

**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION. FOR PRESENT TEXT, SEE EXISTING DECLARATION.**

**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS**

**FOR**

**EDGEWOOD**

**KNOW ALL MEN BY THESE PRESENTS:**

That heretofore on July 2, 1990, the original Declaration of Covenants, Restrictions and Easements for Edgewood Cottages (hereinafter the "Community") was recorded in Official Record Book 1541, Page 1703 *et seq.*, of the Public Records of Collier County, Florida. That Declaration of Covenants, Restrictions and Easements (hereinafter the "Declaration") as it has previously been amended, is hereby further amended in part and is restated in its entirety.

1. **SUBMISSION OF PROPERTY:** This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements is made by Edgewood Association, Inc., a Florida corporation not for profit, hereinafter the "Association". The land subject to this Declaration and the improvements located thereon have already been made subject to covenants and restrictions by the original Declaration. No additional property is being made subject to the covenants and restrictions contained herein.
2. **NAME:** The name of the Community shall henceforth be known as Edgewood, rather than Edgewood Cottages.
3. **DESCRIPTION OF COMMUNITY:** The land which is subject to this Declaration is legally described as Golf Cottages at Wyndemere Phase III according to the Plat thereof, recorded at Plat Book 15, Pages 93 and 94, of the Public Records of Collier County, Florida.

3.1 **Applicability of Declaration.** All property subject to this Declaration shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth. All provisions of this Declaration shall be equitable servitudes which run with the land, and are binding upon and inure to the benefit of all present and future owners of parcels. The acquisition of fee simple title to a parcel, or any ownership interest in the Community, or the lease, occupancies, or use of any portion of a parcel, shall constitute an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and an agreement to be bound by its terms.

4. **DEFINITIONS.** All terms and words in this Declaration and its recorded exhibits shall have the meanings stated below unless the context clearly requires otherwise.

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4.1 "Association" shall mean and refer to Edgewood Association, Inc., a Florida corporation not for profit.

4.2 "Board" means and refers to the Board of Directors of the Association.

4.3 "Declaration" means and refers to this Amended and Restated Declaration of Covenants, Restrictions and Easements for Edgewood, and any future amendments hereto.

4.5 "Family" or "Single Family" means two (2) or more natural persons, each of whom is related to each of the others within the first degree by blood, marriage, or adoption, or not more than two (2) persons not so related who reside together as a single housekeeping parcel.

4.6 "Governing Documents" means and refers to this Declaration, and the Articles of Incorporation, Bylaws, the Rules and Regulations and the Resolutions of the Association. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority stated above.

4.7 "Guest" means any person who is physically present in, or occupies a parcel on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

4.8 "Institutional Mortgagee" means the mortgagee or assignee of a mortgage against a parcel, which mortgagee or assignee is a bank, savings and loan association, mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the Parceled States of America. The term also refers to any holder of a mortgage against a parcel which mortgage is guaranteed or insured (as evidenced by a recorded instrument) by the Federal Housing Administration, the Veterans Administration, any agency of the Parceled States of America or by any other public or private agency engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns. An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a parcel.

4.9 "Lease" means the grant by an owner of a temporary right of use of the owner's parcel for valuable consideration.

4.10 "Master Association" means and refers to Wyndemere Homeowners Association, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the common areas and improvements within Wyndemere, as described in the Master Declaration. All owners of parcels in the Community shall be members of the Master Association.

4.11 "Master Declaration" means and refers to the Declaration of Covenants, Conditions and Restrictions of Wyndemere as originally recorded in Official Record Book 916, Page 1080 *et seq.*, Public Records of Collier County, Florida, including all recorded exhibits thereto, as the same may be amended from time to time.

4.12 "Member" means and refers to all persons who are members of the Association as provided in this Declaration, and the Articles of Incorporation and Bylaws of the Association.

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**4.13** "Occupant" or "Occupy", when used in connection with a parcel means any person who is physically present in the parcel on two or more consecutive days, including staying overnight.

**4.14** "Parcel" means and refers to a portion of the Community which is subject to private ownership and except where the context clearly indicates to the contrary the term "parcel" shall also include the residence located thereon. A "parcel" may consist of a single lot depicted on the plat, two or more lots, a portion of a lot, a tract depicted on the plat, or any combination upon which a single residence is located as legally described in the Deed or other instrument evidencing legal title to the parcel.

