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Amended and Restated  
**Declaration of Condominium**  
of  
WESTCHESTER GARDENS AT THE PLANTATION

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AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
of  
WESTCHESTER GARDENS AT THE PLANTATION



**WHEREAS**, the original Declaration of Condominium of WESTCHESTER GARDENS AT THE PLANTATION, a condominium, was recorded at Official Records Book 1476, Page 947, et seq., of the Public Records of Sarasota County, Florida (Declaration), and

**WHEREAS**, a significant package of amendments was recently approved by not less than two-thirds (2/3rds) of the entire membership, at the properly held members meeting held on the 18th day of February, 2009. The consent forms of first institutional lenders holding mortgages on units in the condominium are attached to this Certificate, as required by the Declaration of Condominium and as required by Chapter 718, Florida Statutes.

**NOW, THEREFORE**, WESTCHESTER GARDENS CONDOMINIUM ASSOCIATION, INC., does hereby amend and restate the Declaration of Condominium, for the purpose of integrating all of the provisions of the Declaration, with the recently adopted amendments and does hereby resubmit the lands described herein to the terms, covenants, conditions, easements and restrictions hereof which shall be covenants running with the condominium property and binding on all existing and future owners, and all others having an interest in the condominium lands or occupying or using the condominium property.

ARTICLE I  
PURPOSE

1.1 PURPOSE. This Declaration, as originally recorded, was submitted to condominium ownership, pursuant to the provisions of Chapter 718, Florida Statutes. The following described land and improvements thereon and all improvements erected thereon, situate, lying and being in the County of Sarasota, State of Florida, to wit:

See legal description of Westchester Gardens at The Plantation Phase I in Exhibit "A" attached to the Declaration as originally records, and by this reference made a part hereof, all references to Exhibit "A" in this document shall refer to that document entitled Exhibit "A", attached to the Declaration as originally recorded, and that said property is subject to the following provisions, restrictions, reservations, covenants, conditions and easements:

1.2 THE CONDOMINIUM ACT. Chapter 718, Florida Statutes, known as the "Condominium Act" is incorporated herein by reference and all provisions thereof shall apply to this condominium except that this Declaration and the exhibits as attached to the Declaration as originally recorded, are incorporated herein and shall control to the extent that the Condominium Act allows such documents to vary the provisions of the Act.

## ARTICLE II IDENTIFICATION

2.1 NAME. The name by which this condominium shall be known and identified is WESTCHESTER GARDENS AT THE PLANTATION, a condominium.

2.2 SURVEY AND PLOT PLAN. A survey of said land and plot plan locating the improvements thereon and identifying each condominium unit and the common elements and their relative locations and approximate dimensions are attached to the Declaration as originally recorded as Exhibit "A" and are recorded in Condominium Book 17 at pages 45-45H, Public Records of Sarasota County, Florida. The locations, dimensions, descriptions, identification and numbering or lettering of the respective condominium units shall be as described in Exhibit "A" and any subsequent amendments thereto as hereinafter provided. A unit shall consist of the space defined in Exhibit "A". In the event that the actual physical location of any unit at any time does not precisely coincide with Exhibit "A" and subsequent amendments, the actual physical locations shall control over the locations, dimensions and descriptions contained on Exhibit "A" and subsequent amendments. In the event of a total or substantial destruction of the building, the locations, dimensions and descriptions of the respective units as contained in Exhibit "A" and subsequent amendments will control.

ARTICLE III  
DEFINITIONS

3.1 DEFINITIONS. The terms used in this Declaration and its Exhibits shall have the meanings stated in the Condominium Act and as hereinafter provided, unless the context otherwise requires.

3.2 UNIT. Unit means a part of the condominium property which is to be subject to exclusive ownership. When used in a conveyance of a unit, and elsewhere when the context permits, the word unit shall include the appurtenances thereto which are elsewhere described.

3.3 DEVELOPER. Developer means Plantation Associates, its designees, successors and assigns.

3.4 UNIT OWNER OR OWNER OF A UNIT. Unit owner or owner of a unit means a record owner of legal title to a condominium parcel.

3.5 ASSOCIATION. Association means Westchester Gardens Condominium Association, Inc., a non-profit Florida corporation, which is responsible for the operation of the condominium, and its successors and assigns.

3.6 COMMON ELEMENTS. Common elements shall include: (a) The portions of the condominium property not included in the units; (b) tangible personal property required for the management, maintenance, repair and operation of the common elements; and (c) other items as stated in the Condominium Act.

3.7 LIMITED COMMON ELEMENTS. Limited common elements means those common elements which are reserved for the use of a certain condominium unit or units to the exclusion of other units.

3.8 CONDOMINIUM. Condominium means all of the condominium property as a whole when the context so permits, as well as the meaning stated in the Condominium Act.

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

3.10 UTILITY SERVICES. As used in the Condominium Act and as construed with reference to this condominium and as used in the Declaration, Articles and Bylaws, utility services shall include, but not be limited to, electric

power, gas, cable T.V., hot and cold water, heating, refrigeration, air-conditioning, garbage, trash and sewage disposal, and solar energy system.

3.11 ASSOCIATION PROPERTY. Association Property means that property, real and personal, which is owned or leased, which is shown by a survey or is dedicated by a recorded plat to the Association for the use and benefit of its members.

3.12 COMMITTEE. Committee means a group of Board members, unit owners, or Board members and unit owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the Association budget or take action on behalf of the Board.

3.13 CONSPICUOUS TYPE. Conspicuous Type means type in capital letters no smaller than the largest type exclusive of headings on the page on which it appears and in all cases, at least 10-point type. Where conspicuous type is required, it must be separated on all sides from other type and print. Conspicuous type may be used in contracts for purchase or public offering statements only where required by law.

#### ARTICLE IV THE UNITS

4.1 THE UNITS. The units of the condominium are more particularly described and the rights of their owners established as hereinafter provided.

4.2 NUMBER OF UNITS. There are a total of 164 residential units in the condominium.

4.3 UNIT IDENTIFICATION. Each unit is identified by number as is shown on the plot plan.

4.4 APPURTENANCES TO UNITS. The owner of each unit shall own a share and certain interests in the condominium property, which share and interest are appurtenant to his unit, including but not limited to the following items that are appurtenant to the units as indicated:

(a) Ownership of Common Elements and Sharing Common Expenses. The ownership interest of the respective condominium units in the common elements and the share of common expenses and common surplus shall be equal among all of the units, that is: 1/164th share per unit.

(b) Association Membership. The membership of each unit owner in the Association and the interest of each unit owner in the funds and assets held by the Association.

4.5 LIABILITY FOR COMMON EXPENSES. Each unit owner shall be liable for a proportionate share of the common expenses, such share being a 1/164th.

## ARTICLE V DEVELOPMENT PLAN

5.1 DEVELOPMENT PLAN. The condominium is described and established as follows:

5.2 COMMON ELEMENTS. Any right, title or interest in a condominium unit shall automatically carry with it as an appurtenance and without the necessity of specific reference thereto, its respective undivided share of the common elements and a right to use the common elements in conjunction with the owners of the other condominium units. The common elements shall include but not be limited to:

- (a) all of the above described land;
- (b) all improvements and parts thereof which are not included within respective condominium units;
- (c) all structural columns, bearing walls, and utility chases regardless whether they are located within or without the unit boundary lines;
- (d) any utility areas and installations and all utility services which are available to more than one unit or to the common elements; provided, however, the Association reserves the use and ownership of all main utility lines and equipment which are located within the lands of this condominium and the right to convey them to Sarasota County or utility companies, such as Florida Power & Light Company, or other utility companies as may be appropriate;
- (e) all parking areas, driveways, and other means of ingress and egress;
- (f) all electrical apparatus and wiring, plumbing pipes and apparatus, and other ducts, conduits, cables, wire or pipe, within the common elements and up to the interior surface of the unit boundary wall;

(g) all tangible personal property required for the maintenance and operation of the condominium and for the common use and enjoyment of the unit owners;

(h) alterations, additions and further improvements to the common elements.

