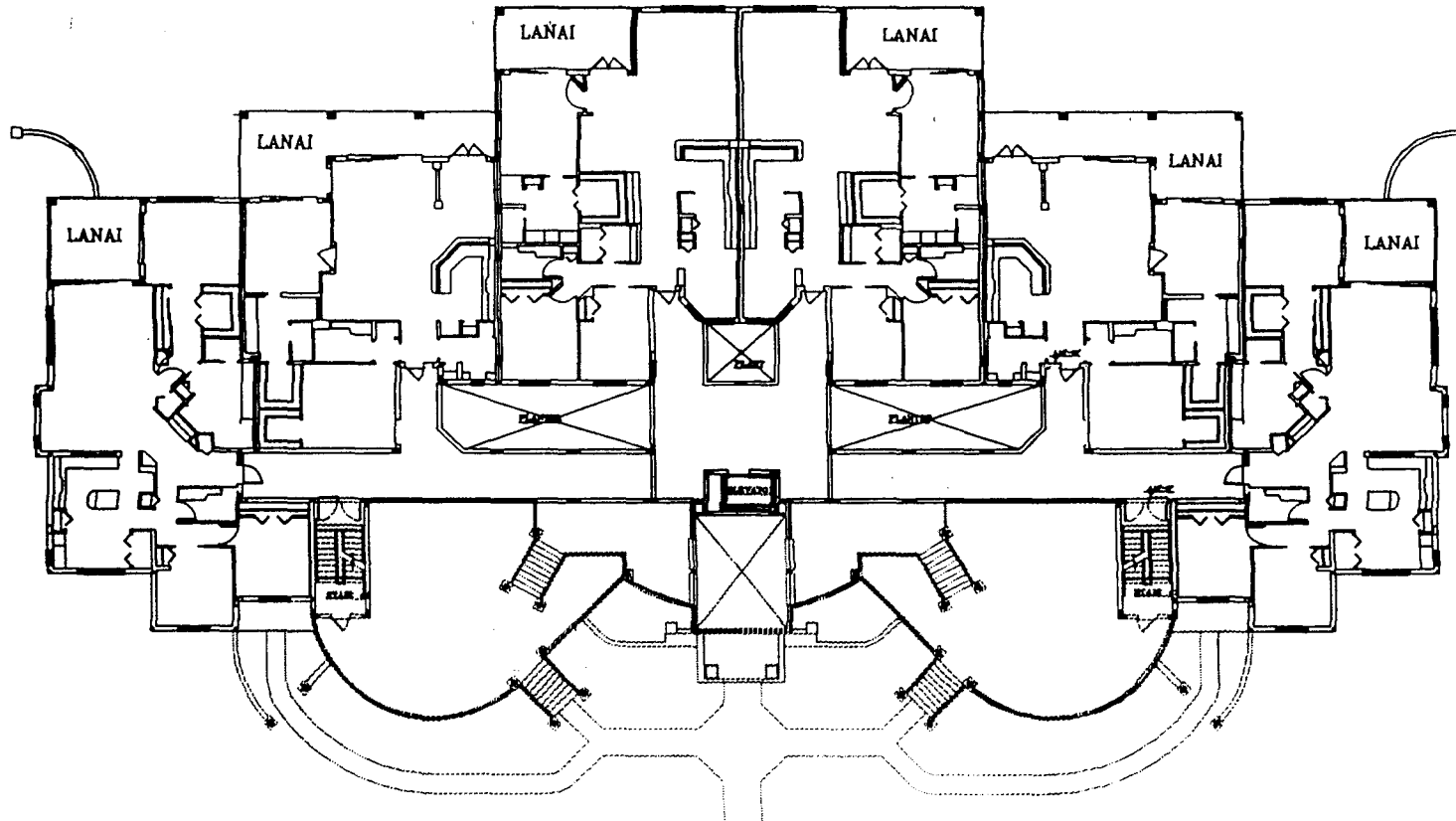
**SUTTON WALK AT LEXINGTON CONDOMINIUM NO. 1**

**EXHIBIT "A"**

**Summary**

The following legal descriptions, surveys and site plans are incorporated by reference:

1. Legal Description recorded at O.R. Book 2773, Pages 3514 – 3515, of the Public Records of Lee County, Florida.
2. Surveys and site plans recorded at O.R. Book 2773, Pages 3516 – 3523, of the Public Records of Lee County, Florida.
3. Legal Description recorded at O.R. Book 2836, Pages 2318 – 2319, of the Public Records of Lee County, Florida.
4. Surveyor Certificate of Substantial Completion recorded at O.R. Book 3094, Page 2035, of the Public Records of Lee County, Florida.
5. Surveys and site plans recorded at O.R. Book 3094, Pages 2036 – 2037, of the Public Records of Lee County, Florida.
6. Surveyor Certificate of Substantial Completion recorded at O.R. Book 3240, Page 1782, of the Public Records of Lee County, Florida.
7. Surveys and site plans recorded at O.R. Book 3240, Pages 1783 – 1784, of the Public Records of Lee County, Florida.
8. Surveyor Certificate of Substantial Completion recorded at O.R. Book 3240, Page 1785, of the Public Records of Lee County, Florida.
9. Surveys and site plans recorded at O.R. Book 3240, Pages 1786 – 1787, of the Public Records of Lee County, Florida.