**4.15** "Parcel Owner or Owner" means and refers to any person or persons, entity or entities, who are the record owner of the fee simple title to any parcel in the Community.

**4.16** "Rules and Regulations" means and refers to administrative rules and regulations governing use of the Community, appearance of building exteriors and procedures for administering the Association and the Community, as adopted, amended and rescinded from time to time by resolution of the Board of Directors.

**4.17** "Voting Interest" means and refers to the voting rights distributed to members as further described in Section 5.5 below.

**4.18** "Wyndemere" means and refers to that real estate development which is the subject of the Master Declaration.

**5. ASSOCIATION; MEMBERSHIP; VOTING RIGHTS.** The administration and management of the Association is by Edgewood Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

**5.1** Articles of Incorporation. A copy of the Amended and Restated Articles of Incorporation of the Association is attached as Exhibit "A".

**5.2** Bylaws. The Amended and Restated Bylaws of the Association shall be the Bylaws as attached as Exhibit "B".

**5.3** Delegation of Management. The Association may contract for the management and maintenance of the Community and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules, payment of bills, establishment and maintenance of Association accounts at financial institutions, and any other duties which the Board may deem appropriate, with funds made available by the Association for such purposes. However, the Association and its officers shall retain at all times the powers and duties provided in the governing documents.

**5.4** Membership. Every person or entity who is a record owner of a fee interest in any parcel located within the Community, shall be a member, provided, however, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be deemed the owner for purposes of determining voting and use rights. Membership shall become effective upon the occurrence of the last to occur of the following events:

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- (A) Recording in the Public Records of a Deed or other instrument evidencing legal title to the parcel in the member's name.
- (B) Delivery to the Association of a copy of the recorded Deed or other instrument evidencing title.

Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based. If a parcel is sold under a recorded agreement for deed, and the agreement for deed specifically so provides, then the purchaser (rather than the fee owner) shall be considered the owner and, hence, the member.

**5.5 Voting Interests.** The members of the Association are entitled to one (1) vote for each parcel owned by them even if the parcel consists of two (2) or more full lots as depicted in the plat for the Community. Partial lots shall not be considered in determining voting interests except that if the entire parcel, by combining portions of individual lots, equals or exceeds the dimensions of a single lot, the owners of said parcel shall be entitled to one (1) vote for that parcel. Portions of Tract "A" shall in no instance be considered in determining voting interests. The total number of votes shall not exceed the total number of parcels subject to this Declaration. The vote of a parcel is not divisible. The right to vote may not be denied because of delinquent assessments. If a parcel is owned by one natural person, his right to vote shall be established by the record title to the parcel. If a parcel is owned jointly by two or more natural persons who are not acting as trustees, that parcel's vote may be cast by any one of the record owners. If two or more owners of a parcel do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a parcel is a corporation, the parcel's vote shall be cast by the President or Vice-President of the corporation. If the owner of a parcel is a partnership, any general partner may cast the parcel's vote. If a parcel is owned in trust, any of the trustees may cast the parcel's vote.

**5.6 Approval or Disapproval of Matters.** Whenever the decision or approval of an owner is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person who could cast the vote of such owner's parcel if present in person at an Association meeting, unless the consent of all record owners is specifically required.

**5.7 Change of Membership.** A change of membership in the Association shall be established by the new owner's membership becoming effective as provided above, and the membership of the prior owner shall thereby be automatically terminated.

**5.8 Termination of Membership.** The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

**5.9 Association As Owner of Parcels.** The Association has the power to purchase parcels with prior approval of at least a majority of voting interests and may acquire and hold, lease, mortgage, and convey such parcels, by act of a majority of the voting interests of the Association.

**5.10 Membership Roster.** The Association shall maintain a current roster of names and mailing addresses of owners. A copy of the up-to-date roster shall be available to any owner upon request.

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**5.11 Limitation on Liability.** The Association shall not be liable to owners for property damage caused by any latent condition of the property to be maintained and repaired by the Association. The Association shall not be liable for damage caused by the elements or owners or other persons.

**5.12 Board of Directors.** Except as otherwise provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members. An owner does not have the authority to act for the Association by virtue of being an owner.