The unit owners in the aggregate shall be entitled to equal and full use and enjoyment of all common elements except as they may be restricted herein or by the reasonable and uniform regulations duly adopted by the Association board of directors, which usage shall always be in recognition of the mutual rights and responsibilities of each of the unit owners.

5.3 LIMITED COMMON ELEMENTS. The following shall be deemed to be Limited Common Elements (LCE):

(a) The patio areas contiguous to the unit, the carport and utility room as designated on Exhibit "A" and the driveway between the street and the carport are Limited Common Elements the exclusive use of which is limited to the owners of the unit to which they are appurtenant, their guests, invitees, lessees, successors and assigns.

(b) The interior of each building, exclusive of the units, including, but not limited to entry areas, walkways, and laundry rooms, shall be deemed to be a Limited Common Element the exclusive use of which is limited to the owners of the units in the respective buildings, their guests, invitees, lessees, successors and assigns.

5.4 UNIT BOUNDARIES. Each unit shall include that part of the Building containing the unit which lies within the boundaries of the unit, which boundaries shall be determined in the following manner:

(a) UPPER AND LOWER BOUNDARIES. The upper and lower boundaries of the unit shall be the following boundaries extended to their intersection with the perimetrical boundaries:

1. UPPER BOUNDARY - the horizontal plane of the undecorated finished ceiling of the unit.

2. LOWER BOUNDARY - the horizontal plane of the undecorated finished floor of the unit.

(b) PERIMETRICAL BOUNDARIES. The perimetrical boundaries of the unit shall be the vertical planes of the unit extended to intersections with each other and with the upper and lower boundaries, and when there is attached to the building containing the unit a loggia, terrace, balcony, patio, canopy, or other portion of the building serving only the unit being bounded, such boundaries shall be the intersecting vertical planes adjacent to and which include all of such structures and fixtures thereon.

## ARTICLE VI THE ASSOCIATION

6.1 ASSOCIATION. The corporation which is responsible for the operation of the condominium is WESTCHESTER GARDENS CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, herein referred to as the Association. All persons owing a vested present interest in the fee title to any of the condominium units, which interest is evidenced by a proper instrument duly recorded in the public records of Sarasota County, shall automatically be members of the Association and their respective memberships shall terminate as their vested interest in the fee title terminates. All of the affairs and property of the condominium and of the Association shall be controlled by the officers and Board of Directors of the Association. A copy of the Articles of Incorporation has been filed with and certified by the Secretary of the State of Florida and recorded in Official Records Book 1476, page 986, et seq., as amended, of the Public Records of Sarasota County, Florida. The Bylaws governing the operation of the condominium and of the Association are recorded in Official Records Book 1476, page 993, et seq., as amended, of the Public Records of Sarasota County, Florida. The Association shall have all of the rights and powers provided by the Condominium Act, the corporation statutes, the Articles of Incorporation, the Bylaws and this Declaration.

6.2 VOTING RIGHTS. Each condominium unit shall be entitled to one vote at Association meetings, notwithstanding that the same owner may own more than one unit or that units may be joined together and occupied by one owner. In the event of a joint ownership of a condominium unit, the vote to which that unit is entitled may be cast by any of the joint owners, and in the event more than one joint owner attempts to cast a vote of the unit, such vote shall be apportioned equally among such joint owners who are attempting to cast the vote. The vote of a unit owned by a legal entity other than a natural person shall be cast by any person entitled to act for such entity.



6.3 COMMON EXPENSES. The common expenses shall include:

(a) costs of operation, maintenance, repair and replacement of the common elements and limited common elements;

(b) costs of management of the condominium, administrative costs of the Association including professional fees and expenses;

(c) costs of water and sewerage services, electricity, solar energy systems, garbage collection and trash removal, and other utilities which are not metered separately to the individual condominium units;

(d) labor, material and supplies used in conjunction with the common elements;

(e) damages to the condominium property in excess of insurance coverage;

(f) annual cost of the community association manager or managers and their assistants, as shall be determined by the Board of Directors of the Association;

(g) premium costs of fire, and other property and liability insurance as provided herein;

(h) initial cost of installation of additions, alterations or improvements, or additional lands, leaseholds or other possessory or use rights in lands or facilities, or memberships or other interests in recreational facilities, purchased as part of the common elements for the benefit of all the unit owners of this condominium, provided that any of such items as shall exceed \$20,000.00 in cost shall first be approved by the affirmative vote not less than 51% of all the unit owners;

(i) charges for cable or central antenna television service; and

(j) all other costs and expenses that may be duly incurred by the Association through its Board of Directors from time to time in operating, protecting, managing and conserving the condominium property and in carrying out its duties and responsibilities as provided by the Condominium Act, this Declaration, the Articles of Incorporation or the Bylaws.

(k) Expenses declared common expenses by provisions of this Declaration, the Articles, the Bylaws or the Condominium Act.

(l) Any valid charge against the condominium property as a whole.

(m) The cost and expense of maintaining, repairing and replacing all heating and air-conditioning equipment serving a particular unit (whether such equipment is located inside or outside of the unit) shall not be a common expense but shall be the individual expense of the owner of the unit being served by such equipment.

6.4 LIMITATION UPON LIABILITY OF ASSOCIATION. Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to unit owners for the injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained by the Association, or caused by the elements or other owners or persons.

6.5 RESTRAINT UPON ASSIGNMENT OF SHARES AND ASSETS. The share of members in the funds and assets of the Association cannot be assigned, hypothecated, encumbered or transferred in any manner, except as an appurtenance of his unit.

6.6 APPROVAL OR DISAPPROVAL OF MATTERS. Whenever a decision of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.

## ARTICLE VII MAINTENANCE, REPAIR AND REPLACEMENTS

7.1 MAINTENANCE, ALTERATION AND IMPROVEMENT. The responsibility for the maintenance of the condominium property and restriction upon the alteration and improvement thereof shall be as hereinafter provided.

7.2 BY THE ASSOCIATION. The Association shall maintain, repair and replace as part of the common expense, all of the common elements and limited common elements as defined herein and as may be required by the Rules and Regulations. Unless waived by the membership as provided for in the Condominium Act, the Association shall have the condominium buildings which are greater than three (3) stories in height inspected every five (5) years by a Florida licensed

architect or engineer as to the required maintenance, useful life, and replacement cost.

7.3 UNIT OWNER LIABILITY. If the Board determines that any maintenance or repair required to be made by the Association was necessitated by the carelessness or negligence of the unit owner, his guests, tenants or invitees, the cost of such maintenance and repair shall be assessed against the unit owner and may be collected in the same manner as any other assessments provided herein.

