

**AMENDED AND RESTATED  
DECLARATION OF  
CONDOMINIUM**

**Wedgewood at Lexington  
Condominium Association, Inc.**

**Condominium #2**

**February 2013**

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

Wedgewood at Lexington Condominium Association, Inc.  
**DECLARATION OF CONDOMINIUM #2**  
**TABLE OF CONTENTS**

**Section 1. Definitions**

1.1 Act or Condominium Act .....10

1.2 Articles .....10

1.3 Assessment .....10

1.4 Association .....10

1.5 Association Property .....10

1.6 Board of Directors or Board of Directors .....10

1.7 Building .....10

1.8 Bylaws .....10

1.9 Casualty .....10

1.10 Charge .....10

1.11 Common Elements .....10

1.12 Common Expenses of the Association .....11

1.13 Common Expenses of the Condominium .....11

1.14 Common Surplus .....12

1.15 Community Association .....12

1.16 Community Covenants .....12

1.17 Condominium Documents .....12

1.18 Condominium Parcel .....12

1.19 Condominium Property .....12

1.20 County .....13

1.21 Declaration or Declaration of Condominium .....13

1.22 Domestic Partners .....13

1.23 Family or Single Family .....13

1.24 Fractional Ownership or Unit Sharing .....13

1.25 Guest .....13

1.26 Insurable Improvements .....13

1.27 Invitee .....13

1.28 Lease .....14

1.29 Lien for Charges .....14

1.30 Limited Common Elements .....14

1.31 Limited Common Expenses .....14

1.32 Member .....14

1.33 Occupant .....14

1.34 Person .....14

1.35 Primary Occupant .....14

1.36 Rules and Regulations .....14

1.37 Tenant or Lessee .....14

1.38 Unit .....15

1.39 Unit Owner or Owner .....15

1.40 Utility Services .....15

1.41 Voting Interests of the Association .....15

1.42 Voting Interests of the Condominium .....15

**Section 2. Statement of Condominium Declaration .....15**

**Section 3. Condominium Name .....15**

**Section 4. Unit Identification .....15**

**Section 5. Survey and Graphic Description .....15**

Wedgewood at Lexington Condominium Association, Inc.  
**DECLARATION OF CONDOMINIUM #2**  
**TABLE OF CONTENTS**

**Section 6. Voting Rights; Ownership of Common Elements** .....16

**Section 7. Easements**

7.1 Easements .....16

7.2 Support .....16

7.3 Utility and Other Services; Drainage .....16

7.4 Encroachments .....16

7.5 Ingress and Egress .....17

7.6 Other Condominiums; Community Association .....17

7.7 Additional Easements .....17

**Section 8. Condominium Units and Appurtenances** .....17

8.1 Unit Boundaries .....18

    8.1.1 Upper and Lower Boundaries .....18

        8.1.1.1 Upper Boundaries .....18

        8.1.1.2 Lower Boundaries .....18

        8.1.1.3 Interior Divisions .....18

8.2 Perimetrical Boundaries .....18

8.3 Apertures .....18

8.4 Exceptions .....18

8.5 Limited Common Elements .....18

    8.5.1 Lanais .....19

    8.5.2 Garages .....19

8.6 Conveyance of a Unit .....19

8.7 Miscellaneous Areas, Equipment .....19

**Section 9. Maintenance, Alteration and Improvements**

9.1 Association Maintenance, Repair and Replacement Obligation .....19

    9.1.1 General Exterior Maintenance .....19

    9.1.2 Plumbing and Electrical .....20

    9.1.3 Incidental Damage .....20

9.2 Unit Owner Maintenance, Repair and Replacement Obligation .....20

    9.2.1 Windows .....20

    9.2.2 Screens, Screen Frames, and Railings .....20

    9.2.3 Drywall .....21

    9.2.4 Electrical .....21

    9.2.5 Sliding Glass Doors .....21

    9.2.6 Unit Front Entry Doors .....21

    9.2.7 Other Doors .....21

    9.2.8 Hurricane Shutters .....21

    9.2.9 Plumbing and Electrical .....21

    9.2.10 Appliances .....21

    9.2.11 Heating and Air Conditioning Equipment; Ductwork .....21

    9.2.12 Floor Coverings .....21

    9.2.13 Hardware and Locks .....21

    9.2.14 Other Facilities and Fixtures .....22

    9.2.15 Plumbing (Incoming) .....22

    9.2.16 Plumbing (Outgoing) .....22

    9.2.17 Garages .....22

9.3 Unit Owner Obligations in Connection with Maintenance, Repair and Replacement .....22

9.4 Lanais .....23

Wedgewood at Lexington Condominium Association, Inc.  
**DECLARATION OF CONDOMINIUM #2**  
**TABLE OF CONTENTS**

9.5 Unit Floor Coverings .....23  
9.6 Modifications or Alterations by Unit Owners .....23  
9.7 Additional Unit Owner Responsibility for Modifications or Alterations .....24  
9.8 Material Alterations by Association .....24  
9.9 Enforcement of Maintenance .....25  
9.10 Damage Caused by Conditions of the Condominium Property .....25  
9.11 Combination of Units .....26  
9.12 Hurricane Protection .....26

**Section 10. Assessments and Charges**

10.1 Liability for Assessments and Charges .....26  
10.2 Default in Payment of Assessments for Common Expenses or Charges .....27  
10.3 Notice of Intention to Foreclose Lien .....27  
10.4 Attachment of Rental Income When Unit is Delinquent .....27  
10.5 First Mortgagee .....28  
10.6 Certificate of Unpaid Assessments or Charges .....28  
10.7 Lien for Charges .....28  
10.8 Other Remedies .....28

**Section 11. Administration and Management of Condominium**

11.1 Access .....29  
11.2 Assessments and Charges .....29  
11.3 Delegation .....29  
11.4 Regulations .....29  
11.5 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property .....29  
11.6 Membership Agreements .....30  
11.7 Fees for Use of Common Elements; Other Fees and Deposits .....30  
11.8 Lease of Association Property or Common Elements .....30  
11.9 Limitation Upon Liability of Association .....30  
11.10 Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew .....31  
11.11 Restraint Upon Assignment of Shares in Assets .....32