**5.13 Powers and Duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. If the Association has the authority to maintain a class action, the Association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

## **6. ASSESSMENTS AND LIENS.**

**6.1 Creation of Lien and Personal Obligation for Assessments.** Each owner of any parcel (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (A) the parcel's prorata share of regular assessments based on the annual Association budget;
- (B) the parcel's prorata share of special assessments for Association expenditures not provided for by regular assessments, except that the total of all special assessments made in any fiscal year shall not exceed ten percent (10%) of the total budget for that year, unless at least a majority of the voting interests first consent; and
- (C) any charges against less than all of the parcels specifically authorized in this Declaration or the Association Bylaws.

Assessments shall be established and collected as provided herein and in the Bylaws of the Association. The regular and special assessments and charges, together with interest, costs, and reasonable attorney's fees shall bind such property in the hands of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor the amounts paid by the transferee. Except as provided elsewhere in this Declaration as to the Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused.

**6.2 Share of Assessments.** Each parcel and the owner thereof shall be liable for an equal share of all regular and special assessments, except that if a single parcel consists of two (2) or more full lots as depicted on the plat for the community, that parcel and the owner thereof shall be liable for the

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number of shares of assessments which equals the number of full lots. The foregoing notwithstanding the parcel which consists of lots 42 and 43 shall be obligated for only one assessment share.

**6.3 Establishment of Liens.** Any and all assessments levied by the Association in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, and costs of collection (including, but not limited to reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the parcel against which each such assessment is made, and shall also be the personal obligation of the owner of each parcel assessed. This lien is superior to any homestead rights the owner may acquire. No owner may exempt himself from personal liability for assessments, or release the parcel owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area, or by abandonment of his parcel. The lien shall be perfected from and after the recording in the Public Records of Collier County of a Claim of Lien by the Association setting forth the amount and due date of each assessment unpaid as of the date the Claim of Lien is recorded. A Claim of Lien shall secure payment of all assessments due at the time of recording (including interest, costs and attorney's fees as provided above), as well as all assessments coming due subsequently, until the Claim is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by that Claim of Lien, the party making payment is entitled to a Satisfaction of Lien.

**6.4 Priority of Liens.** The Association's lien for unpaid assessments shall be subordinate and inferior to any recorded institutional first mortgage, unless the Association's Claim of Lien was recorded prior to the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when recorded. Any lease of a parcel shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser, or mortgagee shall hold title subject to the liability and lien of any assessment coming due after foreclosure or conveyance in lieu of foreclosure. Any unpaid assessment which cannot be collected as a lien against any parcel by reason of the provisions of this Section, shall be treated as a special assessment divided equally among, payable by, and assessed against all parcels, including the parcel as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

**6.5 Collection of Assessments.** If any owner fails to pay any assessment, or installment thereof, within thirty (30) days after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

- (A) To charge interest on such assessment or installment, from the date payment is due until paid, at the highest rate allowed by law, as well as to impose a late payment penalty in such amount as determined by the Board of Directors. A separate penalty may be imposed for each month that the assessment or installment remains unpaid. This penalty shall not be considered a fine as provided for in Section 12.2 hereof, and the procedural requirements for levying fines set forth therein shall not apply. All payments on account shall be applied first to interest, then to late payment penalties, court costs and attorney's fees and finally to delinquent assessments.

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- (B) To accelerate the due date for the entire remaining unpaid amount of the regular assessments against the owner's parcel for the remainder of the fiscal year notwithstanding any provisions for the payment thereof in installments.
- (C) To file an action in equity to foreclose its lien. The lien may be foreclosed by an action in the name of the Association in the same manner as provided in Section 718.116 of the Florida Condominium Act, as amended from time to time, for the foreclosure of liens on condominium parcels for unpaid condominium assessments.
- (D) To bring an action at law for a money judgment against the owner without waiving any lien foreclosure rights of the Association.

**6.6 Certificate.** The Association shall, within fifteen (15) days of receipt of a written request for same, furnish to any owner liable for assessments a certificate in writing signed by an officer of the Association, setting forth whether said assessments and any other sums due the Association have been paid. Such certificate may be relied upon by all interested persons except the owner. The Association may require the advance payment of a processing fee not to exceed fifty dollars (\$50.00) for the issuance of such certificate.

**7. ARCHITECTURAL AND AESTHETIC CONTROL.** No building, structure or other improvement shall be erected or altered on any parcel, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure or parcel be performed without the prior written approval of the Board of Directors of the Association. In obtaining said written approval, the owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents. Refusal of approval for plans and specifications may be based on any reason including purely aesthetic reasons. Any or all duties of the Board of Directors pursuant to this Section 7 may be delegated by the Board to an architectural review committee.