7.4 LIMITATION ON LIABILITY. The Association shall not be liable for any damage to the property or person of any other unit owner or occupant of a unit resulting from water intrusion into a unit through the common elements or from another unit, resulting from rain, or pipe leakage, overflow, bursting or other similar source, unless the damage constitutes a claim under the Association insurance obligation in which event the Association shall cover the amount for the insurance deductible as a common expense.

7.5 BY THE UNIT OWNERS. Each unit owner shall maintain, repair and replace everything within the confines of his unit which is not part of the common elements or limited common elements as defined herein, including but not limited to:

(a) paint, finish, covering, wallpaper and decoration of all walls, floors and ceiling;

(b) all built-in shelves, cabinets, counters, storage areas, and closets;

(c) any refrigerators, stoves, ovens, disposals, dishwashers and other kitchen equipment, washer and dryer, and all bathroom fixtures, equipment and apparatus, within his unit;

(d) all electrical, plumbing, telephone and television fixtures, apparatus, equipment, outlets, switches, wires, pipes and conduits serving one unit; (for example, all plumbing pipes which serve only one unit, whether located within the unit or in the common element, are a unit owner's responsibility to maintain, repair and replace); all electric lines and service panel between the unit and its individual electric meter, even though such lines and service panel may be in the common elements;

(e) all mechanical, ventilating, heating and air conditioning equipment serving the respective unit even though such equipment may be located in the common element;

(f) all interior doors, walls, partitions, and room dividers;

(g) all exterior doors, including sliding glass; screen doors; windows; and screening of the unit;

(h) all furniture, furnishings and personal property contained within the unit;

(i) door and window hardware;

(j) all door, window, and screen framing, including sliding glass door assemblies and tracks;

(k) shower pans; and

(l) the main water supply shut-off valve for the unit; and

(m) the lanai screening and its aluminum posts and framing.

7.6 ALTERATION AND IMPROVEMENT. Neither a unit owner nor the Association shall make any alterations in the portions of a unit that are to be maintained by the Association, or remove any portion of such, or make any additions to them, or do anything that would jeopardize the safety or soundness of the unit, or impair any easement, without first obtaining the approval in writing of owners of all units in which such work is to be done, and the approval of the Board of Directors of the Association. A copy of plans for all such work prepared by an architect licensed to practice in this State, shall be filed with the Association prior to the start of the work.

7.7 UNIT OWNER MODIFICATIONS. If a unit owner makes or has made any modifications, installations or additions to the common elements, or the limited common elements, the unit owner, and his successors in title, shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions, and the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other part of the

condominium property, provided, however, nothing herein shall be construed to authorize an owner to proceed with any such work without first obtaining the written approval of the Board of Directors as required by this Declaration.

7.8 USE OF LICENSED AND INSURED CONTRACTORS. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the common elements or limited common elements, such owner shall be deemed to have warranted to the Association and its members that the contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

7.9 ENFORCEMENT OF MAINTENANCE. If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant common elements as required in this Declaration, or makes any additions or alterations without the required written consent of the Association, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit or common element, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any item which in the business judgment of the Board of Directors may constitute a health or safety hazard to other property or residents or to remove any unauthorized additions or alterations. Any expenses incurred by the Association in performing the work contemplated by this paragraph shall be charged to the unit owner, together with reasonable attorney fees and other expenses of collection, if any, and shall constitute a lien on the unit and may be foreclosed in the same manner as an assessment.

7.10 NEGLIGENCE; DAMAGE CAUSED BY CONDITION IN UNIT; APPLIANCES. The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any common element appurtenant to the unit (except those common elements required to be maintained by the Association as provided in this Declaration), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to either units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements, or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered,

the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. Any costs and expenses incurred to mitigate the damage or to prevent its spread shall be the unit owner's responsibility to pay to the vendor. In the event the unit owner fails to pay this expense, the Association may pay the vendor and proceed to collect the expense from the unit owner as an assessment, by means of a claim of lien proceeding, as permitted by Article XI of this Declaration. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

7.11 ASSOCIATION'S ACCESS TO UNITS. The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of an unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment, as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the unit shall be accomplished with due respect of the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. There is a owner's key to each unit which is maintained by the Association. No unit owner shall alter any lock, nor install a new lock, which prevents access when the unit is unoccupied. If the Association cannot access a unit by use of the owner's key, the unit owner shall pay all costs incurred by the Association in gaining entrance to the unit, as well as all damage to his unit caused by gaining entrance thereto, and all damage to the unit, surrounding units and common elements resulting from delay in gaining entrance to the unit caused by the non-availability of a key. In the event the unit owner fails to pay this expense, the Association may pay the vendor and proceed to collect the expense from the unit owner as an assessment, by means of a claim of lien proceeding, as permitted by Article XI of this Declaration.

7.12 PEST CONTROL. The Association supplies pest control services for the inside of each unit, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the condominium, in which event the owner thereof must either permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control service provided by the Association is part of the common expenses, the election of an owner not to use such service shall not reduce the owner's assessments.

7.13 ALTERATION AND IMPROVEMENTS OF COMMON ELEMENTS.

There shall be no material alteration, substantial additions or further improvement of common elements or to real property which is Association property without prior approval of not less than two thirds (2/3rds) of the total membership. There shall be no change in the shares and rights of a unit owner in the common elements which are altered or further improved.

7.14 HURRICANE SHUTTERS. Notwithstanding any provisions set forth hereinabove to the contrary, the Board of Directors shall adopt and approve a model, style and color of hurricane shutter as a standard hurricane shutter for use in the condominium. A unit owner may install an approved shutter without specific consent from the Board of Directors provided the hurricane shutter and all attachments and equipment conform in all respects to the approved hurricane shutter plans and specifications. No hurricane shutter except the standard model, color and style adopted by the Board of Directors shall be permitted to be installed on the condominium building.

ARTICLE VIII

INSURANCE, DESTRUCTION AND RECONSTRUCTION

8.1 INSURANCE. The insurance other than title insurance which shall be carried upon the condominium property and the property of the unit owners shall be governed by the provisions hereinafter set forth.

8.2 AUTHORITY TO PURCHASE; NAMED INSURED. All insurance policies upon the condominium property shall be purchased by the Association and the named insured shall be the Association individually and as agent for the unit owners, naming them and their mortgagees as their interests may appear. Provision shall be made for the issuance of mortgage endorsements and memoranda of insurance to the mortgagees of unit owners. The Association may choose not to purchase flood insurance on the common element structures, as the property is not located in an area where a mortgage lender would require flood insurance coverage on the property.

As agent for and in behalf of the unit owners and their respective mortgagees, the Association shall obtain and maintain fire and extended coverage insurance with a responsible insurance company upon all of the insurable improvements of the entire condominium, except as otherwise provided for herein, including the common elements and the respective units and personal property of the Association, for the full replacement or insurable value thereof.

8.3 INSURANCE POLICIES. All insurance policies upon the Condominium property shall be purchased by the Association and the named insured shall be the Association individually and as agent for the Unit Owners, naming them and their mortgagees as their interests may appear.

(a) Provision shall be made for the issuance of mortgage endorsements and memoranda of insurance to the mortgagees of Unit Owners.

(b) The provisions of 718.111(11)(f), Florida Statutes, as amended, for insurance policies issued on or after January 1, 2009, are included herein.

(c) Pursuant to said provision, the terms "condominium property," "building," "improvements," "insurable improvements," "common elements," "association property," or any other terms found in the Declaration of Condominium which defines the scope of property or casualty insurance that the Association must obtain.

(d) The Association shall obtain property or casualty insurance for:

1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.