**Section 12. Insurance**

12.1 Authority to Purchase Insurance .....32  
12.2 Coverage  
    12.2.1 Property Insurance .....32  
    12.2.2 Flood .....33  
    12.2.3 Liability Insurance .....33  
    12.2.4 Fidelity Bond .....33  
    12.2.5 Worker’s Compensation .....33  
    12.2.6 Other Insurance .....33  
12.3 Deductible and Other Insurance Features .....33  
12.4 Premiums .....34  
12.5 Insurance Share or Proceeds .....34  
    12.5.1 Common Elements Proceeds .....34  
    12.5.2 Unit Proceeds  
        12.5.2.1 Surplus .....34  
        12.5.2.2 When the Building is to be Restored .....34  
        12.5.2.3 When the Building is Not to be Restored .....34  
        12.5.2.4 Common Elements and Units .....34  
    12.5.3 Mortgages .....35

Wedgewood at Lexington Condominium Association, Inc.  
**DECLARATION OF CONDOMINIUM #2**  
**TABLE OF CONTENTS**

12.6 Distribution of Proceeds .....35  
    12.6.1 Reconstruction or Repair .....35  
    12.6.2 Failure to Reconstruct or Repair .....35  
12.7 Association as Agent .....35

**Section 13. Reconstruction After Casualty**

13.1 Common Elements .....35  
13.2 The Building  
    13.2.1 Lesser Damage .....36  
    13.2.2 Major Damage .....36  
    13.2.3 Plans and Specifications .....36  
    13.2.4 Definition of “Uninhabitable” .....36  
13.3 Responsibility .....36  
13.4 Estimates of Costs .....37  
13.5 Assessments .....37  
13.6 Damage Caused by Wear and Tear .....37  
13.7 Termination of Condominium if Not Reconstructed .....37  
13.8 Additional Board Authority .....37

**Section 14. Use Restrictions**

14.1 Occupancy of Units; Single Family Residence .....38  
14.2 Nuisance .....39  
14.3 Garages .....39  
14.4 Children .....39  
14.5 Pets .....39  
14.6 Alterations .....39  
14.7 Use of Common Elements .....40  
14.8 No Improper Uses .....40  
14.9 Hurricane Protection .....40  
14.10 Exterior Improvements; Landscaping .....40  
14.11 Commercial/Recreational Vehicle and Trailers .....40  
14.12 Relief by Association .....41  
14.13 Changes in Permitted Use .....41  
14.14 Additional Restrictions .....41

**Section 15. Leasing** .....41  
15.1 Leasing .....41

**Section 16. Maintenance of Community Interests** .....41  
16.1 Forms of Ownership  
    16.1.1 Ownership by Individuals .....42  
    16.1.2 Co-Ownership .....42  
    16.1.3 Ownership by Corporations, Partnerships, LLC’s, Trusts, or Other Entities .....42  
    16.1.4 Life Estate .....42  
16.2 Deed .....42

**Section 17. Method of Amendment of Declaration** .....43  
17.1 Proposal of Amendments .....43  
17.2 Proposed Amendment Format .....43  
17.3 Notice .....43  
17.4 Adoption of Amendments .....43

Wedgewood at Lexington Condominium Association, Inc.  
**DECLARATION OF CONDOMINIUM #2**  
**TABLE OF CONTENTS**

17.5 Effective Date .....43  
17.6 Automatic Amendment .....43  
17.7 Proviso .....43

**Section 18. Termination of Condominium**

    18.1.1 Termination Because of Economic Waste or Impossibility .....44  
    18.1.2 Optional Termination.....44  
    18.1.3 Very Substantial Damage .....44  
    18.1.4 Mortgage Lien holders .....44  
18.2 Procedures for Termination and Sale .....45  
18.3 Amendment .....45

**Section 19. Condemnation**

19.1 Awards .....45  
19.2 Determination Whether to Continue Condominium .....45  
19.3 Distribution of Funds .....45  
19.4 Association as Agent .....45  
19.5 Units Reduced but Habitable .....45  
    19.5.1 Restoration of Unit .....45  
    19.5.2 Distribution of Surplus .....45  
    19.5.3 Adjustment of Shares in Common Elements .....45  
19.6 Units Not Habitable .....46  
    19.6.1 Payment of Award .....46  
    19.6.2 Addition to Common Elements .....46  
    19.6.3 Assessments .....46  
19.7 Taking of Common Elements .....46  
19.8 Amendment of Declaration .....46

**Section 20. Compliance and Default**

20.1 Duty to Comply; Right to Sue .....46  
20.2 Attorney’s Fees .....47  
20.3 No Election of Remedies .....47  
20.4 Waiver of Application of Condominium Documents .....47  
20.5 Notice of Lien or Suit  
    20.5.1 Notice of Lien .....47  
    20.5.2 Notice of Suit .....47  
    20.5.3 Failure to Comply .....47

**Section 21. The Community Association** .....47

21.1 Maintenance .....48  
21.2 Assessments and Collections .....48  
21.3 Amendments .....48  
21.4 Non-Discrimination .....48

**Section 22. Miscellaneous Provisions**

22.1 Covenants Running with the Land .....48  
22.2 Savings Clause .....48  
22.3 Heirs, Successors, and Assigns .....48  
22.4 Notices .....48  
22.5 Compliance with Fair Housing Laws .....49  
22.6 Conflicts .....49

Wedgewood at Lexington Condominium Association, Inc.  
**DECLARATION OF CONDOMINIUM #2**  
**TABLE OF CONTENTS**

22.7 Interpretation .....49  
22.8 Captions and Headings .....49  
22.9 Waiver .....49  
22.10 Plurality; Gender .....49

**AMENDED AND RESTATED**

**DECLARATION OF CONDOMINIUM**

**OF**

**WEDGEWOOD AT LEXINGTON CONDOMINIUM NO. 2**

**RECITALS:**

In a Declaration of Condominium recorded at O.R. Book 2788, Page 2938, *et seq.* of the Lee County Public Records on 4<sup>th</sup> day of February 1997, 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:

TWO PARCELS OF LAND SITUATED IN SECTION 9, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY FLORIDA, SAID PARCELS BEING PART OF TRACTS 17 AND 18 OF THE LANDS PLATTED AS "LEXINGTON COUNTRY CLUB" AS RECORDED IN PLAT BOOK 56, PAGES 59 - 68, IN LEE COUNTY FLORIDA, AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS;