**7.1 Master Association Approval.** All improvements made to parcels shall also be subject to review and approval by the Architectural Review Committee (ARC) of the Master Association, in accordance with the provisions of the Master Documents.

**7.2 No Liability.** Review and approval of any application pursuant to this Section 7 is made on the basis of aesthetic consideration only and the Board of Directors or the Association shall not bear any responsibility of ensuring the marketability, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes or other governmental requirements. Neither the Association or the Board of Directors shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction of or modifications to any residence or other structure.

## **8. PROPERTY RIGHTS; EASEMENTS.**

**8.1 Encroachments.** If any parcel or part of a parcel shall encroach upon any other parcel for any reason other than the intentional act of the owner, then an easement shall exist to the extent of that encroachment for so long as the encroachment shall exist. If a building, window, eave, projection, gutter, roof or any other structure on a parcel (the "encroaching parcel") shall encroach upon any adjoining parcel, by reason of original construction, reconstruction, repair, shifting, settlement, or

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movement of any portion of the improvements, or by the unintentional act of the owner, then an easement appurtenant to such encroaching parcel, to the extent of such encroachment, shall exist so long as such encroachment shall exist.

**8.2 Separation of Interests.** The ownership of any parcel and the ownership of the residence constructed thereon may not be separated or separately conveyed; nor may any person who does not have an ownership interest in at least one parcel hold membership in the Association.

**8.3 Easements.** The Association shall have the right to grant such electric, telephone, gas, water, sewer, irrigation, drainage, cable television or other easements, and to relocate any existing easement in any portion of the Community and to grant access easements and to relocate any existing access easements in any portion of the Community as the Association shall deem necessary or desirable, for the proper operation and maintenance of the Community, or any portion thereof, or for the general health or welfare of the owners or for the purpose of carrying out any provisions of this Declaration. Such easements or the relocation of existing easements may not prevent or unreasonably interfere with the use of the parcels. Each parcel shall be subject to an easement in favor of all other portions of the Community for the location of utilities, and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of the party walls, structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving other portions of the Community.

## **9. MAINTENANCE; IMPROVEMENTS.**

**9.1 Maintenance of Parcels by Owner.** The owner of each parcel shall maintain, repair and replace, at his own expense, all portions of his parcel and any structures located thereon. The owner's responsibility also includes all utility lines, ducts, conduits, pipes, wires and other utility fixtures and appurtenances which are located upon under the parcel and which serve on the parcel, except that storm drainage shall be maintained by the Master Association at its expense.

**9.2 Specific Provisions Relating to Duplex Buildings.** Certain of the residences located in the community are duplex structures which share certain "common structural elements". Common structural elements include shared utility lines, party walls, roofing including support structures and all related improvements, siding including all finish, trim and other exterior materials and the floor slab. The owners of each individual unit within a duplex building shall be responsible jointly for the maintenance, repair and replacement of all portions of the building which are common structural elements (all other portions being the responsibility of each individual owner). In the event joint owners of the duplex building disagree as to the need for or method of undertaking such maintenance, repair or replacement then either party shall have the right to request the Board to decide the issue, which decision shall be binding on both owners.

**9.3 Maintenance of Parcels by the Association.** The Association shall be responsible to maintain the lawn and landscaping of each parcel in the Community, except as otherwise provided in Section 9.4 below as to undeveloped parcels, and the costs of such service is to be included in the amount of regular or special assessments. Such duty of maintenance shall not extend to areas requiring unusual maintenance specifically designated by the Board of Directors as an "Area of High Maintenance" or to replacement of any portion of the lawn or landscaping. However, the Association may elect to assume these

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additional maintenance responsibilities by agreement with the owner, and such costs shall be treated as a charge against that parcel as provided in Section 6.1(C) hereof. For the purposes of this Declaration, trees in excess of fifteen (15) feet and rose gardens shall be included within the definition of an "Area of High Maintenance" and are not covered by the landscape maintenance contract.

**9.4 Undeveloped Parcels.** The owner of each undeveloped parcel shall be responsible at his own expense to mow the parcel and to keep the parcel free from debris and other unsightly materials.