2. All material alterations, additions or improvements made to the condominium property or Association property.

(e) The Association's property or casualty insurance policy shall exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and counter tops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit. This insurance requirement includes, but is not limited to the obligation that the Association shall replace drywall and perform mold remediation services within the boundaries of a unit, together with the obligation to repair and replace air conditioning and heating systems whether located within the unit or on the common element, as necessary, in the event of a casualty.

(f) The deductible for the Association's insurance policy shall be paid as a common expense for each casualty. The deductible will be paid by the unit owner if the following circumstances exist:



1. The damage is within a unit and is a part of the unit which is the unit owner's obligation to insure, but the Association's insurance policy provides coverage for the claim.

2. The damage is caused by the intentional conduct, negligence, or the failure to comply with the terms of this Declaration or the Association rules and regulations by the unit owner, member's of his family, other unit occupants, tenants, guests or invitees.

(g) Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense.

8.4 INSURANCE DEDUCTIBLE. The insurance policy may include deductibles as determined by the Board of Directors. The deductible shall be consistent with industry standards and prevailing practice for communities of similar size, age, construction and facilities of this condominium in Sarasota County. The Board of Directors shall establish the amount of the insurance deductible based upon the level of available funds and predetermined assessment authority at a properly called Board of Director meeting. The Board meeting agenda shall state the proposed deductible, the available funds, the assessment authority relied upon by the Board and an estimate for any potential assessment amount levied against each unit to fund the deductible for each casualty, if any.

8.5 INSURANCE COST. The premium for such insurance shall be paid by the Association and shall be included in the assessment for common expenses.

8.6 NAMED INSURED. The Association Board of Directors shall have full authority as agent for the insureds to compromise and settle all claims against its insurance carrier and may institute legal proceedings for the collection thereof. The original policy of insurance shall be held by the Association, and available to unit owners upon request. Each unit owner shall be responsible for insuring his own personal property within his unit and any improvements made by him within his unit which are not covered by the Association policy unless the Board of Directors determines by resolution that such insurance shall be included in the insurance package purchased by the Association.

8.7 ASSOCIATION AS AGENT. In the event of destruction or casualty loss to any of the improvements, all insurance proceeds payable under the Association's policies shall be collected by the Association treasurer. The insurance carrier shall not be responsible to assure that the proceeds are properly applied as provided herein. Said funds shall be disbursed upon written draw requests signed by the

President or Vice-President of the Association as reconstruction progresses. In the event said proceeds are not sufficient to pay the cost of such reconstruction, the Association shall supply sufficient additional funds as a part of the Association common expense. The Association's insurance carrier shall not have a right of subrogation against a unit owner, but if it is determined by the Board of Directors that the damage was proximately caused by the negligence of one or more unit owners, such unit owner(s) may be assessed a sum sufficient to reimburse the Association for any deficiency in insurance proceeds and the Association shall have a lien for such amount, plus interest at the highest rate allowed by law from the date of such assessment, and reasonable attorneys' fees, to the same extent that it has a lien for any unpaid assessments under the Condominium Act. Any surplus of insurance proceeds shall be returned to the Association and added to the common surplus. In the event repairs are not started within ninety (90) days, all insurance funds will be invested in an interest-bearing account until needed for payment of repairs.

8.8 PLANS AND SPECIFICATIONS. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, or if not, then according to plans and specifications approved by the Board of Directors of the Association and institutional first mortgagees holding mortgages on the units involved.

8.9 RESPONSIBILITY. If the damage is only to those parts of a unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility for reconstruction and repair after casualty shall be that of the Association. Insurance proceeds shall be applied to such reconstruction and repair.

8.10 ESTIMATE OF COSTS. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

8.11 CONSTRUCTION FUNDS. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance and funds collected by the Association from assessments against unit owners, shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association. The first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds and if there is a balance in the construction fund after payment of all costs of reconstruction and repair for

which the fund is established, such balance shall be distributed to the Association as common surplus.

8.12 RECONSTRUCTION AND REPAIR/TERMINATION. In the event of a total or substantial destruction of all of the condominium improvements, the improvements shall be restored as above provided unless the owners of not less than two-thirds (2/3) of the voting interest who cast their vote, at a properly called members' meeting, in person or by limited proxy, to terminate the condominium. In the event the condominium is to be terminated, then all owners of units will immediately convey all their right, title and interest to their respective units to the bank trustee selected by the Board of Directors to be held by such trustee in trust. The recording of each such conveyance to trustee in the public records of Sarasota County will have the immediate effect of releasing all liens upon the respective unit and shall cause their instantaneous transfer to that unit owner's share of the common surplus to be subsequently distributed by trustee as provided herein. Said trustee shall collect all insurance proceeds payable as a result of such destruction, shall collect all assets of the Association which are allocable to the units and which may remain after the Association pays its liabilities, and shall effect a public or private sale of the condominium property, by whatever means the Association Board of Directors shall deem best, for the highest and best price, for cash or terms, as soon as practicable consistent with local real estate market conditions. After conveyance of title to the purchaser free and clear of all liens and encumbrances and after payment of reasonable trustee's fees, appraiser's fees, and other costs reasonably incurred, trustee shall apportion the remaining funds in its hands among the units in accordance with their respective values prior to such destruction as determined by three experienced real estate appraisers selected by the Board of Directors. Trustee shall distribute each unit's share of said funds jointly to the record title owners of each unit and the record owners of any mortgages or other liens encumbering such unit at the time of the recording of its conveyance to the trustee by the unit owner. All mortgages and other liens upon the respective units shall be fully released and discharged as provided herein even though the share of a particular unit in said funds is insufficient to pay all liens in full; in such event the lienholders who had priority against the title to the unit shall have priority of payment of the unit's share of the common surplus. Nothing herein provided shall in any way relieve the unit owner of his personal liability for any deficiency which may remain upon any liens which encumbered his unit at the time of his conveyance to the trustee. Mortgagees and other lienholders will evidence their acceptance and consent to the forgoing provisions by the acceptance of their mortgage or perfection of their liens.

8.13 LIABILITY INSURANCE. The Association shall obtain and maintain public liability insurance covering all of the common elements 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 premiums for such insurance coverage shall be a part of the common expenses. 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 any such claims 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. Each unit owner will be responsible for procuring and maintaining public liability insurance covering losses which may occur in and about his particular unit, as he may deem appropriate.

#### ARTICLE IX USE RESTRICTIONS

Each owner, tenant or other occupant of a condominium unit shall comply with the following use restrictions:

9.1 COMMERCIAL USE. The unit shall only be used for residential purposes. No part of the condominium property shall be used directly or indirectly for any business or other non-residential purpose. However, unit owners, tenants and occupants may conduct limited professional or business activities incidental to the primary use of the unit as a residence, but only if the activity is permitted under the zoning regulations of Sarasota County, and is confined solely within their units, and only if the activity cannot be seen, heard or smelled by other residents of the condominium. No activity shall be permitted that results in a significant increase in pedestrian or vehicular traffic in the condominium, nor shall any activities be permitted which would increase the insurance risk of either homeowners or the Association, or create a danger. The Association shall have the right to provide or authorize such services on the common elements as it deems appropriate for the enjoyment of the common elements and for the benefit of the condominium unit owners.