**PARCEL #1** PART OF TRACT 17 AS DESIGNATED IN THE PLAT OF LEXINGTON COUNTRY CLUB, PLAT BOOK 56 PAGES 59 - 68, IN LEE COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE PLATTED CENTERLINE INTERSECTION OF BAYBERRY BEND AND WILLOWCREST COURT, THENCE S 88 D 39'10" W 17.67' TO A POINT OF THE WEST RIGHT OF WAY OF BAYBERRY BENT (35' R/W), AND THE EAST LINE OF TRACT 17 OF WHICH THIS IS PART; AND MARKING THE TRUE POINT OF BEGINNING

THENCE S 80 D 55'34" W A DISTANCE OF 138.24' TO A POINT; THENCE N 12 D 35'46" W A DISTANCE OF 149.08' TO A POINT; THENCE N 14 D 13'58" W A DISTANCE OF 360.37' TO A POINT; THENCE N 12 D 31'40" W A DISTANCE OF 44.14' TO A POINT; THENCE N 05 D 28'54" W A DISTANCE OF 371.41' TO A POINT; THENCE N 14 D 06'57" W A DISTANCE OF 207.64' TO A POINT; THENCE N 68 D 05'12" E A DISTANCE OF 140.38' TO A POINT; THENCE AROUND A NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 08 D 44'18" AN ARC DISTANCE OF 355.47' A CHORD BEARING OF S 12 D 41'48" E A DISTANCE OF 355.12' TO A POINT; THENCE AROUND A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 09 D 02'05" AN ARC DISTANCE OF 76.08' A CHORD BEARING OF S 03 D 48'37" E A DISTANCE OF 76.01' TO A POINT; THENCE AROUND A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 20 D 14'03" AN ARC DISTANCE OF 359.33' A CHORD BEARING OF S 09 D 24'36" E A DISTANCE OF 357.47' TO A POINT; THENCE AROUND A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 09 D 47'58" AN ARC DISTANCE OF 82.52' A CHORD BEARING OF S 14 D 37'38" E A DISTANCE OF 82.42' TO A POINT; THENCE AROUND A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 02 D 40'56" AN ARC DISTANCE OF 47.63' A CHORD BEARING OF S 11 D 04'07" E A DISTANCE OF 47.63' TO A POINT; THENCE S 12 D 24'36" E A DISTANCE OF 211.50' TO A POINT; THENCE AROUND A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 02 D 53'42" AN ARC DISTANCE OF 32.16' A CHORD BEARING OF S 10 D 57'45" E A DISTANCE OF 32.16' TO A POINT MARKING THE POINT OF BEGINNING.

CONTAINING 3.744 ACRES MORE OR LESS

**PARCEL #2** PART OF TRACT 18 AS DESIGNATED IN THE PLAT OF LEXINGTON COUNTRY CLUB, PLAT BOOK 56 PAGES 59 – 68, IN LEE COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE PLATTED CENTERLINE INTERSECTION OF BAYBERRY BEND AND WILLOWCREST COURT, THENCE N 16 D 53'29" E 48.07' TO A POINT ON THE RIGHT OF WAY OF SAID INTERSECTION MARKING THE COMMON CORNER BETWEEN BLOCK 5 OF LEXINGTON COUNTRY CLUB AND THE AFOREMENTIONED TRACT 18 OF WHICH THIS IS A PART, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING:

THENCE AROUND A NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 25 D 59'38" AN ARC DISTANCE OF 22.68' A CHORD BEARING OF N 25 D 24'25" W A DISTANCE OF 22.49' TO A POINT; THENCE N 12 D 24'36" W A DISTANCE OF 183.21' TO A POINT; THENCE AROUND A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 02 D 40'56" AN ARC DISTANCE OF 46.00' A CHORD BEARING OF N 11 D 04'07" W A DISTANCE OF 45.99' TO A POINT THENCE AROUND A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 09 D 47'58" AN ARC DISTANCE OF 88.51' A CHORD BEARING OF N 14 D 37'38" W A DISTANCE OF 88.40' TO A POINT; THENCE AROUND A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 20 D 14'03" AN ARC DISTANCE OF 346.97' A CHORD BEARING OF N 09 D 24'36" W A DISTANCE OF 345.17' TO A POINT; THENCE AROUND A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 09 D 02'05" AN ARC DISTANCE OF 81.60' A CHORD BEARING OF N 03 D 48'37" W A DISTANCE OF 81.52' TO A POINT; THENCE AROUND A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 08 D 48'37" AN ARC DISTANCE OF 363.77' A CHORD BEARING OF N 12 D 43'58" W A DISTANCE OF 363.42' TO A POINT; THENCE N 68 D 05'12" E A DISTANCE OF 143.86' TO A POINT; THENCE S 12 D 38'10" E A DISTANCE OF 28.25' TO A POINT; THENCE S 14 D 26'27" E A DISTANCE OF 172.86' TO A POINT; THENCE S 11 D 48'30" E A DISTANCE OF 33.38' TO A POINT; THENCE S 10 D 15'32" E A DISTANCE OF 174.40' TO A POINT; THENCE S 04 D 12'37" E A DISTANCE OF 39.68' TO A POINT; THENCE S 02 D 57'41" E A DISTANCE OF 172.59' TO A POINT; THENCE S 04 D 34'33" E A DISTANCE OF 23.86' TO A POINT; THENCE S 14 D 47'16" E A DISTANCE OF 169.65' TO A POINT; THENCE S 17 D 52'14" E A DISTANCE OF 29.89' TO A POINT; THENCE S 12 D 30'23" E A DISTANCE OF 207.29' TO A POINT; THENCE AROUND A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 01 D 22'45" AN ARC DISTANCE OF 30.10' A CHORD BEARING OF S 84 D 23'31" W A DISTANCE OF 30.10' TO A POINT; THENCE S 32 D 03'27" W A DISTANCE OF 150.07' TO THE POINT OF BEGINNING.

CONTAINING 3.474 ACRES MORE OR LESS

Said Declaration was subsequently amended as follows:

Amendment recorded at O.R. Book 3323, Page 901, *et seq.*, Lee County Public Records;  
and

Amendment recorded at Instrument No. 2012000156333, Lee County Public Records;

The submission of the land to the condominium form of ownership by that document is and will remain effective. By adoption of this Amended and Restated Declaration of Condominium (hereinafter "Declaration"), the Association Members hereby adopt certain amendments to the Declaration of Condominium and amendments thereof and hereby restate the Declaration in its entirety. By adoption of this Declaration, 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, as defined in Article 1.1 hereof.