**9.5 Enforcement of Maintenance.** If the owner fails to maintain his parcel as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the parcel, with or without consent of the owner. The Association shall have the right to repair any parcel which constitutes a danger or nuisance or is unsightly or in disrepair, provided that the owner is given no less than five (5) days notice of the Association's intent to do so which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner of said parcel, which charge shall be a lien on the parcel which may be foreclosed and shall include the Association's attorney fees and other costs in connection with said foreclosure.

**9.6 Negligence; Damage Caused by Condition in Parcel.** The owner of each parcel shall be liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents, or lessees; but, unless the negligence is of such character as to evidence gross recklessness or willful or wanton disregard for life or property, the owner shall be liable only to the extent that such expense is not met by the proceeds of insurance. If any condition, defect or malfunction existing within a parcel, whether caused by the owner's negligence or otherwise, shall cause damage to other parcels, the owner of the offending parcel shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not met by insurance. If one or more of the damaged parcels is not occupied at the time the damage is discovered, the Association may enter without prior notice to the owner and take reasonable actions to prevent the spread of the damage. The Association may, but is not obligated to, also repair the damage.

## **10. INSURANCE.**

**10.1 Duty to Insure Association.** The Association shall maintain adequate liability insurance, casualty insurance covering any Association property and such other insurance which the Board of Directors deems to be in the best interest of the Association and its members, including Directors and officers liability coverage in amounts determined annually by the Board of Directors.

**10.2 Duty to Insure Parcels.** By virtue of taking title to a parcel subject to the terms of this Declaration, each owner covenants and agrees with all other owners and the Association that each owner shall carry sufficient all risk casualty insurance on the parcel and structures constructed thereon. If requested, each owner shall provide a certificate of insurance to the Association annually. Each owner covenants to carry homeowner's insurance or recognize that he bears the financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

**10.3 Duty to Reconstruct.** If any residence or other improvements located on any parcel are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the

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owner of such improvements shall cause repair or replacement to be commenced within ninety (90) days from the date that such damage or destruction occurred, and to complete the repair or replacement within nine (9) months thereafter unless a hardship exception to such time periods is granted by the Board of Directors. All such repairs or replacements must restore the improvements to substantially their original character, design and condition, shall utilize and conform with the original foundation and appearance of the original improvements except as otherwise approved by the Board of Directors and the Architectural Review Committee of the Master Association.

**10.4 Failure to Reconstruct.** If the owner of any parcel fails to commence or complete construction to repair or replace any damaged or destroyed improvements for which he is responsible within the time periods provided for in Section 10.3 above, the Association shall give written notice to the owner of his default. If after thirty (30) days the owner has not made satisfactory arrangements to meet his obligations, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Section, which shall be at the discretion of a majority of the voting interests of the Association, the owner of the parcel shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the parcel to secure payment.

**10.5 Association's Right of Entry.** For the purpose of performing the duties authorized by this Section 10, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the owner, to enter upon the parcel at reasonable hours.

## **11. GENERAL COVENANTS AND RESTRICTIONS.**

**11.1 Residential Use.** No parcel shall be used for other than a residence occupied by a single family. Parcels owned by corporations, partnerships, in trust or some other form of multiple ownership shall designate one (1) natural person and his or her family to occupy the parcel prior to, or at the time of conveyance of the parcel to the multiple ownership entity. The designation of such occupants may be changed only with prior written notice to the Board of Directors. No building other than one single family residence shall be erected, altered, placed or permitted to remain on any parcel. No business or commercial activity shall be conducted in or from any parcel. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his residence or from handling her personal, business or professional telephone calls or written correspondence in and from his parcel. Such uses are expressly declared customarily incident to residential use.

**11.2 Leases.** Parcels may not be leased for periods of less than three (3) months or more than two (2) times in any calendar year. The first day of the lease term shall determine in which year the lease occurs. No subleasing or assignment of lease rights is allowed.

**11.3 Nuisance.** No noxious or offensive activity shall be carried on in any parcel nor shall any owner permit or condone any activity that is or may reasonably become a source of annoyance or nuisance to other residents.

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**11.4 Temporary Structures.** No temporary structure, including trailer, tent or shack shall be used at any time as a residence, either temporarily or permanently.

**11.5 Signs.** No sign of any kind shall be displayed to the public view or any view on any of the parcels or residences within the Community, except for signs approved by the Architectural Review Committee of the Master Association.