9.2 UNITS. Each of the units shall be occupied only by the owner, his tenants, and servants, and the respective families and guests of the unit owner and his tenants. No unit may be divided or subdivided into a smaller unit nor any portion thereof sold or otherwise transferred without first amending this Declaration to show the changes in the units to be affected thereby.

9.3 ADDITIONS AND ALTERATIONS. Unit owners shall not paint or otherwise change the appearance of any exterior wall, door, window, hurricane shutter, patio, screened terrace, or other surface visible from the outside of the unit;

place any awning on any exterior opening; plant or otherwise alter existing exterior plantings; erect any exterior lights or signs; place any signs or symbols in windows; display any flags or banners, except as permitted to be displayed by law; erect or attach any structures or fixtures within the common elements; make any structural additions or alterations (except the erection or removal of non-support carrying interior partitions wholly within the unit) to any unit or to the common elements; nor any of the foregoing without the prior written consent of the Association Board of Directors.

9.4 INTERIOR FIXTURES. No unit owner shall fasten light fixtures, shelving, pictures, mirrors, objets d'art, curtain rods and similar household items to the walls of a unit unless they may be removed without substantial damage to support or structural walls of the building.

9.5 NUISANCE. No unit owner shall permit loud and objectionable noises or obnoxious odors to emanate from the unit which may cause a nuisance to the occupants of other units in the sole opinion of the Board or commit or permit any public or private nuisance, in his unit or in or on the common elements.

9.6 LAWFUL USE. No unit owner shall make any use of a unit which violates any laws, ordinances and regulations of any governmental body.

9.7 RULES AND REGULATIONS. Each unit owner shall conform to and abide by the Bylaws and the uniform Rules and Regulations in regard to the use of the units and the common elements which may be adopted from time to time by the Board of Directors.

9.8 ACCESS TO UNIT. The Board of Directors or its designated agent shall have the right to enter any condominium unit at any reasonable time to determine compliance with the Condominium Act, this Declaration, or the Bylaws and Regulations of the Association.

9.9 ANTENNA, AERIALS. Unit owners shall not erect, construct or maintain any wire, antennas, garbage or refuse receptacles, or other equipment or structures on the exterior of the building or on or in any of the common elements, except with the written consent of the Association Board of Directors.

9.10 INSURANCE COMPLIANCE. Unit owners shall not permit or suffer anything to be done or kept in his condominium unit which will increase insurance rates on any unit or on the common property.

9.11 PARTITION. A unit owner shall not divide or subdivide a unit for purpose of sale or lease except to the owner of an adjacent unit, although a unit may be combined with an adjacent unit and occupied as one unit.

9.12 CLOTHES. No laundry, garments, towels or other unsightly objects which are visible outside of the unit shall be permitted.

9.13 INGRESS AND EGRESS. No unit owner shall allow anything to remain in the units or common areas which would be unsightly or hazardous or which would impede ingress and egress to a unit or the common elements.

9.14 TRASH. No rubbish, refuse, garbage or trash may accumulate in places other than the receptacles provided therefor, and each unit and the common elements shall at all times be kept in a clean and sanitary condition; garbage shall be disposed of through the kitchen garbage disposal so far as possible and other trash shall be placed in a plastic container, or similar containers before being placed in the appropriate receptacles. Bottles, cans, and newspapers shall be placed in designated recycle receptacles.

9.15 HEALTH HAZARDS. No fire or health hazard is permitted to exist.

9.16 USE AND ENJOYMENT OF COMMON ELEMENT. Each unit owner shall make use of the common elements in such a manner as to abridge the equal rights of the other unit owners to their use and enjoyment.

9.17 LEASING. No unit may be rented or leased for less than an entire unit nor for a period of less than thirty (30) days at a time. The only exception to this restriction being that those units whose owners held record title to the unit at the date this Amended and Restated Declaration of Condominium was recorded in the Official Records of Sarasota County, Florida, may continue to rent or lease their unit for a period of not less than seven (7) days until the time the unit sells or otherwise transfers.

9.18 LIMITATION ON NUMBER OF PERSONS TO OCCUPY A RENTAL UNIT. A one (1) bedroom unit, when leased, shall not be occupied by more than two (2) persons. A two (2) bedroom unit, when leased, shall not be occupied by more than four (4) persons. A three (3) bedroom unit, when leased, shall not be occupied by more than six (6) persons.

9.19 PETS. From and after the date of recording of this Amended and Restated Declaration of Condominium:

(a) No unit owner or guest shall keep or bring any new pet (dog or cat) to reside on the premises which exceeds twenty (20) pounds in weight, nor shall there be more than two pets occupying a unit. Those occupants who presently have pets whose weight is in excess of twenty (20) pounds may continue to maintain their pet on the premises for the life of the particular pet.

(b) From and after the date of recording this Amended and Restated Declaration of Condominium, a tenant is not allowed to maintain a pet, except that tenants with existing pets are permitted maintain that pet, if one is currently occupying a unit until such time as the pet dies or is otherwise removed from the unit.

(c) All pets shall be kept on a leash while outside the unit.

(d) In the event a majority of the Board of Directors deems, in its discretion, that the pet is a nuisance and an annoyance, then the owner of the unit where said pet is kept shall, when notified in writing to do so, permanently remove the pet from the property immediately upon receipt of the written notice.

(e) All pets shall be kept in conformity with Rules and Regulations promulgated from time to time by the Board of Directors.

9.20 DISCHARGE. Saline or other regenerating solution from water softening equipment shall not be discharged into any street, easement or common area so as to harmfully affect any lawn or plants.

9.21 PARKING. Commercial vehicles; campers; motor homes; boats on trailers; trailers; recreational vehicles; or motorcycles, shall not be parked on the property for more than 48 consecutive hours. Each unit is assigned the exclusive use of a covered parking space. All uncovered, additional parking spaces are provided for guests, unit owners and tenants.

9.22 POOL USE. Everyone entering the pool shall comply with all pool rules as promulgated from time to time by the Board of Directors, including, but not limited to, using the shower provided at the pool to remove suntan lotion or oils.

9.23 COOKING GRILLS. Grills, other than electric grills, shall not be placed or operated on balconies, lanais, stairwells, or parking areas. The Association maintains gas cooking grills for the use of all unit occupants adjacent to the swimming pool area and at each end of the condominium complex.

9.24 PLANT MAINTENANCE. No unit owner shall install any planting or otherwise alter the exterior appearance without prior Board of Directors' approval

and the owner of that unit, his successors and assigns, shall thereafter undertake the maintenance, repair and replacement obligation of the approved planting changes.

9.25 APPROPRIATE ATTIRE. No one shall appear outside their unit without proper attire, including shirts for men and cover-ups, robes or street clothes for women, except when inside the pool area.

9.26 ELECTRICAL APPARATUS. No electric machine or apparatus of any sort shall be used or maintained in any unit which causes interference with the television or radio reception in other units.

9.27 VACANT UNITS. In order to prevent damage to the unit(s) and common element due to water and sewage intrusion, whenever a unit is vacant for a period of time exceeding thirty (30) days, the unit owner shall arrange for a periodic review of the unit's interior space. The unit owner shall provide the Association, in writing, with the name, address and telephone number of the local person or entity to contact in the event of damage occurs within the unit. In the event the unit owner does not provide the Association with the information required by this paragraph and/or the unit owner fails to provide documentation that periodic review of the unit's interior occurred at the time that damage occurs, then the unit owner shall be deemed intentionally negligent in his conduct and shall be responsible to reimburse the Association for any and all expenses it incurs as a result of a casualty event within the unit.