**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, 2012), as it now exists or as it may be amended from time to time, including the definitions therein contained.

**1.2 “Articles”** means the 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 Units.

**1.4 “Association”** means WEDGEWOOD AT LEXINGTON CONDOMINIUM ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of the Wedgewood at Lexington Condominium No. 1, Wedgewood at Lexington Condominium No. 2 and Wedgewood at Lexington Condominium No. 3.

**1.5 “Association Property”** means all property owned by the Association for the use and benefit of the Unit Owners. The two recreation areas which serve the Condominiums are intended to be Association Property.

**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 and portions of the Common Elements 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 “Casualty”** for the purposes of this Declaration, and not for the purpose of construing coverage between any insurer and insured, means an event which causes damage to the Condominium Property due to some sudden, fortuitous cause, including (but not limited to) fire, flood, hail, wind, rain, vandalism, explosion, or bursting pipes, but does not include progressive decay or corrosion, or slow or continuous leaks.

**1.10 “Charge”** means any legal or equitable indebtedness or sums owed to or due 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.

**1.11 “Common Elements”** means and includes:

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

**1.11.2** 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.

**1.11.3** 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.

**1.11.4** 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.

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

**1.12 “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, maintenance, 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, pool service, operation, maintenance, and management of the two recreation areas serving the Condominiums, 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, 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 74/238 by Condominium No. 1 Owners, 84/238 by Condominium No. 2 Owners, and 80/238 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.

**1.13 “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 casualty insurance are Common Expenses of the Condominium. Legal fees involving the interests of 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 (e.g., lawn maintenance, casualty insurance, etc.) the Board may allocate segments of said invoices to the individual Condominiums as the Board in its sole discretion deems fair and equitable. Common Expenses of the Condominium shall be shared by Condominium No. 1 Unit Owners on a 1/74 basis, by Condominium No. 2 Unit Owners on a 1/84 basis, and by Condominium No. 3 Unit Owners on a 1/80 basis. Reserves required by the Act and the Condominium Documents are a Common Expense of the Condominium.

**1.14 “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 shall be determined in the same manner as Common Expenses.

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

**1.16 “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.

**1.17 “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 Wedgewood at Lexington Condominium Association, Inc. attached hereto 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.

**1.18 “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.

**1.19 “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 the Units or Common Elements by Unit Owners (or their predecessors in title) are not part of the Condominium Property. References in the Condominium Documents to Condominium Property shall include Association Property, unless indicated otherwise.

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

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

**1.22 “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.

**1.23 “Family” or “Single Family”** shall refer to any one of the following:

**1.23.1** One natural person, his spouse or Domestic Partner, if any, and their custodial children, if any.

**1.23.2** Not more than two natural persons not meeting the requirement of Article 1.23.1 above, but who customarily and continuously reside together as a single housekeeping Unit, and the custodial children of said parties, if any.

**1.23.3** The reference to “natural” herein is intended to distinguish between an individual and a corporation or other artificial entity. “Family member” is a person who resides in a Unit as part of the Owner’s Family, but is not a title holder.

**1.24 “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.

**1.25 “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.

**1.26 “Insurable Improvements”** shall mean the “Buildings” as defined in Article 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.

**1.27 “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 contractors, workmen, delivery persons, domestic assistants and health care assistants.

**1.28 “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.

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

**1.30 “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. References herein to Common Elements shall include all Limited Common Elements, unless the context would prohibit or it is otherwise expressly provided. 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.

**1.31 “Limited Common Expenses”** 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.

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

**1.33 “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.

**1.34 “Person”** means any individual or representative of an entity, including Unit Owners, Family members, Tenants, Guests, and Invitees. Whenever the word “Person” is used to require or prohibit certain conduct, it is the intention that the Owner of the Unit with which such Person is affiliated shall be responsible for ensuring such Person’s compliance with the Condominium Documents.

**1.35 “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”.

**1.36 “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.

**1.37 “Tenant” or “Lessee”** means a person occupying a Unit, other than the Owner, 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 services, etc. The term “Tenant” shall be used interchangeably with “Lessee”.

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

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

**1.40 “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.

**1.41 “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 238 Units, so the total number of Voting Interests of the Association is 238. 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.

**1.42 “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 Article 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 “Wedgewood at Lexington Condominium No. 2”.

**4. UNIT IDENTIFICATION.** The identification of each Unit shall be by number and shall be as indicated on the 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 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 1/238<sup>th</sup> (one Voting Interest per Unit) for Association matters and 1/84<sup>th</sup> for individual Condominium voting issues. Voting rights may be suspended pursuant to the terms of the Condominium Documents and/or Florida Law. The sharing of Common Expenses and ownership of Common Elements and Common Surplus shall be on a 1/84<sup>th</sup> basis for Common Expenses of the Condominium and 1/238<sup>th</sup> basis for Common Expenses of the Association. Suspension of voting rights shall not affect the basis for which Common Expenses are shared or Common Elements and Common Surplus owned. However, suspended Voting Interests shall be subtracted from the total number of votes required when calculating any required vote or quorum during the period for which said Voting Interest is suspended. The undivided share of ownership of 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.

**7. EASEMENTS.**

**7.1 Easements.** Each of the following easements and easement rights is reserved through the Condominium Property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium, unless released in connection with termination of the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of the Unit Owners with respect to such easements.

**7.2 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.

**7.3 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.

**7.4 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 the maintenance of the same so long as the Improvement shall stand.

**7.5 Ingress and Egress.** A non-exclusive easement shall exist in favor of each Unit Owner and Occupant, their respective Guests, Tenants, and Invitees 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 portion of the Common Elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

**7.6 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 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 herein.

Each Owner and Occupant, and the Guests and Invitees thereof, if 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.

**7.7 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.

**8. CONDOMINIUM UNITS AND APPURTENANCES.** The Land has constructed thereon the Building, consisting of nine (9) buildings containing eight (8) Units each and two (2) buildings containing six (6) Units each for a total of eighty-four (74) Units. Each such Unit is identified by a separate numerical designation. The designation of each of such Units is set forth on Exhibit “A” attached hereto. Exhibit “A” consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Building in with the Units are located, and a plot plan thereof. Said Exhibit “A”, together with this Declaration, is sufficient in

detail to identify the Common Elements and Each Unit and their respective locations and dimensions.

