

NOTE: THIS IS A SUBSTANTIAL AMENDMENT OF THE ENTIRE DECLARATION. SEE PRIOR DECLARATION FOR COMPARISON.

**AMENDED AND RESTATED  
DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS  
FOR  
EAGLE POINTE PHASE I**

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS is made effective this \_\_\_ day of \_\_\_\_\_ 20\_, by EAGLE POINTE PHASE I COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, hereinafter called the "**Association.**"

**PREMISES:**

Whereas, the Association is a Florida not-for-profit corporation responsible for the operation of a neighborhood subdivision located in Lee County, Florida, consisting of one hundred twenty-four (124) single-family residential homes and common area property, known as "**EAGLE POINTE PHASE I COMMUNITY**" (hereinafter referred to as the "Neighborhood"); and

Whereas, the Neighborhood is comprised of the real property that is described in **Exhibit "A"** to this Declaration (the "Lands"); and

Whereas, the Neighborhood was established and developed by The Gateway Venture, a Florida Joint Venture composed of FHC at Gateway, Inc. and SSC at Gateway, Inc., Florida corporations as the Declarant, subject to the Declaration of Restrictions and Protective Covenants for Eagle Pointe Phase I dated June 13, 1990 and as originally recorded in Official Records Book 2160 at Pages 2131-2166 of the Public Records of Lee County, Florida on July 5, 1990 (the "Original Declaration"); and

Whereas, to provide a means for meeting the purposes and intents herein set forth, the Association was formed as a Florida corporation, not-for-profit pursuant to Chapters 617 and 720, Florida Statutes; and

Whereas, to preserve, protect and enhance the values of the property and amenities in the Neighborhood, and the general health, safety and welfare of the Members of the Association, the Association deems it desirable to maintain and subject the Neighborhood to certain protective covenants, conditions and restrictions, but to also restate, update and amend the Original Declaration; and

Whereas, the Neighborhood has been turned over by the Declarant to the Owners of the Lots and Dwelling Units within the Neighborhood, and the Association, by and through its Board of Directors, have decided to amend and restate the Original Declaration and as later amended, to reflect that the Declarant is no longer involved in the Association and to update the Original  
**EAGLE POINTE PHASE I-AMENDED AND RESTATED DECLARATION**

Declaration to address changes to the law as well as the needs of the Association;

NOW THEREFORE, the Association hereby declares that the Lands described in Exhibit "A" hereto, are and shall be owned, used, sold, conveyed, encumbered, demised and occupied subject to the provisions of this Amended and Restated Declaration, which shall run with the Lands and be binding on all parties having any right, title or interest in the Lands or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**1. DEFINITIONS.** The following definitions shall apply to the terms used in this Declaration and its recorded exhibits, or if not defined below unless the context clearly requires another meaning.

**1.1 "Act" or "Homeowners' Association Act" or "HOA Act"** means Chapter 720, Florida Statutes, as it now exists or as it may be amended from time to time including the definitions therein contained.

**1.2 "Amendment"** means or refers to a change or revision which has been approved and recorded in the Public Records of Lee County, Florida.

**1.3 "Architectural Control Committee" ("ACC")** means the Architectural Control Committee as established and empowered in Section 8 of this Declaration.

**1.4 "Articles"** means the Amended and Restated Articles of Incorporation attached hereto as Exhibit "C", as they may be amended from time to time.

**1.5 "Assessment" or "Assessments"** means the assessments for which all Lot Owners are obligated to the Association and includes both annual and special assessments.

**1.6 "Association" or "Neighborhood Association" or "Community Association"** means Eagle Pointe Phase I Community Association, Inc., a Florida corporation not-for-profit, which has its principal place of business in Lee County, Florida and its successors and assigns.

**1.7 "Board"** means the Board of Directors of Eagle Pointe Phase I Community Association, Inc.

**1.8 "Bylaws"** means the Amended and Restated Bylaws of the Association as attached hereto as Exhibit "D", as they may be amended from time to time.

**1.9 "Charge"** means any legal or equitable indebtedness of an Owner to the Association, or other sums owed to or due to the Association from an Owner, or any cost or expense incurred by the Association on behalf of or because of an Owner, other than Assessments for Common Expenses, which the Owner is obligated to pay to the Association. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Governing Documents.