**11.6 Appearance; Refuse Disposal.** Each owner shall keep his parcel and the abutting sidewalk and bike path clear of obstruction, trash and debris and shall reasonably maintain his parcel. No parcel shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers within the parcels, except that such containers may be placed on the street the day of or night before scheduled refuse removal service. Such containers must be replaced inside the parcel on the day of the service, following said service. No garbage incinerators or burning of trash shall be permitted.

**11.7 Landscaping.** The landscaping, including without limitation, the trees, shrubs, lawns and walkways shall be maintained by the Association except for "Areas of High Maintenance" described in Section 9.2 above with that exception, all vegetation outside screened enclosure shall be considered ordinary maintenance and shall be the responsibility of the Association. No significant landscaping shall be added, cut down, destroyed or removed without the prior express written consent of the Board of Directors. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon any parcel outside of the parcel, unless approved by the Board of Directors.

**11.8 Outside Lighting.** No spotlights, floodlights, or similar type of high intensity lighting shall be placed or utilized upon any parcel which in any way will allow light to be reflected on any other parcel or the improvements thereon without the written authorization of the Board. Other types of low intensity lighting which do not unreasonably disturb the owners or other occupants of the Community shall be allowed.

**11.9 Pets.** Normal domesticated household type pets (such as cats or dogs) may be kept in a parcel, provided that no pet may be kept, bred or maintained for any commercial purpose. The pet must be under direct and immediate voice control, carried under the owner's arm or leashed at all times while outside of the parcel. The owner of the pet is responsible for the appropriate removal of all pet waste. Such obligation applies equally to owners in residence as well as to tenants. The owner shall be responsible for his tenant's failure to comply. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Community. No reptiles, amphibians, poultry or livestock may be kept on the Community.

**11.10 Parking and Vehicular Restrictions.**

- (A) **Parking.** No motor vehicle of any kind (including trucks and vans) other than a four wheel passenger automobile shall be parked in Wyndemere for a period exceeding eight (8) hours, unless such vehicle is kept in a closed garage or screened from view from all portions of Wyndemere by a fence or landscaping approved by the Architectural Review Committee of the Master Association. No boat, boat trailer or other trailer of any kind, camper, mobile home, golf cart or disabled vehicle shall be permitted in Wyndemere unless kept in a closed garage or screened from view from all portions of Wyndemere by a fence or landscaping

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approved by the Architectural Review Committee of the Master Association. No maintenance or repair shall be done upon or to any vehicle (including four wheel passenger automobiles), except within a closed garage. Nothing herein shall prohibit the establishment by the Master Association of an area within Wyndemere designated and available for the storage of prohibited vehicles if the establishment of such storage facility is otherwise permitted by applicable government regulation and the Architectural Review Committee of the Master Association. No vehicle shall be parked anywhere but on paved areas intended for the purpose. Parking on lawns or landscaped areas is prohibited. These restrictions shall not preclude the entry in the Community of necessary service or development related vehicles.

- (B) **Towing.** Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations promulgated by the Board may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean any item restricted in (A) above. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

**11.11 Satellite Dishes, Television and Other Outdoor Antennae.** No outdoor satellite dishes, television, radio or other antenna or supplemental solar heating systems may be erected or installed on any parcel except as may be permitted by the Association and the Architectural Review Committee of the Master Association. The approval rights set forth in this Section shall exist to the fullest extent permitted by applicable law.

**11.12 Garage Sales.** No garage sale, estate sale, flea market, auction, or similar event shall be held from any parcel.

**11.13 Dikes, Dams or Canal Walls.** No dikes, dams or canal walls shall be erected or constructed except pursuant to a plan approved by the Association and appropriate governmental officials.

**11.14 Docks, Boathouses, Waterfront Construction, and Shore Contours.** No docks, bulkheads, moorings, pilings, boathouses, or boat shelters of any kind or any construction shall be erected on or over waterways of and within the Community without the consent of the Wyndemere Country Club, Inc. The area, if any between the rear lot line of the parcel and the water edge of any lake or other body of water within the Community shall be landscaped and/or sodded and maintained by the owner of the parcel, and is subject to easements in favor of the Club and its members.

**11.15 Boats.** No boats shall be used upon any portion of the Community which is designed for water retention. The administration, management, operation and maintenance of water retention areas and drainage system shall be the responsibility of Wyndemere Country Club, Inc. (The Club)

**11.16 Water Supply.** No individual water supply system for drinking purposes or household use shall be permitted on any parcel with the exception of a water purifier or water softener system. This provision, however, shall not preclude the installation of any water supply system for irrigation or

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sprinkler purposes: provided, however, that such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Association and the applicable governmental authorities. A water supply system for irrigation or sprinkler purposes installed by the Master Association requires that an owner use such water.