There shall pass with a Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration, including the applicable Limited Common Element garage; (c) an exclusive easement for the use of the 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; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration or the Act.

**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, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the two-floors or nonstructural interior walls shall be considered a boundary of the Unit.

**8.2 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.

**8.3 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.

**8.4 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 8.3 above shall control unless specifically depicted otherwise on such survey.

**8.5 Limited Common Elements.** Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto:

**8.5.1 Lanais.** Any lanai (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 lanai, (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 lanai, the edge of the concrete slab facing the lanai and (iv) other perimetrical: any sliding glass door(s) or fixed glass panel(s) abutting the lanai.

**8.5.2 Garages.** Each Unit is hereby assigned the exclusive right to use the garage adjacent to 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, provided that the upper boundary shall be the unfinished lower surface of the roof or slab located over the Unit so that any overhead storage area (and the ceiling structure) shall be a part of the Limited Common Elements.

Each Unit is also hereby assigned the exclusive right to use the driveway immediately adjacent to the aforesaid garage, same to be a Limited Common Element of the Unit As well.

**8.6 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.

**8.7 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).

**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, Repair and Replacement Obligation.** 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. Maintenance, repair and replacement of outside stair railings to second floor Units is the responsibility of the Association.

**9.1.1 General Exterior Maintenance.** The Association's maintenance, repair and replacement responsibility shall include, but not be limited to, exterior painting, roofing, maintenance of parking facilities (except as otherwise provided herein to the contrary), and general exterior maintenance, but shall not include maintenance, repair and replacement of railings, screens and screen 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.

**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 (but not including) the circuit breaker 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 or 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, or repair of damage caused by a covered cause of loss under the Association's applicable insurance policy, 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 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, Repair and Replacement Obligation.** 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.** The Unit Owner shall maintain, repair and replace the window installations originally installed by the Developer or subsequent replacement thereof. Same includes the window frame and encasement, the plate glass, and all caulking thereof. The Unit Owner shall be responsible for interior window locking and opening mechanisms, the windowsill and glass breakage. The Association shall be responsible for exterior caulking around the window frames.

**9.2.2 Screens, Screen Frames, and Railings.** The Unit Owner shall maintain, repair and replace all window screens, screen doors or lanai screens, including hardware and framing, and including lanai railings. The second floor, outside stair railings are the responsibility of the Association.

**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 interior side of the exterior boundary walls, and the drywall on the ceiling of the Units, if any.

**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 fixtures, apparatus or installations from and including the circuit breaker 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 frames 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 door, and be responsible for the repair and replacement of said door (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 Hurricane Shutters.** The Unit Owner shall maintain, repair and replace hurricane shutters and the structural components thereof.

**9.2.9 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.

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

**9.2.11 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), 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).

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

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

**9.2.14 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.

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

**9.2.16 Plumbing (Outgoing).** The Unit Owner shall maintain, repair and replace outbound plumbing until the point of exit from the Unit boundary. Provided, however, that the Unit Owner is responsible for the remediation of clogged pipes or drains, where the source of blockage or obstruction originates from the Unit, even if the area where the blockage or obstruction is located is outside of the Unit boundary.

**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).

Any of the above-described areas that are to be maintained, repaired or replaced by the Unit Owner, or by the Association at the expense of the benefiting Unit(s), if located outside of the boundaries of the Unit, are declared Limited Common Elements. Responsibility for maintenance, repair and replacement of Condominium Property may not coincide with obligation for insurance of Condominium Property, nor its repair after Casualty, or damage from covered cause of loss under the Association's applicable insurance policy, which are governed by Article 12 and Article 13 hereof, respectively.

**9.3 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; or access to a Building roof.

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.

**9.4 Lanais.** The Unit Owner who owns or has the right to the exclusive use of a lanai shall be responsible for the maintenance, repair and replacement of: lanai 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 lanai; ceiling fans; and the replacement of light bulbs. The Association shall be responsible for structural maintenance, repair and replacement of lanai floors, and ceilings, and also the Building walls enclosed by the lanais.

**9.5 Unit Floor Coverings.** All Units above the first living floor shall always have the floors covered with wall-to-wall carpeting, except in kitchens, bathrooms, lanais, foyers, and utility or laundry rooms, except as provided below. Owners of Units above the first living floor who wish to install or replace hard floor surfaces (tile, marble, wood, etc.) in any area of the Unit are required to also install an approved sound-deadening material. The Board has the authority to adopt specifications for minimum sound proofing material that will be approved.

**9.6 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 undertake any 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 Wedgewood at Lexington Condominiums and the Lexington Community, 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 Article 9.8 of this Declaration, 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.

**9.7 Additional Unit Owner Responsibility for Modifications or Alterations.** If a Unit Owner (or his predecessors in title) makes, or has made any modifications or alterations to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the Unit Owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, preservation, reconstruction, repair or replacement of the modification or alteration and shall execute such documents as the Association may promulgate, if any, accepting said financial responsibility. Any modification or alteration to the Condominium Property made by a Unit Owner may be required to be removed in connection with the Association's maintenance of the Condominium Property. In such cases, the Unit Owner who installed the modification or alteration (and/or their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of Lien for Charges of equal dignity to the Common Expense lien created by this Declaration, or alternatively, said Owner may be required to remove and reinstall said modification or alteration, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent, although the Association may provide for stricter liability standards in contracts with contractors.

**9.8 Material Alterations by Association. Material Alterations by Association.** There shall be no material alterations or substantial additions to the Common Elements or real property which is Association Property by the Association, except as authorized by the Board of Directors. Provided, however, that if any such alteration or addition to real property which is

Association Property requires the expenditure of more than ten percent (10%) 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 two-thirds (2/3) of Voting Interests present (in person or by proxy) and voting at an Association meeting at which a quorum has been obtained, or by written agreement of two-thirds (2/3) 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 (10%) 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 two-thirds (2/3) 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 Property regardless of the level of expenditure, is the responsibility of the Board of Directors. Cellular antennae and similar apparatus and apparatus to provide communication or internet services as provided in Article 1.12, may be placed on the Condominium Property as authorized by the Board.