## ARTICLE X SALE, TRANSFER, LEASE OR OCCUPATION OF UNIT

10.1 MAINTENANCE OF COMMUNITY INTEREST. In recognition of the close proximity of the units and the compact living conditions which exist in this condominium, the mutual utilization and sharing of the common elements and common recreational facilities, and the compatibility and congeniality which must exist between unit owners and occupants in order to make this community enjoyable for all parties in interest, it shall be necessary for the Board of Directors of the Association, or its duly authorized officers, agent or committee, to approve in writing all rentals, sales, transfers, leases or occupation of a unit before such rental, sale, transfer, lease or occupation shall be valid and effective.

10.2 TRANSFERS SUBJECT TO APPROVAL. The following transfers shall be subject to approval:



(a) SALE. No unit owner may dispose of a unit or any interest therein by sale or other transfer without the approval of the Association.

(b) GIFT, DEVISE OR INHERITANCE. If any unit owner shall acquire his title by gift, devise or inheritance or other means of transfer not herein set forth, the continuance of his ownership of his unit shall be subject to the approval of the Association.

(c) LEASE, RENTAL OR OCCUPANCY IN THE ABSENCE OF THE OWNERS. No unit owner may lease, rent or allow his unit to be occupied in his absence without, the approval of the Association.

10.3 APPROVAL BY ASSOCIATION. Written application for such approval shall contain such information as may be required by application forms promulgated by the Board and shall be accompanied by a transfer fee as required by regulation of the Board. When considering such application, consideration shall be given to good moral character, social compatibility, personal habits and financial responsibility of the proposed tenant, purchaser, transferee, lessee, or occupant. A waiver of this provision or the failure to enforce it in any particular instance shall not constitute a waiver or stop the Association from enforcing this provision in any other instance.

10.4 SUBLEASING. A lessee shall not assign his lease or sublet his condominium unit without the prior written approval of the Board of Directors or its duly authorized officers or committee.

10.5 FACTORS WHEN CONSIDERING DISAPPROVAL OF SALE OR TRANSFER OF UNIT. Approval of the Association shall be withheld only if a majority of the entire Board so votes. The Board shall consider the following factors and may confer with legal counsel in reaching its decision. Only the following may be deemed to constitute good cause for disapproval:

(a) The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval intends to conduct himself or herself in a manner inconsistent with the condominium documents.

(b) Applicant (which shall include all proposed occupants) has been convicted of a felony involving violence to persons or property, or demonstrating dishonesty or moral turpitude.

(c) The person seeking approval has a record of financial irresponsibility.

(d) The owner allows a prospective owner to take possession of the premises prior to approval by the Association as provided for herein.

(e) Applicant has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his or her conduct in other social organizations, communities or associations, or by conduct in this condominium as a tenant, unit owner or occupant of a unit.

(f) Applicant failed to provide the information, fees or appearance required to process the application in a timely manner.

(g) All assessments, fines and other charges against the unit or the unit owner have not been paid in full, provided however, the Association may grant approval subject to payment in full as a condition of the approval.

#### 10.6 DISAPPROVAL BY ASSOCIATION.

10.6.1 LEASING. In the event a rental, lease, sublease, or occupation of a unit is disapproved, the unit shall not be rented, leased, subleased or so occupied.

10.6.2 SALES. In the event a sale or transfer is disapproved or no action is taken by the Board or its duly authorized officers, agent or committee within 15 days after receipt of said application, and the unit owner intends to close in spite of such disapproval or inaction, the unit owner shall give the Board an additional 30 days written notice of such intent prior to closing.

(a) In such event, the Association or any other unit owner shall have the right of first refusal to purchase said unit for the identical price, terms and conditions, which right shall be exercised in writing delivered to the proposed seller or mailed to his address as shown on the Association records.

(b) In the event the Association is of the opinion that the price is not a bona fide sales price, then the sales price for purposes of the right of first refusal shall be the fair market value of the unit determined by the average of the values assigned by the written appraisals of three recognized real estate appraisers, one of whom shall be selected by the Association, one by the proposed seller and the third by the first two appraisers. The cost of such appraisals shall be divided between the Association and the proposed seller.

(c) If such right of first refusal is exercised by more than one, priority shall be given first to the Association and then to the unit owner who delivers his acceptance before any other unit owner.

(d) If no one exercises his right of first refusal by delivering or mailing his acceptance prior to three days before the proposed closing date or within 10 days after the sales price is determined by appraisal, whichever is later, the transfer may be closed pursuant to the price and terms stated in the notice.

(e) Failure of a transferor to comply with these provisions for sale or transfer shall give the Association or any other unit owner a right to redeem the unit involved from the transferee at any time before closing of such transfer and for a period of six months after the recording of such conveyance in the public records of Sarasota County, or 60 days after the Board of Directors is given formal written notice of such transfer, whichever period is shorter. The only condition to the exercise of such right of redemption shall be that the transferee be reimbursed for that portion of the purchase price he has paid to that date. Immediately upon the tender of such sums the transferee shall convey all his right, title and interest to the one making the redemption and shall thereafter immediately deliver up possession of the unit in the same condition as existing when he first assumed possession.

(f) In addition to all other available remedies, the right of redemption may be enforced by suit for specific performance.

(g) In the event legal proceeding are commenced by the Association or any unit owner to enforce the provisions of this paragraph against a unit owner or transferee who fails to comply therewith, the party bringing such proceedings shall be entitled to his costs and reasonable attorneys' fees as determined by the Court, including appellate proceedings, if such party prevails.

(h) The foregoing provisions shall not be applicable to purchasers at foreclosure sales of mortgages held by savings and loan associations, banks or insurance companies, or their affiliate or subsidiary companies, nor to conveyances or leases to or from such institutional first mortgagees.

10.7 EXCEPTIONS. The foregoing provisions of this section shall not apply to a transfer or to a purchase by a bank, life insurance company, real estate investment trust, savings and loan association or other conventional institutional lender, or seller, that acquires its title as the result of owning a mortgage upon the unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings; nor shall such provisions apply to a transfer or sale by a bank, life insurance company, real estate investment trust,

savings and loan association or other conventional institutional lender, or seller, that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a unit at a duly advertised public sale with open bidding provided by law, such as, but not limited to an execution sale, foreclosure sale, judicial sale or tax sale.

10.8 TENANTS RIGHTS TO USE COMMON ELEMENT. When a unit is leased, a tenant shall have all use rights in the Association property and those common elements otherwise readily available for use generally by unit owners and the unit owner shall not have such rights except as a guest. Nothing in this subsection shall interfere with the access rights of the unit owner as a landlord pursuant to Chapter 83, Florida Statutes. The Association shall have the right to adopt rules to prohibit dual usage by a unit owner and a tenant of Association property and common elements otherwise readily available for use generally by unit owners.

## ARTICLE XI ASSESSMENTS AND LIENS

11.1 ASSESSMENTS. The making and collection of assessments against the unit owners for common expenses shall be pursuant to the Bylaws and subject to the provisions hereinafter provided.

11.2 SHARE OF COMMON EXPENSES. Each unit owner shall be liable for a 1/164th share of the common expenses.

11.3 ANNUAL BUDGET OF COMMON EXPENSES. The Board of Directors of the Association shall approve annual budgets of projected anticipated income and estimated expenses for each fiscal year, and each unit owner will be responsible for his unit's share of such annual assessment based upon its proportionate share of the common expenses as provided herein. Annual assessments shall be paid in quarterly installments in advance on the first day of each calendar quarter, in an amount as determined by resolution of the Board of Directors.