SUTTON WALK AT LEXINGTON,  
RESIDENTIAL LEVEL 1 FLOOR PLANS

"LANAIS, STORAGE CLOSETS, BALCONIES AND  
GARAGE PARKING ARE LIMITED COMMON ELEMENTS."

**CES** COMMUNITY ENGINEERING SERVICES, INC.  
Civil Engineering • Planning • Project Management  
9200 Bonita Beach Road Suite 213  
Bonita Springs, Florida 33923  
Telephone (941) 495-0009 Fax (941) 495-7934

SUTTON WALK AT LEXINGTON,  
CONDOMINIUM No. 1  
SHEET 1 of 3

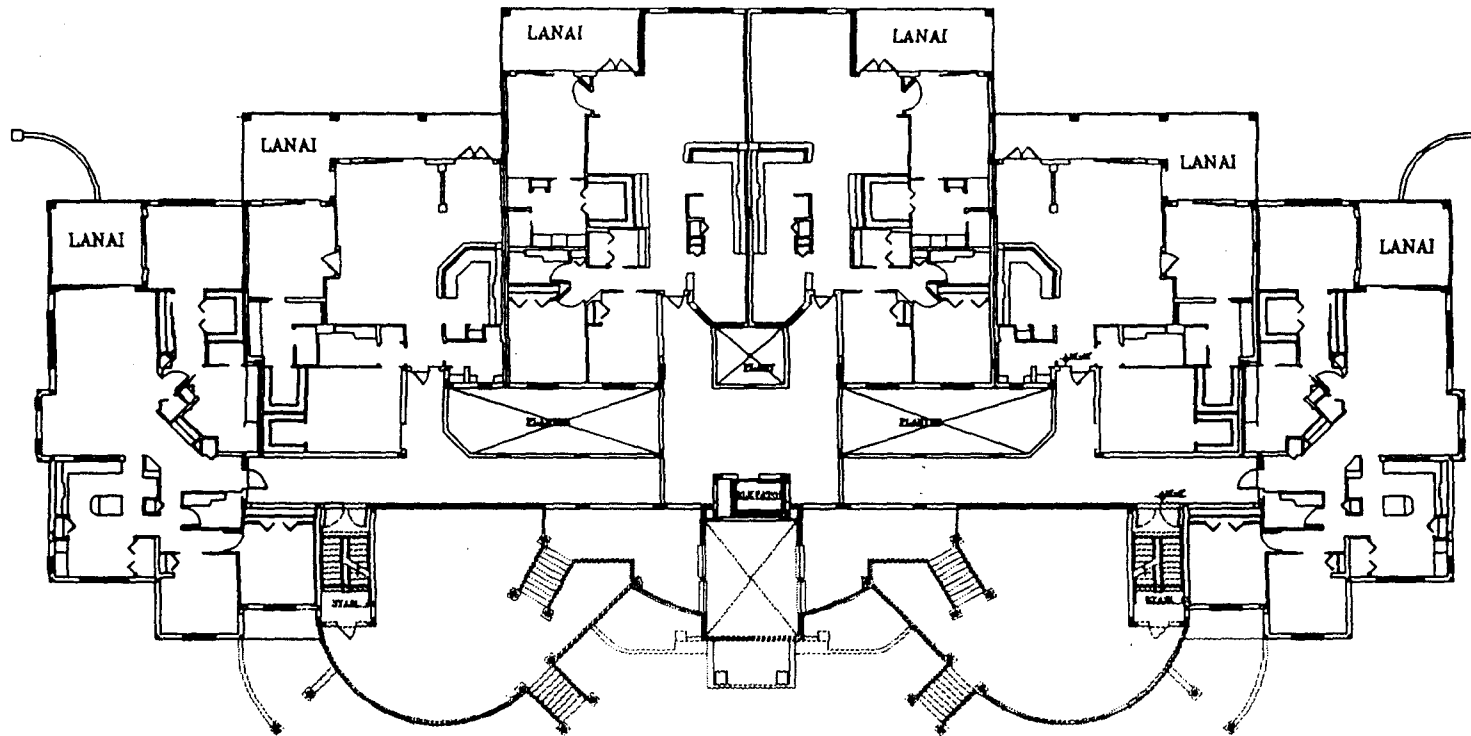


Exhibit "A"  
Page 3 of 8

# SUTTON WALK AT LEXINGTON, RESIDENTIAL LEVEL 2, 3, AND 4 FLOOR PLANS

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SUTTON WALK AT LEXINGTON,  
CONDOMINIUM No. 1