**9.9 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.

**9.10 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 or responsibility on the Association or other Unit Owners (without limitation, the Association shall not be obligated to obtain proof of Unit Owner insurance), 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.

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

**9.12 Hurricane Protection.** The Board of Directors shall adopt hurricane shutter specifications for the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code. The Board may adopt the Master Association Hurricane Shutter Specifications as those applicable to the Association.

**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 Article 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 interest, late fees, 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 lien on each Condominium Parcel for any unpaid Assessments on such parcel, with interest, late fees and for reasonable attorney's fees, as well as costs and expenses of collection incurred by the Association incident to the collection of the Assessment or enforcement of the lien. If prohibited by the Act, 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) of the Act. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law. The Association's 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 in full, 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.

**10.3 Notice of Intention to Foreclose Lien.**

So long as required by law, 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, other monetary obligations, interest, late fees, costs, collection expenses, attorney's fees and receiver's fees, if

applicable, are paid in full. 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, or other remedies as may be prescribed by law or elsewhere in the Condominium Documents, 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 Act.

**10.6 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.

**10.7 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.

**10.8 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 any Common Elements or of any portion of a Unit to be maintained by the Association pursuant to this Declaration, or as necessary to prevent damage to the Common Elements or to any other 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. A pass key must be provided by the Unit Owner to the Association for each Unit entry door, and as may be applicable air conditioning or utility room or closet, and storage unit. The Association may utilize a master key system. When a Unit Owner must maintain, repair or replace portions of the Condominium Property as provided herein, and which requires access to another Unit for said purpose, the Unit Owner shall have reasonable right of access which shall be administered through the Association. The Unit Owner upon whose behalf access has been obtained shall be obligated for the expense of repairing any damage to the Condominium Property.

**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 two-thirds (2/3rds) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noted meeting of the Association where a quorum is present. No Unit Owner approval shall be required to acquire, purchase, or mortgage a Unit in connection with foreclosure of a lien or deed in lieu of foreclosure, nor to dispose of such Unit. No Unit Owner approval shall be required to accept title to properties in connection with resolving title defects or effectuating the intent of the original Condominium Documents. By way of example, but not limitation, the Board of Directors may authorize acceptance of title to the recreational facilities serving the Condominiums without need for approval of the Unit Owners. 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 approval of two-thirds (2/3rds) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noted meeting of the Association where a quorum is present.

**11.7 Fees for Use of Common Elements; Other Fees and Deposits.** The power to set fees, pursuant to Section 718.111(4) of the Act, 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: clubhouse/meeting room deposits, use fees and/or clean-up fees; fees for the issuance of parking passes or decals; fees for architectural/engineer review of renovation/alteration plans; contractor damage deposits; 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 Building roof areas and other Common Elements for antennas or other telecommunications and similar 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.

**11.9 Limitation Upon Liability of Association.** Notwithstanding the duty to maintain, repair, replace, insure or reconstruct 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.** Each 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 recommend 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, or any person or entity the Association is obligated to indemnify (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.

**12.2 Coverage.**

**12.2.1 Property Insurance.** Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general property and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements (including Limited Common Elements), the Units, and the personal property of the Association, for the replacement value thereof, including coverage for changes in building codes, if reasonably available and determined commercially practicable by the Board, 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 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 deductibles, at a duly noticed meeting of the Board, and shall give notice of such meeting, and determine the deductibles, 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) of the Act. 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 property insurance 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 lanai 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. Whenever the Act is amended to shift insurance responsibility for insurance of components from the Association to the Unit Owner, or vice-versa, this Declaration shall be deemed amended accordingly, so as to coincide with the Act. 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.

**12.2.2 Flood.** The Association shall use its best efforts to obtain and maintain adequate flood insurance, for replacement value, less a commercially reasonable deductible as determined by the Board, and less foundation and excavation costs if determined by the Board. The Association will have discharged its responsibility to use its “best efforts” to obtain “adequate” flood insurance if it is able to purchase flood insurance through the National Flood Insurance Program (NFIP), or through any similar federally-sponsored or related program, or through private carriers with similar coverage, for premium rates that are generally commensurate with flood insurance premium rates for condominiums in the local area.

**12.2.3 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. 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.

**12.2.4 Fidelity Bond.** The Association shall obtain and maintain insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the term “persons who control or disburse funds of the association” includes, but is not limited to, those individuals authorized to sign checks on behalf of the Association, and the President, Secretary, and Treasurer of the Association.

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

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

**12.3 Deductible and Other Insurance Features.** The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features (including but not limited to exclusions), as it deems desirable and financially expedient, in the exercise of its business judgment, and in the method provided by the Act. The deductible and other features 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.

Where 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 omission of the individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

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

**12.5 Insurance Shares or Proceeds.** 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:

**12.5.1 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 of the Condominium appurtenant to the Unit.

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

**12.5.2.1 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 in the manner elsewhere stated.

**12.5.2.2 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.

**12.5.2.3 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 of the Condominium appurtenant to the Unit.

**12.5.2.4 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 or covered cause of loss under the Association's applicable insurance policy, but insufficient proceeds for Casualty or covered cause of loss 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 and Limited Common Elements, it being the intent of this provision that when there is a common Casualty loss or covered cause of loss under the Association's applicable insurance policy 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.

**12.5.3 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.

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

**12.6.1 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 Unit Owners, or, at the option of the Board, may be deposited in the reserve fund kept on behalf of the Condominium.

**12.6.2 Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with the Plan of Termination approved pursuant to Article 18.

**12.7 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.

**13. RECONSTRUCTION AFTER CASUALTY.** If any part of the Condominium Property shall be damaged by Casualty or covered cause of loss under the Association's applicable insurance policy, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

**13.1 Common Elements.** If the damaged improvement is any of the Common Elements, the damaged Common Element shall be reconstructed or repaired, unless the Condominium is to be terminated as provided elsewhere herein.

**13.2 The Building.**

**13.2.1 Lesser Damage.** If the damage renders less than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property shall be reconstructed or repaired.

**13.2.2 Major Damage.** If the damage renders more than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless 75% of the entire Voting Interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the Casualty or covered cause of loss under the Association's applicable insurance policy, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed three (3) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

**13.2.3 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 Article 9.8 and no vote of the Unit Owners shall be required.