**11.17 Sewage Disposal.** No individual sewage disposal system shall be permitted on any parcel.

**11.18 Combining Parcels.** As of the effective date of this provision, it shall be prohibited to combine adjacent parcels for the purpose of erecting one (1) residence thereon.

**12. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS.** Every owner shall at all times comply with Chapter 617, Florida Statutes, other applicable laws, ordinances and regulations as well as all the covenants, conditions and restrictions of the Governing Documents. All violations of laws or the Governing Documents shall be reported immediately by any owner to a member of the Board of Directors. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors of the Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. If any person, firm or entity subject to the Governing Documents fails to abide by them, as they are interpreted by the Board of Directors of the Association, that person shall be liable to be fined by the Association for each such failure to comply or other violation.

**12.1 Legal Action.** Judicial enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the parcel to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If such action is instituted, the prevailing party shall be entitled to recover its costs and attorney's fees incurred.

**12.2 Fines.** The Board may impose a fine or fines upon an owner for failure of the owner, his family, guests, invitees, tenants, or employees to comply with any covenant, restriction, rule, or regulation contained herein or promulgated pursuant to the Governing Documents. The procedures for levying fines shall be as follows:

- (A) **Notice.** The Association shall notify the owner of the nature of the alleged infraction or infractions. Included in the notice shall be the date and time of the next Board of Directors meeting at which time the owner shall have an opportunity for a hearing and a right to present reasons why penalty(ies) should not be imposed. Notice of the hearing must be given at least fourteen (14) days in advance of the hearing.
- (B) **Hearing.** At the hearing, the facts of the alleged infraction(s) shall be presented to a committee appointed by the Board consisting of at least three (3) members who are not officers, directors or employees of the Association or the spouse, parent, child, brother or sister of an officer, director or employee. The owner shall then have a reasonable

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- opportunity to present evidence as to why the penalty(ies) should not be imposed. If the committee, by majority vote, does not approve a proposed fine, it may not be imposed.
- (C) **Amount of Fine.** The Board of Directors may impose fines in amounts reasonably related to the severity of the offense and deemed adequate to deter future offenses, however, no fine may exceed fifty dollars (\$50.00) per violation. Each day of a continuing violation may be considered a separate violation, with the requirement of only one notice and opportunity for hearing.
  - (D) **Collection of Fines.** Fines shall be treated as an assessment due to the Association ten (10) days after the hearing.
  - (E) **Application.** All monies received from fines shall become part of the common surplus.
  - (F) **Nonexclusive Remedy.** Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such owner.

**12.3 Applicability of Documents.** All of the provisions of the Governing Documents pertaining to use and occupancy shall be applicable and enforceable against any person occupying a parcel as a lessee, guest or invitee to the same extent as against an owner, and a covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Governing Documents, designating the Association as the owner's agent, with the authority to terminate any lease and evict the tenant in the event of violations by the tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not. The Association may also bring an action at law or in equity, or both, to redress alleged failure or refusal to comply with the Governing Documents or law against any tenant, guest or invitee occupying a parcel. The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs.

### **13. MASTER ASSOCIATION.**

**13.1 Applicability of Master Documents.** By taking title to a parcel, the owner becomes subject to the terms and conditions of the Declaration of Covenants, Conditions, and Restrictions of Wyndemere, originally recorded in Official Record Book 916, Page 1080 *et seq.*, of the Public Records of Collier County, Florida (the "Master Declaration"), as it may be amended from time to time.

**13.2 Master Association Assessments.** Pursuant to the Master Declaration, the Master Association has the right to assess its members for all expenses which may be incurred by the Master Association in the performance of its duties and to place liens on parcels in the event of failure to pay said assessments. Master Association expenses specifically include the costs of any bulk agreement entered into by that Association for the provision of basic cable or satellite television services to all property in Wyndemere.

**13.3 Membership in Master Association, Inc.** In accordance with the provisions of the Articles of Incorporation of the Master Association, Inc., all owners are automatically and irrevocably members of the Master Association.

#### **DECLARATION**

**13.4 Representation of Master Association Board.** As further provided in Section 10 of the Bylaws, the Association is entitled to elect one (1) representative to the Board of Governors of the Master Association which representative shall be entitled to cast all votes of the members of the Association in the affairs of the Master Association.