DATE: 6/24/96

SHEET 2 OF 2



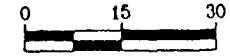


Exhibit "A"  
Page 4 of 8



SIDE ELEVATION



FRONT ELEVATION

SUTTON WALK AT LEXINGTON,  
FRONT ELEVATION

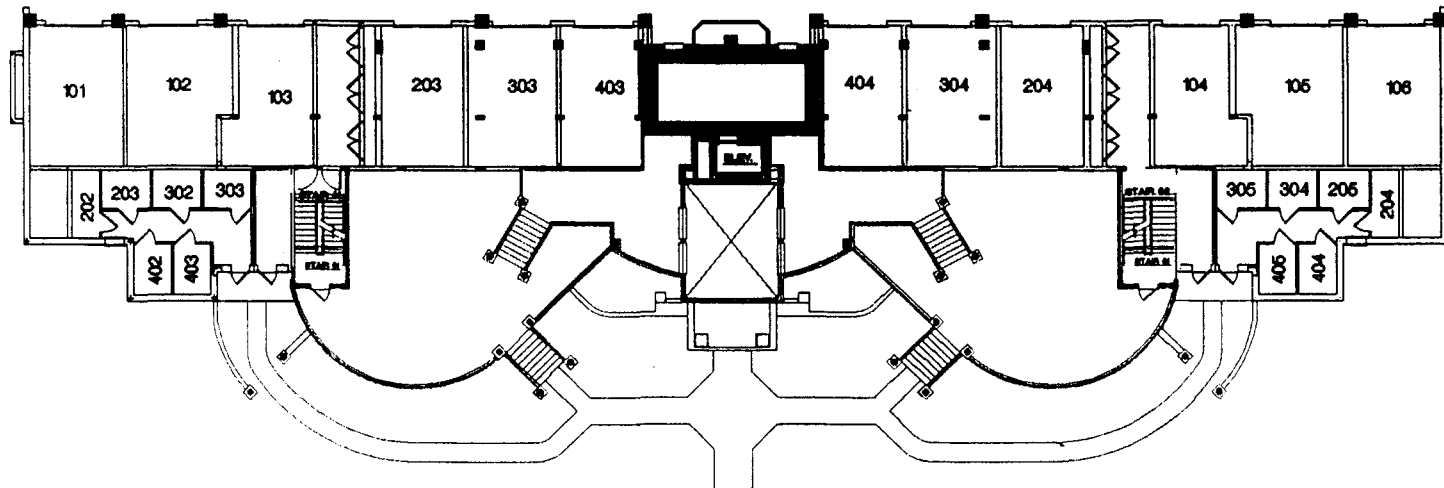
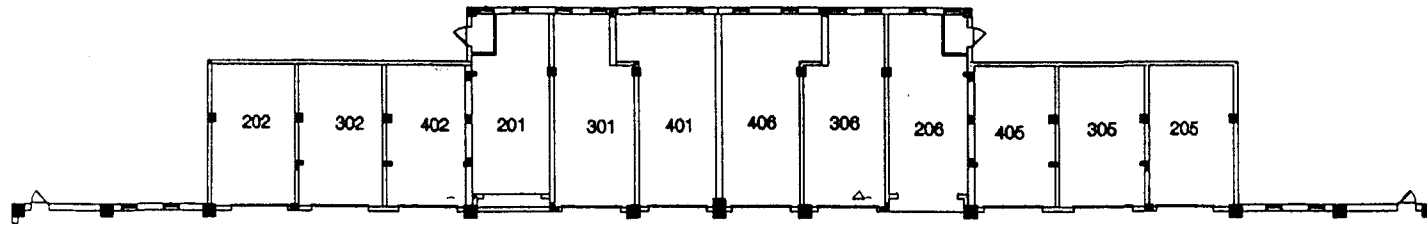
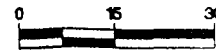
"LANAIS, STORAGE CLOSETS, BALCONIES AND  
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Telephone (813) 488-0000