**13.2.4 Definition of "Uninhabitable".** For purposes of this Declaration, "uninhabitable" shall mean that the Board of Directors has concluded that the Condominium Property which the Association is required to insure cannot be restored to the condition (or a better condition) in which it existed prior to the Casualty or covered cause of loss under the Association's applicable insurance policy through available insurance proceeds, plus a special assessment against each Unit Owner not to exceed 10% of the average fair market value of the Units, as determined by the Board. This calculation shall not include costs affiliated with those items the Unit Owner is obligated to repair or replace, at the Unit Owner's expense. A governmental agency's declaration or order that the Condominium Property may not be occupied for a defined period of time due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are "habitable", a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law.

**13.3 Responsibility.** All reconstruction work after a Casualty or covered cause of loss under the Association's applicable insurance policy 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 Article 13.5 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 Article 9.9, 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 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) of the Act. However, any cost of repair, reconstruction or replacement of portions of the Condominium Property that is not caused by a Casualty or covered cause of loss under the Association's applicable insurance policy, as determined by the Board of Directors, shall be repaired, and said costs allocated pursuant to the general maintenance, repair, and replacement provisions of this Declaration.

**13.6 Damage Caused By Wear and Tear of the Condominium Property.** Damage to the Condominium Property that is not caused by a Casualty as defined in Article 1.9 or covered cause of loss under the Association's applicable insurance policy, shall be repaired or replaced in accordance with the provisions of Article 9 and shall not be subject to this Article 13. To the extent legally required, it is the intention of this Article 13.6 to "opt out" of the provisions of Section 718.111(11)(j) of the Act as pertains to damage not covered by Casualty.

**13.7 Termination of Condominium if Not Reconstructed.** If the Owners vote not to reconstruct the Condominium by vote described in Article 13.2.2 hereof, 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 in Article 13.2. 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 property submitted for condominium ownership 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. As used in the Condominium Documents, "Single Family" means one natural person, a group of two or more natural persons who customarily reside together as a Single Family housekeeping Unit, each of whom is related to each of the others by blood, marriage (or domestic partnership) or adoption, or not more than two persons not so related, who customarily reside together as a single housekeeping Unit. No more than two (2) persons per bedroom and one (1) person per den may permanently occupy a Unit, unless otherwise approved by the Board of Directors. 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. No person may occupy a Unit as a Unit Owner, Tenant, or Family

member thereof (i.e., occupy the Unit on an overnight basis for more than thirty (30) days in a calendar year) unless said person's occupancy has been specifically approved by the Association, through the Board of Directors. Any person who occupies a Unit for more than thirty (30) days in a calendar year shall not be considered a Guest. Units may not be used for commercial or business purposes. 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.

**14.2 Nuisance.** The Condominium Property shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the Condominium Property, nor which becomes a source of annoyance to the Condominium residents, or which will increase insurance rates. All property shall be kept in a neat and orderly manner. The Common Elements shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such residents. The Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances.

**14.3 Garages.** Garages shall be used only for the storage of the Unit Owner's or Tenant's primary 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.

**14.4 Children.** Children shall be permitted to reside in Units, subject to the provisions of Article 14.1.

**14.5 Pets.** Each Unit may maintain two (2) domestic dogs or cats in total (two dogs, two cats, or one cat and one dog). No pet shall be kept, bred or maintained for any commercial purpose, shall not become a nuisance or annoyance to neighbors. All pets must be registered with the Association. No reptiles, "exotic" pets or wildlife shall be kept in or on the Condominium Property (including Units), as no animal, other than dogs, cats, one bird, or fish are permitted to be kept on the Condominium Property. Unit 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 or otherwise manually restrained at all times 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 lanais when the Owner is not in the Unit. Without limiting the generality of Article 20 hereof, 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 (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property. This Article shall not prohibit the keeping of fish in aquariums or up to one (1) caged household-type bird in a Unit, provided that the bird is not kept on Limited Common Elements and does not become a nuisance or annoyance to neighbors.

**14.6 Alterations.** Without limiting the generality of Article 9 hereof, and subject to the proviso contain therein as to hurricane shutters, 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.

**14.7 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 use and occupancy of Units.

**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 Article 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.

**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, lanais 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 Association.

**14.11 Commercial/Recreational Vehicle and Trailers.** Except as permitted below, no trucks, other commercial vehicles, campers, mobile homes, recreational vehicles, motorcycles or boat or other 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. 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 pick-up trucks of less than a three-quarter (3/4) ton capacity or (iii) vans with windows which contain seating for at least four (4) persons, provided that such vans and trucks shall not bear commercial-type lettering or graphics. A non-commercial vehicle may, however, be kept if (i) it is the Unit Owner's or Occupant's primary vehicle and (ii) it is kept in a garage. 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.

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 the Common Elements or to any rules and 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) being conducted in reliance on such permissibility and (iii) is continuing with the same pet, vehicle, lessee or occupant as existed prior to the effectiveness of the amendment. 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 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. 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. 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. Leases may be extended or renewed, subject to Board approval. This section shall apply to all Unit Owners, regardless of when the Unit was purchased or title acquired.

**15.1** When checking in with the Community Association Administration, the Lessee must sign a statement that they are aware that in the event the Owner is delinquent, the Association shall have the authority to direct that all rental income related to the Unit be paid to the Association until all past due and current obligations of the Association have been paid in full, and that they have been provided with and will comply with the Rules and Regulations of the Association and the Community Association.

**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 Forms of Ownership:**

**16.1.1 Ownership by Individuals.** A Unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

**16.1.2 Co-Ownership.** Co-ownership of Units may be permitted. If the co-owners are other than husband and wife or Domestic Partners, the Board shall condition its approval upon the designation of one approved 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. Any changes in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in Primary Occupant will be approved in any calendar year. No time share estates may be created. "Unit Sharing" by multiple families and "Fractional Ownership" are prohibited.

**16.1.3 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, if approved in the manner provided elsewhere herein. 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 approval of a partnership, trustee, corporation, limited liability company, or other entity as a Unit Owner shall be conditioned upon designation by the Owner of 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. Any change in this Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in designation of Primary Occupant will be approved in any twelve (12) month period.

**16.1.4 Life Estate.** A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. 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. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. 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.

**16.2** A copy of the deed or other instrument of conveyance must be provided to the Association within ten (10) days of the date such instrument was recorded.