11.4 SPECIAL ASSESSMENTS. In addition, the Board of Directors shall have the power to levy special assessments against the unit owners in proportion to each unit's share of the common expenses, if necessary to cover unanticipated expenditures which may be incurred during the fiscal year.

11.5 INTEREST; APPLICATION OF PAYMENT. Any assessments which are not paid when due shall bear interest from the due date until paid at the highest legal rate allowed by law. All payments upon account shall be first applied to any interest

accrued by the Association, then any administrative late fees, then to any costs and reasonable attorney's fees incurred in collection and then to the assessment payment first due. All interest collected shall be credited to the general expense account. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

11.6 LATE FEE. Unit owners who fail to timely pay assessments shall be subject to a late charge, in addition to interest, in an amount not to exceed the greater of \$25 or 5% of each installment of an assessment for each delinquent installment that the payment is late.

11.7 LIEN FOR ASSESSMENTS. The Association shall have the remedies and liens provided by the Condominium Act with respect to unpaid assessments, which shall include any late charges, accrued interest and reasonable attorneys' fees incurred by the Association incident to the collection of such assessment or enforcement of such lien, including appellate proceedings.

11.8 ACCELERATION OF ASSESSMENT INSTALLMENTS UPON DEFAULT. The remaining installments of the annual or any special assessment may be accelerated to maturity by giving the defaulting unit owner 10 days notice of intent to accelerate unless all delinquent sums are paid within that time. The Board of Directors may require each unit owner to maintain a minimum balance on deposit with the Association (not to exceed one-fourth of the current annual assessment) for working capital and to cover contingent expenses from time to time.

## ARTICLE XII RIGHTS OF INSTITUTIONAL FIRST MORTGAGEES

12.1 DEFINED. The term "institutional first mortgagees" as used in this Declaration shall mean all savings and loan associations, banks, real estate investment trusts, insurance companies or other conventional institutional lenders, including Fannie Mae, Freddie Mac, and other generally recognized residential mortgage lenders, holding mortgage upon any of the condominium units.

12.2 Notwithstanding any of the foregoing provisions of this Declaration, the written consent of all institutional first mortgagees shall be first obtained prior to the following:

- (1) the subdivision of any units;
- (2) any change in the percentage of ownership of the common surplus or common elements;

(3) any change in the percentage of sharing the common expense or assessments; and

(4) any change in the voting rights.

ARTICLE XIII  
COMPLIANCE AND DEFAULT

13.1 REMEDIES FOR DEFAULT. In addition to the remedies provided by statute and common law and the remedies elsewhere provided herein, a default in the compliance and fulfillment of the provisions of the Condominium Act, this Declaration, Articles of Incorporation, Bylaws and the Regulations and Rules promulgated by the Association or its Board of Directors, shall entitle the Association or individual unit owners to the relief as provided herein, in addition to the remedies provided by the Condominium Act.

13.2 ENFORCEMENT BY ARBITRATION OR COURT ORDER. Enforcement actions may be filed with the appropriate State agency or with the Sarasota County court, as appropriate for injunctive relief or money damages or both.

13.3 ATTORNEY'S FEES AND COSTS. In any such legal or equitable action or proceeding the prevailing party shall be entitled to recover his costs and expenses, including reasonable attorneys' fees to be determined by the Court, including appellate proceedings.

13.4 OTHER REMEDIES. During the continuance of any such default, the Association by action of the Board of Directors may terminate any or all services rendered to the unit or the unit owner including utility services which are paid by the Association.

13.5 AUTHORITY OF BOARD OF DIRECTORS REGARDING FINES.

(a) The Association may appoint a committee to recommend to the Board of Directors reasonable fines against a unit for failure of the unit owner or its occupant, guest, tenant, licensee or invitee to comply with any provision of the Declaration of Condominium, the Bylaws, or the Association's reasonable Rules and Regulations. No fine shall become a lien against a unit. A fine shall not exceed \$100.00 per violation or be levied in an amount other than as permitted by law, whichever is greater. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for a hearing, provided that no such fine shall in the aggregate exceed \$1,000.00 or as otherwise permitted by law, whichever is greater. A fine shall not be levied except after giving reasonable

notice and opportunity for a hearing to the owner and, if applicable, its licensee or invitee.

(b) The Board of Directors shall afford an opportunity for a hearing to the party against whom the fine is sought to be levied, after reasonable notice of not less than 14 days. The Notice shall include:

1. A statement of the date, time and place of hearing.
2. A statement of the provisions of the Declaration, the Bylaws and lawfully adopted rules and regulations which have allegedly been violated; and
3. A short and plain statement of the matters asserted by the Association.

(c) The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association.

(d) Upon the levying of any fine, the Board may collect such fines in one or more installments. Each day of violation shall be a separate violation.

(e) The affected unit owner, whether the offending party or not, shall always be given notice of the hearing.

13.6 NEGLIGENCE. A unit owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. A unit owner shall reimburse the Association for the insurance deductible expense incurred in the casualty event and also pay to the Association the amount of any increase in its insurance premium occasioned by use, misuse, occupancy or abandonment of a unit or its appurtenances, or of the common elements, by the unit owner.

13.7 NO WAIVER OF RIGHTS. The failure of the Association or any unit owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

ARTICLE XIV  
EASEMENTS

14.1 EASEMENTS. Each of the following easements were hereby reserved in favor of the Developer, its grantees, designees, successors and assigns and the unit owners in the Declaration as originally recorded, and are covenants running with the land of the condominium. Notwithstanding any of the other provisions of this Declaration, these Easements may not be amended or revoked and shall survive the termination of the condominium and the exclusion of any of the lands of the condominium from the condominium.

(a) UTILITY EASEMENTS. The Association maintains the right to grant to public and private utility companies serving the condominium and The Plantation community, such nonexclusive easements for ingress and egress, and for construction, installation, maintenance, replacement and repair of water, sewer, electrical, telephone, cable television, and other utilities, use of wells and irrigation lines, and surface water drainage over, under, through and across the common areas of the condominium and such lands adjacent to the condominium as may be necessary for the purpose of providing access, utility services and drainage for this condominium or The Plantation Master Association. Said easements shall be limited to the actual roadways, utility lines and drainage facilities, plus sufficient right-of-way for the maintenance thereof. The Association maintains the right to alter, amend, move or substitute for such easements as may be necessary from time to time to allow for the orderly operation of the condominium and The Plantation lands. The Association shall have the right and authority to grant such nonexclusive easements over, under, through and across the common areas of the condominium and to move and relocate such easements as the Association Board may deem appropriate.

(b) PEDESTRIAN AND VEHICULAR TRAFFIC. Each unit owner is hereby granted a nonexclusive perpetual easement for ingress and egress to and from his respective unit through the common elements and over the roads and streets of The Plantation.

(c) EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS. Each unit owner is hereby granted a perpetual easement for encroachments which may exist now or on the future by inaccuracies in construction, settlement or movement of the building, which encroachments shall be allowed to remain undisturbed until they no longer exist.

(d) SUPPORT. Every portion of a unit contributing to the support of the condominium building or an adjacent unit shall be burdened with an easement of support for the benefit of all other units and Common Elements in the building.



(e) OTHER EASEMENTS. Other easements, if any, as may be set forth in Exhibit "A" as is attached to this Declaration as originally recorded.