SUTTON WALK AT LEXINGTON,  
CONDOMINIUM No. 1



### SUTTON WALK AT LEXINGTON, PARKING GARAGE DESIGNATIONS

Exhibit "A"  
Page 5 of 8

\*LANAIS, STORAGE CLOSETS, BALCONIES AND GARAGE PARKING ARE LIMITED COMMON ELEMENTS.\*



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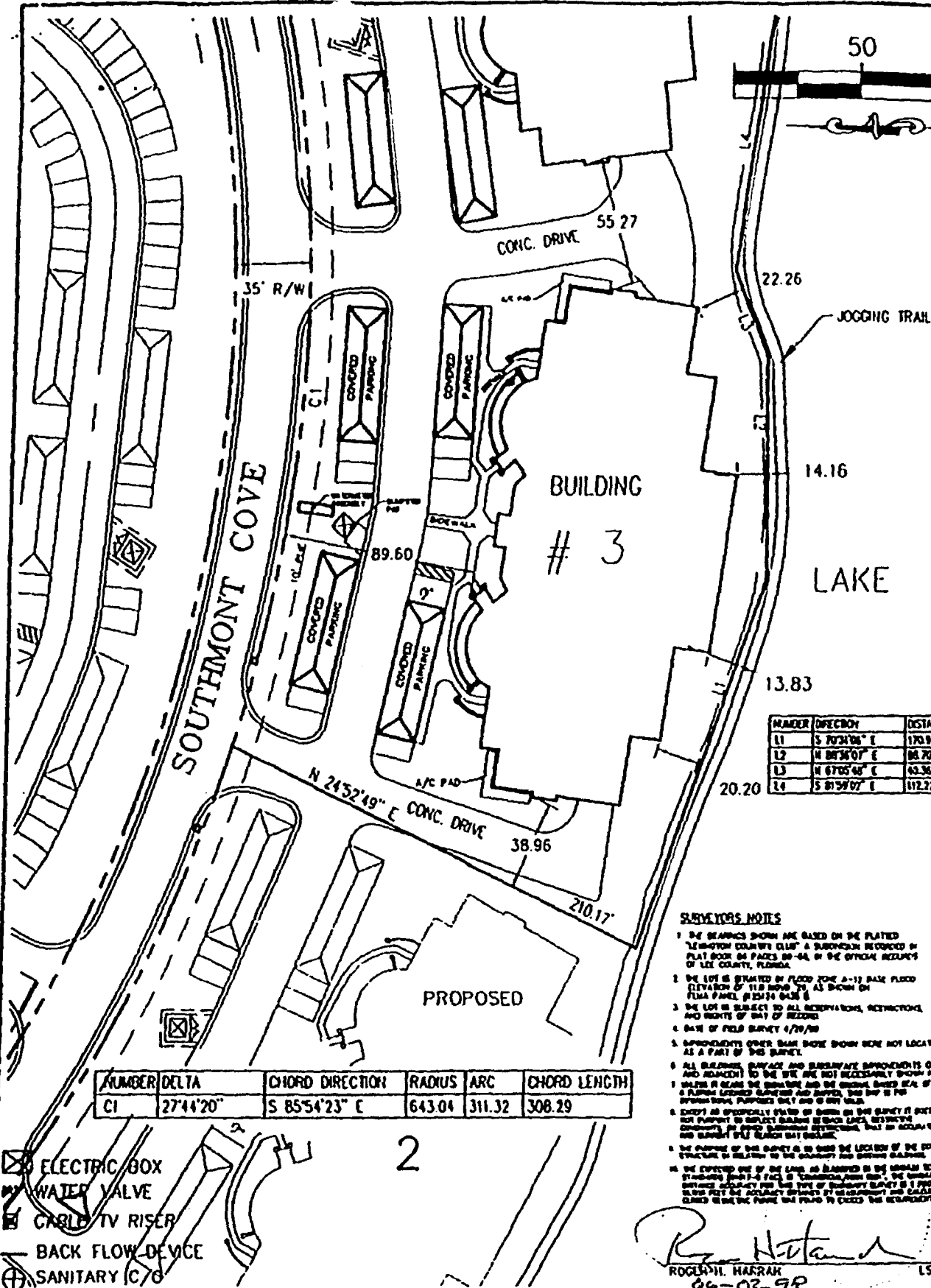
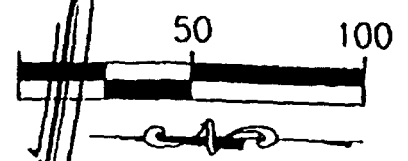
9200 Bonita Beach Road Suite 213  
Bonita Springs, Florida 33923  
Telephone (941) 495-0009 Fax (941) 495-7934