**14. DURATION OF COVENANTS; AMENDMENT OF DECLARATION.**

**14.1 Duration of Covenants.** This Declaration and its terms, provisions, conditions, covenants, restrictions, reservations, regulations, easements, burdens and liens contained herein, including without limitation, the provisions for assessment of a parcel, shall run with and bind the land and inure to the benefit of the Association, owners and their respective legal representatives, heirs, successors and assigns for the term of twenty-five (25) years from the date of the original recording of this Declaration amongst the Public Records of Collier County (June 2, 1990), after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless at least one (1) year prior to the termination of such twenty-five (25) year term or any such ten (10) year extension thereof there is recorded amongst the Public Records of Collier County, an instrument signed by the then owners owning two-thirds (2/3rds) of the parcels and all Institutional Mortgagees in existence one (1) year prior to the termination of such term or extension agreeing to terminate this Declaration, upon which event this Declaration shall be terminated upon the expiration of the twenty-five (25) year term or the then ten (10) year extension during which such instrument of termination is recorded.

**14.2 Vote Required to Amend.** Except as otherwise provided by law, or by specific provision of the Governing Documents, this Declaration may be amended by concurrence of at least a two-thirds (2/3rds) of the voting interests of the Association at any annual meeting or special meeting called for the purpose, provided that notice of each proposed amendment has been given to the members in accordance with law. No amendment shall change the owner's share of liability for assessments or voting rights unless the owner consents to the amendment. Any amendment which would affect the surface management system requires the prior approval of the South Florida Water Management District.

**14.3 Action by Members Without Meeting.** Except for the holding of the annual meeting, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written ballots or other instruments indicating approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting, or majority of the total votes of the entire membership, whichever is greater, unless a lesser vote is sufficient by law. If the requisite number of written expressions of approval are received by the Secretary within thirty (30) days after mailing notice of the proposed action to the members, a resolution passed by the Board of Directors on the action so authorized shall be of full force and effect as if the action had been approved by the vote of the members at a members meeting held on the date of the Board meeting. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph shall be construed in derogation of members' rights to call a special meeting of the membership, as provided in the Bylaws. If the vote is taken by the method described in this Section, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

**14.4 Certificate; Recording.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration is recorded, and shall be executed by officers

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of the Association with the formalities of a deed. The certificate must also set forth the legal description of the Community. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

## **15. GENERAL PROVISIONS.**

**15.1 Waiver.** Any waiver by the Association of any provisions of this Declaration of breach hereof must be in writing and shall not operate or be construed as a waiver of any other provision or subsequent breach.

**15.2 Severability.** If any section, subsection, sentence, clause, phrase or portion of this Declaration or any of its recorded exhibits is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions.

**15.3 Headings.** The headings of any Sections herein are for convenience only and shall not affect the meanings or interpretation of the contents thereof.

**15.4 Singular, Plural and Gender.** Whenever the context so requires, the use of the plural shall include the singular and the plural, and the use of any gender shall be deemed to include all genders.

**15.5 Notices.** Any notice required to be sent to any owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner on the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any change of address.

**15.6 Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

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IN WITNESS WHEREOF, Edgewood Association, Inc., has caused these presents to be executed in its name and its corporate seal to be affixed by its proper officers on the day and year first above written.

EDGEWOOD ASSOCIATION, INC.

Sue Hicks  
Signature of Witness

By: Anderson Kelley  
Anderson Kelley, President

Sue Hicks  
Print Name of Witness

(CORPORATE SEAL)

Suzanne Gephart  
Signature of Witness

Suzanne Gephart  
Print Name of Witness

STATE OF FLORIDA  
COUNTY OF COLLIER

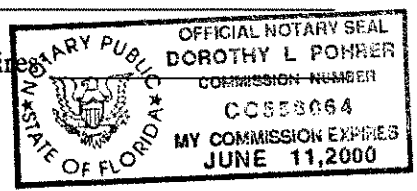
The foregoing instrument was acknowledged before me this 18th day of April, 1997, by Anderson Kelley, President of Edgewood Association, Inc., a Florida not for profit corporation, on behalf of the corporation. He is personally known to me or has produced \_\_\_\_\_ as identification.

Dorothy L. Pohrer

Notary Public  
Dorothy L. Pohrer

Printed name  
My commission expires

(SEAL)



DECLARATION