ARTICLE XV  
LIMITATION ON USE OF RECREATION AND COMMUNITY FACILITIES

In order to conserve the recreation facilities of this condominium and to preserve such facilities for the maximum enjoyment and pleasure of all concerned, the use of such facilities shall be limited only to immediate family in residence in any unit from time to time and their occasional guests. In the event a unit is rented, or leased, the tenant and his family and occasional guests may use such facilities to the exclusion of the owner of the unit and his family. Families in residence in units owned by multiple or corporate owners shall be entitled to use such facilities during periods of such residence to the exclusion of the other multiple owners or corporate officials or their invitees.

ARTICLE XVI  
MANAGEMENT AGREEMENT

The Association, acting through its Board of Directors, is authorized to enter into an agreement with any person or legal entity, to act as managing agent to handle the affairs of the Association and the operation of the condominium upon such terms and conditions as the Board may deem to be in the best interests of the condominium and the unit owners. The Board may delegate any part or all of the duties and functions of the Association to such managing agent.

ARTICLE XVII  
THE PLANTATION MASTER COVENANTS

The condominium is part of the land developed and known as "The Plantation Golf & Country Club" herein referred to as "The Plantation". The land is subject to The Plantation Master Covenants recorded in Official Records Book 1450 at page 16, Public Records of Sarasota County. The Master Covenants include easements, restrictions and other provisions affecting the use and maintenance of The Plantation lands and facilities. The Master Covenants give the Plantation Management Association, its successors and assigns, the right to vary the water level and otherwise control all lakes, waterways and other parts of The Plantation drainage and water attenuation system. All persons owning a vested present interest in the fee title to any of the condominium units shall automatically be a member of the non-profit corporation known as The Plantation Management Association, Inc. (herein called "Management Association") which will operate,

maintain, improve, replace, repair and manage the common areas and facilities of The Plantation. Roads and drives within the boundaries of the condominium are "Limited Private Roads" under the terms of the Master Covenants and are to be maintained and repaired by the condominium Association as part of the common expense of the condominium. Annual maintenance assessments payable by unit owners to the Management Association pursuant to the Master Covenants shall be collected by the condominium Association as collection agent for the Management Association in one lump sum from each unit owner each year.

## ARTICLE XVIII LAKES AND OPEN SPACE

18.1 LAKES. The lakes or portions thereof (if any) which are included within the condominium boundaries are man-made lakes which form a part of the drainage system for The Plantation. The condominium Association and the Management Association, its successors and assigns, have the right to use the water from the lakes as may be necessary due to the amount of rainfall and the required attenuation of surface waters necessitated by such rainfall.

18.2 MOWING LAKE BOUNDARIES. The condominium Association shall be responsible for the mowing and maintenance of the grass area within the boundaries of the condominium lands up to the normal water line of the lakes.

18.3 EASEMENT BY LAKE. There exists an easement for the benefit of the condominium Association and the Management Association which is 20 feet in width from the normal water line of all lakes to provide access to the lakes for maintenance thereof and the installation, maintenance, repair and replacement of drainage lines, ducts, conduits and apparatus.

18.4 GOLF COURSE LIMITATION. The golf course and other recreational facilities which are or may be constructed at The Plantation are not part of the condominium and the unit owners shall acquire no right, title or interest therein by virtue of their ownership of a condominium unit. The present golf course lands adjacent to the condominium will remain restricted to open space and recreational uses for a period of at least 99 years in accordance with the terms of The Plantation Master Covenants.

ARTICLE XIX  
AMENDMENTS

19.1 AMENDMENTS. Except as otherwise specifically provided herein, this Declaration of Condominium may be amended only in the manner hereinafter set forth.

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

19.3 RESOLUTION. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by at least twenty percent (20%) of the members of the Association.

19.4 VOTE. This Declaration may be amended at any time by affirmative vote of not less than two-thirds (2/3) of voting interests who cast their vote at a properly called members' meeting, in person or by limited proxy.

19.5 UNANIMOUS VOTE REQUIREMENT. Provisions relating to sharing or ownership of the common elements and common surplus and sharing of common expenses, the voting rights of members, and matters affecting The Plantation Management Association, Inc., The Plantation lakes and open space may be amended only with the written consent of all voting interests of this condominium and any other persons and entities adversely affected thereby.

19.6 EXECUTION AND RECORDING. No amendment shall be effective unless it be in writing, executed by the President or Vice President and attested by the Secretary of the Association with the formalities required for a conveyance of real property in the State of Florida, and recorded in the public records of Sarasota County. All amendments shall take effect immediately upon recordation in the public records of Sarasota County.

ARTICLE XX  
TERMINATION

20.1 TERMINATION. The condominium may be terminated in the manner provided in Article 8.12 of this Declaration, in addition to the manner provided in the Condominium Act.

20.2 AGREEMENT. The condominium lands and improvements may be removed from the provisions of this Declaration at any time by a vote of not less than

2/3rds of the voting interests, who cast their vote at a properly called members' meeting, in person or by limited proxy, and the unanimous written consent of all of the institutional first mortgage holders.

20.3 SHARES OF OWNERS AFTER TERMINATION. In the event of termination, the rights of owners or mortgages or other liens and the procedure for liquidation of the condominium assets as provided herein with respect to total or substantial destruction shall apply and shall be under the supervision and control of the banking trustee selected by the Board of Directors of the Association.

ARTICLE XXI  
BINDING EFFECT

All provisions of the Declaration of Condominium shall be enforceable as equitable servitudes which run with the land and shall be in full force and effect until a particular provision is duly amended or until the Declaration is duly terminated.

ARTICLE XXII  
SEVERABILITY

If any provisions of this Declaration, the Articles of Incorporation, or the Bylaws or any section, sentence, clause, phrase or word thereof, or the application thereof in any circumstance, is held invalid, the validity of the remainder of such instruments and of the application thereof in other circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the undersigned has signed and sealed this Declaration the 3rd day of December, 2009.

ATTEST:

WESTCHESTER GARDENS CONDOMINIUM  
ASSOCIATION, INC.

By: [Signature]  
as Secretary

By: [Signature]  
DONALD WIENKE, as President

WITNESSES:

[Signature]

[Signature]

STATE OF FLORIDA  
COUNTY OF SARASOTA

I HEREBY CERTIFY that on this day before me, a Notary Public in and for the State of Florida at large, personally appeared DONALD WIENKE, as President, and *Donna L. Hill*, as Secretary, of WESTCHESTER GARDENS CONDOMINIUM ASSOCIATION, INC., and they acknowledged before me that they are such officers of said corporation; and they executed the foregoing Declaration of Condominium for WESTCHESTER GARDENS AT THE PLANTATION, a condominium, on behalf of said corporation, and affixed thereto the corporate seal of said corporation; that they are authorized to execute said Declaration of Condominium and that the execution thereof is the free act and deed of said corporation. They are personally known to me or have produced their driver's licenses as identification and did not take an oath.

*31<sup>st</sup>* WITNESS my hand and official seal at Sarasota County, Florida this day of *December*, 2009.

*LISA SIMPSON*  
Printed Name of Notary: \*  
*Lisa Simpson*  
Notary Public  
Commission # \_\_\_\_\_

My Commission expires:



LISA SIMPSON  
MY COMMISSION # DD 586984  
EXPIRES: December 19, 2010  
Bonded Thru Budget Notary Services