SUTTON WALK AT LEXINGTON,  
CONDOMINIUM No. 1

SHEET of

OR3094 P62031 CHARLE GREEN-GERRIK  
LEE COUNTY, FL

99 MAR 25 PM 2:09



NUMBER	DIRECTION	DISTANCE
L1	S 70°31'06" E	170.97
L2	N 08°36'07" E	86.70
L3	N 67°05'45" E	53.36
L4	S 81°59'07" E	112.27

NUMBER	DELTA	CHORD DIRECTION	RADIUS	ARC	CHORD LENGTH
C1	27°44'20"	S 85°54'23" E	643.04	311.32	308.29

**SURVEYOR'S NOTES**

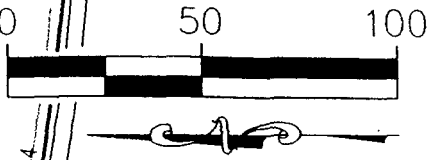
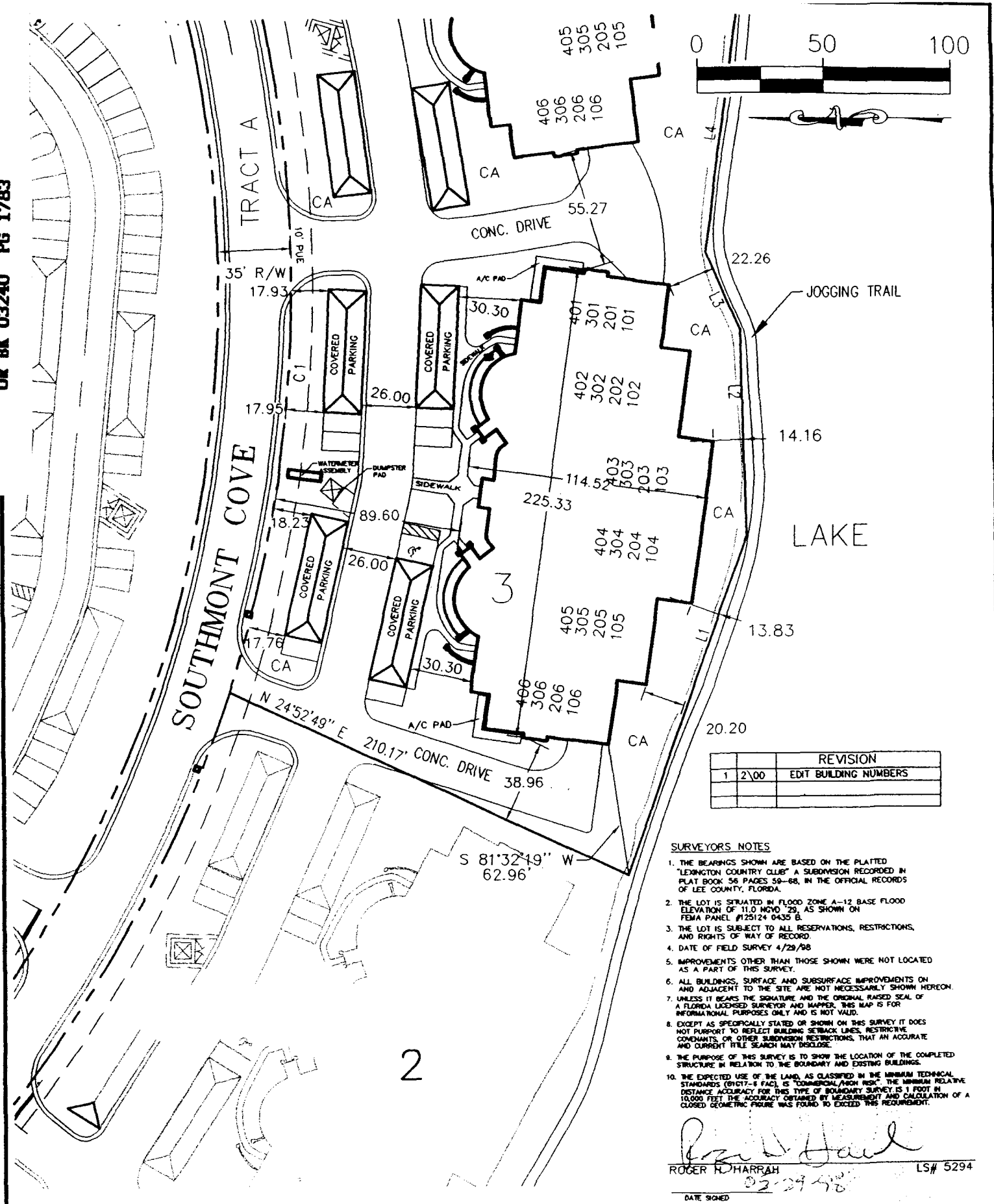
1. THE BEARINGS SHOWN ARE BASED ON THE PLATED "LEXINGTON COUNTRY CLUB" A SUBDIVISION RECORDED IN PLAT BOOK 94 PAGES 88-84, IN THE OFFICIAL RECORDS OF LEE COUNTY, FLORIDA.
2. THE LOT IS BARRIERS BY FLOOD ZONE A-12 BASE FLOOD ELEVATION OF 11.8 HIGHER THAN AS SHOWN ON FEMA PANEL # 25474 0428 B.
3. THE LOT IS SUBJECT TO ALL RESERVATIONS, RESTRICTIONS, AND EASES OF ANY OF RECORD.
4. DATE OF FIELD SURVEY 4/20/99
5. APPROXIMATE OTHER MARK SHOWS WERE NOT LOCATED AS A PART OF THIS SURVEY.
6. ALL BUILDINGS, DRIVEWAYS AND SUBSURFACE IMPROVEMENTS ON AND ADJACENT TO THE SITE ARE NOT NECESSARILY SHOWN HEREON.
7. WALKER IS BEING THE SURVEYOR AND THE SURVEY BEING THAT OF A PLANNED LOTTERY SURVEY AND NOT A REAL ESTATE SURVEY. PURPOSES ONLY AND IS NOT VALID.
8. EXCEPT AS SPECIFICALLY STATED ON THIS SURVEY IT DOES NOT PURPORT TO REFLECT EXISTING OR OTHER RECORDS, RESTRICTIONS, OR EASES OF RECORD. SURVEYOR'S OBLIGATION IS TO ACCURATELY AND TRUTHFULLY REPORT THE RESULTS OF THIS SURVEY.
9. THE PURPOSE OF THIS SURVEY IS TO DETERMINE THE LOCATION OF THE PROPOSED STRUCTURE IN RELATION TO THE EXISTING AND OTHER BUILDINGS.
10. THE SURVEYOR OF THE LAND AS SHOWN IN THE SURVEY TECHNICAL DRAWING SHEET-4 PAGE 4 OF "CONDOMINIUM #3" THE SURVEY BEING THE SURVEY ACCURATELY AND TRUTHFULLY REPORT THE RESULTS OF THIS SURVEY IS A PART OF THIS SURVEY AND ACCURATELY REPORT BY MEASUREMENT AND CALCULATION OF ALL DATA IN THIS SURVEY AND TO BE USED TO DETERMINE THE RESULTS OF THIS SURVEY.

*Roger H. Harrak*  
ROGER H. HARRAK  
06-03-99  
LS# 5294

**CES** COMMUNITY ENGINEERING SERVICES, INC.  
18 # 6672  
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Santa Fe Springs, Florida 34135  
Telephone (941) 623-0009 Fax (941) 482-7934

**IMPROVEMENT SURVEY**  
9111 SOUTHWALK COVE  
SUTTONWALK # 3  
AT LEXINGTON COUNTRY CLUB  
CONDOMINIUM No. 1  
BEING A PART OF TRACT 37 OF LEXINGTON COUNTRY CLUB AS RECORDED IN PLAT BOOK 94 PAGES 84-88 OF THE OFFICIAL RECORDS OF LEE COUNTY FL.