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

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

**17.2 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."

**17.3 Notice.** The subject matter 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.

**17.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3<sup>rds</sup>) of the Voting Interests of the Association 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 (2/3<sup>rds</sup>) of the entire Voting Interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

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

**17.6 Automatic Amendment.** Whenever the Act, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration, the Board may operate the Association pursuant to the less stringent requirements without the need to change this Declaration. The Board of Directors without a vote of the Owners, may also adopt by majority vote, amendments to this Declaration as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and the Act, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**17.7 Proviso.** No amendments to Article 14 or any other provision of this Declaration governing the use of Units or the Common Elements or to any rules and 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) being conducted in reliance on such permissibility and (iii) is continuing with the same pet, vehicle, lessee or occupant as existed prior to the effectiveness of the amendment. 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. No amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the mortgages on such apartment shall join in the execution of the amendment, and all other Unit Owners approve the amendment.

## **18. TERMINATION.**

**18.1** The Condominium may be terminated under any one of the following alternatives:

### **18.1.1 Termination Because of Economic Waste or Impossibility.**

Notwithstanding anything to the contrary in this Declaration, the condominium form of ownership may be terminated by a plan of termination approved by the percentage of Voting Interests necessary to amend the Declaration when:

- the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all Units in the Condominium after completion of the repair; or
- it becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations.

It is the intent of this provision to incorporate Section 718.117(2) of the Act.

**18.1.2 Optional Termination.** Except as provided in Article 18.1.1, the condominium form of ownership may be terminated pursuant to a plan of termination approved by at least eighty percent (80%) of the total Voting Interests of the Condominium if not more than ten percent (10%) of the total Voting Interests of the Condominium have rejected the plan of termination by negative vote or by providing written objections thereto. It is the intent of this provision to incorporate the provisions of Section 718.117(3) of the Act.

**18.1.3 Very Substantial Damage.** If the Condominium suffers major damage as defined in Article 13, which shall mean that more than one-half the Units in the Condominium are rendered uninhabitable as determined in the sole discretion of the Board of Directors, the Condominium may be terminated if seventy-five percent (75%) of the total Voting Interests in the Condominium vote to approve a plan of termination.

**18.1.4 Mortgage Lienholders.** Notwithstanding any provision to the contrary in this Declaration or Chapter 718, approval of a plan of termination by the holder of a recorded mortgage lien affecting a Condominium Parcel is not required unless the plan of termination would result in less than the full satisfaction of the mortgage lien affecting the Condominium Parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to a plan of termination may contest the plan as provided in Section 718.117(16) of the Act.

**18.2 Procedures for Termination and Sale.** The termination of the Condominium via either of the methods set forth in 18.1.1 through 18.1.3 herein shall be as set forth in Section 718.117(4) – (20) of the Act.

**18.3 Amendment.** This Article 18 may be amended in the same manner in which this Declaration may be amended generally, as set forth in Article 17.

## **19. CONDEMNATION.**

**19.1 Awards.** The taking of all or any part of the Condominium Property by condemnation or eminent domain shall be deemed to be a Casualty to the portion taken, and the awards for that taking shall be deemed to be proceeds from insurance on account of the Casualty. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association, and if any fail to do so, a special assessment shall be made against a defaulting Unit Owner in the amount of this award, or the amount of the award shall be set off against any sums payable to that Owner.

**19.2 Determination Whether to Continue Condominium.** Whether the Condominium will be continued after condemnation will be decided in the same manner as repair after Casualty as set forth in Article 13 hereof.

**19.3 Distribution of Funds.** If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a Casualty. If the Condominium is not terminated after condemnation, the size of the Condominium may be reduced. The Owners of condemned Units, if any, will share in awards and special assessments as provided below.

**19.4 Association as Agent.** The Association is hereby irrevocably appointed as each Unit Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

**19.5 Units Reduced but Habitable.** If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the awards for the taking of a portion of that Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium.

**19.5.1 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 assessed against the Owner of the Unit.

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

**19.5.3 Adjustment of Shares in Common Elements.** If the floor area of a Unit is reduced by the taking, the number representing the share in the Common Elements appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is

reduced by the taking, and then the shares of all Unit Owners in the Common Elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

**19.6 Units Not Habitable.** If the taking of any entire Unit or so reduces the size of the Unit that it cannot be made habitable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

**19.6.1 Payment of Award.** The condemnation award immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagee(s).

**19.6.2 Addition to Common Elements.** If possible and practical, the remaining portion of the Unit shall become a part of the Common Elements and shall be placed in condition for use by all Unit Owners in the manner approved by the Board of Directors.

**19.6.3 Assessments.** If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned Unit to the Unit Owner and to recondition the remaining portion of the Unit, the amount required for those purposes shall be raised by special assessment against all of the Unit Owners who will continue as Owners of any Unit after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the shares of those Owners in the Common Expenses after the changes effected by the taking.

**19.7 Taking of Common Elements.** Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, may be returned to the Unit Owners or used by the Association as the Board may determine.

**19.8 Amendment of Declaration.** The changes in Units, in the Common Elements and in the ownership of the Common Elements that are necessitated by condemnation shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Board.

## **20. COMPLIANCE AND DEFAULT.**

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

**20.1.1** The Association;

**20.1.2** A Unit Owner; or

**20.1.3** 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.

**20.2 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.

**20.3 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.

**20.4 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.

**20.5 Notice of Lien or Suit.**

**20.5.1 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.

**20.5.2 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.

**20.5.3 Failure to Comply.** Failure of an Owner to comply with this Article 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.

**21. 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:

**21.1 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.

**21.2 Assessments and Collections.** Assessments levied by the Community Association shall be 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.

**21.3 Amendments.** Notwithstanding anything contained in this Declaration or the Articles of Incorporation, Bylaws 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.

**21.4 Non-Discrimination.** Neither the provisions of this Declaration nor those of the Articles of Incorporation, Bylaws 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. MISCELLANEOUS PROVISIONS.**

**22.1 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 and shall run perpetually unless terminated or amended as provided herein.

**22.2 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.

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

**22.4 Notices.** All notices shall be given as provided in the Bylaws. Anything contained to the contrary notwithstanding, the Association shall not be responsible to any

mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.

**22.5 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.

**22.6 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.

**22.7 Interpretation.** 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.

**22.8 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.

**22.9 Waiver.** No provisions contained in the Condominium Documents 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.

**22.10 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.