OR BK 03240 PG 1783



REVISION		
1	2/00	EDIT BUILDING NUMBERS

- SURVEYORS NOTES**
1. THE BEARINGS SHOWN ARE BASED ON THE PLATTED "LEXINGTON COUNTRY CLUB" A SUBDIVISION RECORDED IN PLAT BOOK 56 PAGES 59-68, IN THE OFFICIAL RECORDS OF LEE COUNTY, FLORIDA.
  2. THE LOT IS SITUATED IN FLOOD ZONE A-12 BASE FLOOD ELEVATION OF 11.0 MGD 29, AS SHOWN ON FEMA PANEL #125124 0435 B.
  3. THE LOT IS SUBJECT TO ALL RESERVATIONS, RESTRICTIONS, AND RIGHTS OF WAY OF RECORD.
  4. DATE OF FIELD SURVEY 4/29/98
  5. IMPROVEMENTS OTHER THAN THOSE SHOWN WERE NOT LOCATED AS A PART OF THIS SURVEY.
  6. ALL BUILDINGS, SURFACE AND SUBSURFACE IMPROVEMENTS ON AND ADJACENT TO THE SITE ARE NOT NECESSARILY SHOWN HEREON.
  7. UNLESS IT BEARS THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID.
  8. EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS SURVEY IT DOES NOT PURPORT TO REFLECT BUILDING SETBACK LINES, RESTRICTIVE COVENANTS, OR OTHER SUBDIVISION RESTRICTIONS, THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
  9. THE PURPOSE OF THIS SURVEY IS TO SHOW THE LOCATION OF THE COMPLETED STRUCTURE IN RELATION TO THE BOUNDARY AND EXISTING BUILDINGS.
  10. THE EXPECTED USE OF THE LAND, AS CLASSIFIED IN THE MINIMUM TECHNICAL STANDARDS (91C17-6 FAC), IS "COMMERCIAL/HIGH RISK". THE MINIMUM RELATIVE DISTANCE ACCURACY FOR THIS TYPE OF BOUNDARY SURVEY IS 1 FOOT IN 10,000 FEET; THE ACCURACY OBTAINED BY MEASUREMENT AND CALCULATION OF A CLOSED GEOMETRIC FIGURE WAS FOUND TO EXCEED THIS REQUIREMENT.

*Roger H. HARRAH*  
 ROGER H. HARRAH LS# 5294  
 DATE SIGNED 02-29-98

**CES** COMMUNITY ENGINEERING SERVICES, INC.  
 LB # 6572  
 Civil Engineering • Planning • Project Management  
 9200 Bonita Beach Road Suite 213  
 Bonita Springs, Florida 34135  
 Telephone (941) 495-0009 Fax (941) 495-7074

**IMPROVEMENT SURVEY**  
 BUILDING #3 OF SUTTON WALK  
 AT LEXINGTON CONDOMINIUM No. 1

BEING A PART OF TRACT 37 OF LEXINGTON COUNTRY CLUB AS RECORDED IN PLAT BOOK 56 PAGES 59-68 OF THE OFFICIAL RECORDS OF LEE COUNTY FL.



INSTR # 2010000085887, Doc Type D, Pages 4, Recorded 04/06/2010 at 01:55 PM, Charlie Green, Lee County Clerk of Circuit Court, Deed Doc No. 2010000085887 Rec. Fee \$35.50 Deputy Clerk JMILLER

This instrument was prepared by:  
Steven P. Kushner, Esq.  
Becker & Poliakoff, P.A.  
12140 Carissa Commerce Court, Suite 200  
Fort Myers, Florida 33966

**QUIT CLAIM DEED**

**THIS INDENTURE**, made this 19 day of March, 2010, between Worthington Communities, Inc., a Florida corporation, whose address is 9341 Marketplace Road, Fort Myers, Florida 33912, Party of the First Part, and Sutton Walk At Lexington Condominium Association, Inc., a Florida not for profit corporation, c/o Paul Sapp, P&M Property Management, 14360 N. Tamiami Trail #B, Fort Myers, Florida 33912, Party of the Second Part.

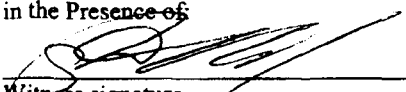
**WITNESSETH**, that the said Party of the First Part, for and in consideration of the sum of TEN (\$10.00) DOLLARS, in hand paid by the said Party of the Second Part, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quitclaim unto the said Party of the Second Part all the right, title, interest, claim and demand, which the said Party of the First Part has in and to the following described land, situate lying and being in the County of Lee, State of Florida, to wit:

See attached Exhibit "A" for legal description.

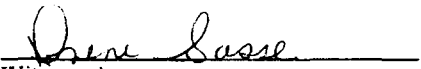
This is a conveyance of common areas being made in favor of the Condominium Association.

**TO HAVE AND TO HOLD** the same, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said Party of the First Part, either in law or equity, to the only proper use, benefit and behoof of the said Party of the Second Part.


**IN WITNESS WHEREOF**, the said Party of the First Part has hereunto set its hand and seal the day and year first above written.

Signed, Sealed and Delivered  
in the Presence of  
  
Witness signature

Stacy Mersman  
(Type/Print Name of Witness)

  
Witness signature

Irene Sasse  
(Type/Print Name of Witness)

**WORTHINGTON COMMUNITIES, INC.**  
a Florida corporation  
By:   
John Gnagey, Vice President

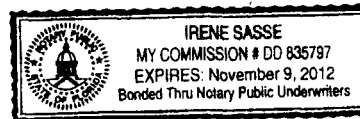
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19 day of March, 2010, by John Gnagey, Vice President of Worthington Communities, Inc., a Florida corporation, on behalf of the Corporation. He is personally known to me [ ] or has produced \_\_\_\_\_ as identification.

My Commission Expires:

Notary Public  
Name: Irene Sasse  
Commission No. DD 835797

ACTIVE: 2915574\_1



**LEGAL DESCRIPTION:  
POOL AND RECREATION AREA AT SUTTON WALK  
AT LEXINGTON COMMUNITY ASSOCIATION  
SECTION 9, TOWNSHIP 46 SOUTH, RANGE 24 EAST**

A PARCEL OF LAND SITUATED IN SECTION 9, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA; SAID PARCEL ALSO BEING DESIGNATED AS PART OF TRACT 37 IN THE PLAT OF LEXINGTON COUNTRY CLUB, AS RECORDED IN PLAT BOOK 56, PAGES 59 - 68, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF TRACT 37 OF LEXINGTON COUNTRY CLUB AS RECORDED IN PLAT BOOK 56, PAGES 59-68; THENCE ALONG THE WEST LINE OF SAID TRACT 37, N 00°48'16" E, A DISTANCE OF 432.96' TO A POINT; THENCE LEAVING SAID LINE AND RUNNING N 58°49'08" W, A DISTANCE OF 78.83' TO THE TRUE POINT OF BEGINNING;

CONTINUING AT THE POINT OF BEGINNING;

THENCE S 58°49'08" E, A DISTANCE OF 36.57' TO A POINT;  
THENCE N 65°15'37" E, A DISTANCE OF 182.46' TO A POINT;  
THENCE N 33°21'44" E, A DISTANCE OF 56.24' TO A POINT;  
THENCE S 49°56'10" E, A DISTANCE OF 1.56' TO A POINT;  
THENCE S 49°56'10" E, A DISTANCE OF 22.01' TO A POINT;  
THENCE S 09°27'23" W, A DISTANCE OF 83.99' TO A POINT;  
THENCE S 16°53'32" E, A DISTANCE OF 100.47' TO A POINT;  
THENCE S 26°19'02" E, A DISTANCE OF 94.14' TO A POINT;  
THENCE AROUND A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 109°08'14", HAVING A RADIUS OF 202.50', AN ARC DISTANCE OF 383.72', WITH A CHORD BEARING OF S 70°30'22" E, A DISTANCE OF 330.00' TO A POINT;  
THENCE AROUND A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 47°27'08", HAVING A RADIUS OF 82.05', AN ARC DISTANCE OF 68.33', WITH A CHORD BEARING OF S 07°27'19" W, A DISTANCE OF 66.39' TO THE POINT OF BEGINNING.

CONTAINING 1.306 ACRES MORE OR LESS.

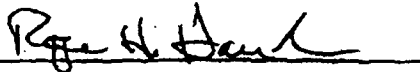
THIS SURVEY SKETCH AND DESCRIPTION IS VALID ONLY IF IT BEARS THE ORIGINAL RAISED SEAL AND SIGNATURE OF THE SURVEYOR.

(See attached Sketch of Description)

Surveyor and Mapper in Responsible Charge:

Roger H. Hartzel, LS #3294  
Professional Surveyor and Mapper  
Community Engineering Services, Inc.  
9200 Bonita Beach Road, Suite 213  
Bonita Springs, FL 34135  
LS # 6572

Signed:



Seal:



**SURVEYORS' NOTES**

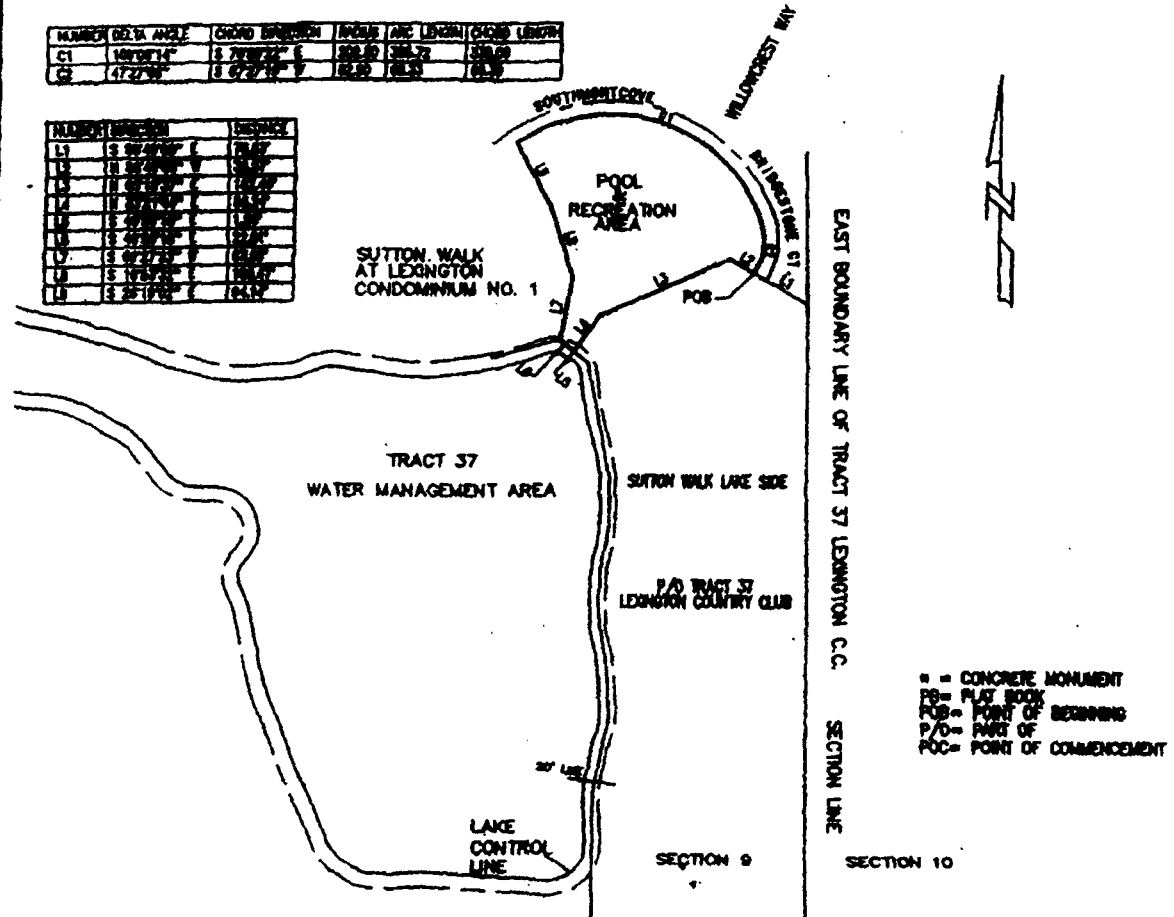
1. THE BEARINGS SHOWN ARE BASED ON THE PLATTED "LEXINGTON COUNTRY CLUB" A SUBDIVISION RECORDED IN PLAT BOOK 88, PAGES 80-88 IN THE OFFICIAL RECORDS OF LEE COUNTY, FLORIDA.
2. THE LOT IS STRIPPED BY FLOOD ZONE A-12 BASE FLOOD ELEVATION OF 11.6 FEET AS SHOWN ON FEMA PANEL FIRM# 848 E.
3. THE LOT IS SUBJECT TO ALL RESERVATIONS, RESTRICTIONS AND EASES BY WAY OF RECORD.
4. DATE OF SKETCH 08/16/90
5. IMPROVEMENTS OTHER THAN THOSE SHOWN WERE NOT LOCATED AS A PART OF THIS SURVEY.
6. ALL BUILDING, SURFACE AND SUBSURFACE IMPROVEMENTS ON AND ADJACENT TO THE SITE ARE NOT NECESSARILY SHOWN HEREON.

**SURVEYORS' NOTES (CONT)**

7. THE EXISTED LINE OF THE LAND, AS CLASSIFIED IN THE MICHIGAN TECHNICAL STANDARDS (MST-6 FAC) IS "COMMERCIAL/AGRI PLOT". THE HIGHEST RELATIVE DISTANCE ACCURACY FOR THIS TYPE OF INSTRUMENT SURVEY IS 1 PART IN 10000 FEET. THE ACCURACY OBTAINED BY MEASUREMENT AND CALCULATION OF A CLOSED GEOMETRIC FIGURE WAS FOUND TO EXCEED THE REQUIREMENT.
8. SEE ATTACHED LEGAL DESCRIPTION

NUMBER	BEARING	ANGLE	COORD. BEARING	POSS. ARC LENGTH	CHORD LENGTH
C1	N89°08'14"	6	S 78°27'22" E	208.80	208.72
C2	S72°27'36"	7	S 62°27'12" E	183.80	183.80

NUMBER	BEARING	ANGLE	COORD. BEARING	POSS. ARC LENGTH	CHORD LENGTH
L1	S 89°08'14" E	6	S 78°27'22" E	208.80	208.72
L2	S 72°27'36" E	7	S 62°27'12" E	183.80	183.80
L3	S 89°08'14" E	6	S 78°27'22" E	208.80	208.72
L4	S 72°27'36" E	7	S 62°27'12" E	183.80	183.80
L5	S 89°08'14" E	6	S 78°27'22" E	208.80	208.72
L6	S 72°27'36" E	7	S 62°27'12" E	183.80	183.80
L7	S 89°08'14" E	6	S 78°27'22" E	208.80	208.72
L8	S 72°27'36" E	7	S 62°27'12" E	183.80	183.80
L9	S 89°08'14" E	6	S 78°27'22" E	208.80	208.72
L10	S 72°27'36" E	7	S 62°27'12" E	183.80	183.80



C = CONCRETE MONUMENT  
 PB = PLAT BOOK  
 P/O = POINT OF BEGINNING  
 P/C = POINT OF COMMENCEMENT



P/C  
 SE CORNER  
 TRACT 37  
 LEXINGTON C.C.  
 PB 88, PGS  
 50-51, LEE  
 COUNTY, FLORIDA

**CES** COMMUNITY ENGINEERING SERVICES, INC.  
 120 N. ...  
 4000 South ...  
 ...  
 Telephone (904) 495-0200 Fax (904) 495-7004

**SUTTONWALK POOL & RECREATION AREA**  
 BOUNDARY SKETCH  
 PART OF TRACT 37 OF LEXINGTON COUNTRY CLUB, PB 88, PGS 50-51  
 SECTION 9, TOWNSHIP 46 S, RANGE 24 E, LEE COUNTY, FLORIDA