**1.10 "Committee"** means a group of Board Members, Owners or Board Members and/or Owners and/or other persons appointed by the Board to make reports or recommendations to the Board, to take action on behalf of the Board, or to take such actions as the resolution creating the Committee, or the Directors of the Board, may dictate. It also refers to and means the Architectural Control Committee pursuant to Section 7 of this Declaration.

**1.11 "Common Expenses"** means the expenses for which all Lot Owners are liable to the Association, as described in this Declaration, and includes, but is not limited to, all expenses incurred by the Association in administering, operating, reconstructing, maintaining, repairing and replacing all portions of any Association Property, including any and all improvements thereon, as well as all personal property for which the Association has such obligation, as set forth in this Declaration, including the costs of administration of the Association. Common Expenses also include the costs of the maintenance to be performed by the Association on the Lots and to the Dwelling Units, as specifically provided in this Declaration.

**1.12 "Master Association"** means Gateway Greens Community Association, Inc., a Florida corporation not for profit, organized to administer the Gateway Greens Master Declaration and having among its members all Owners of a Unit (as such terms are defined in the Master Declaration), which includes the Lot Owners.

**1.13 "Master Declaration"** means the Declaration and General Protective Covenants for Gateway Greens recorded in Official Records Book 1977, Pg. 1367 et. seq., and as later amended, of the Public Records of Lee County, Florida and all amendments thereto.

**1.14 "County" or "the County"** means Lee County, Florida.

**1.15 "Design Review Guidelines"** shall mean standards and specifications promulgated by the Board relative to the external appearance of Dwelling Units including the location, size, type or appearance.

**1.16 "Development-Wide Standard"** shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing in the Neighborhood. Such standard may be more specifically determined by the Board and/or by committees required or permitted to be established pursuant to this Declaration or the Bylaws. Such determination, however, must be consistent with the standard originally established by the original developer.

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

**1.18 "Dwelling Unit" "Home" or "Residence"** means a residential unit in the Neighborhood intended as an abode for one single family.

**1.19 "Electronic Transmission"** means any form of electronic communication which creates an electronic record/file that may be retained, retrieved, and reviewed by recipients and may be reproduced on the recipient's computer screen or in a readable paper form by recipients using a laser or ink jet printer.

**1.20 "Family" or "Single Family"** shall refer to any one of the following:

**1.20.1** One (1) natural person, his or her spouse or Domestic Partner, if any, and their custodial children, if any.

**1.20.2** Not more than two (2) natural persons not meeting the requirement of Section 1.20.1 above, but who customarily and continuously reside together as a single housekeeping Dwelling Unit, and the custodial children and/or the parents of said parties, if any.

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

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

**1.22 "Guest"** means any person who is not the Lot Owner or a tenant or a member of the Owner's or tenant's Family, who is physically present on or occupies the Dwelling Unit on a temporary basis at the expressed or implied invitation of the Owner or other legally permitted Occupant, without the payment of consideration.

**1.23 "Governing Documents"** means this Amended and Restated Declaration, the Articles of Incorporation, the Amended and Restated Bylaws, and the Rules and Regulations of the Association, and any Design Review or Architectural Guidelines, as amended. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority as listed herein.

**1.24 "Improvement"** means any Dwelling Unit, building, structure or improvement of any kind including, but not limited to, any wall, fence, landscaping, planting, topographical feature, mailbox, swimming pool, tennis court, screen enclosure, driveway, sidewalk, sewer, drain, water area, outside lighting or sign and addition, alteration or modification thereto.

**1.25 "Institutional Mortgagee"** means:

**1.25.1** a lending institution having a first mortgage lien upon a Lot, Parcel or Tract, including any of the following institutions: a Federal or State savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment

trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company; or

**1.25.2** a governmental, quasi-governmental or private agency that is engaged in the business of holding, guaranteeing or insuring residential mortgage loans (including without limitation the Federal National Mortgage Association), Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration and which holds, guarantees or insures a first mortgage upon a Lot or Dwelling Unit.

**1.26** "**Eagle Pointe Phase I**" is the name of the Neighborhood.

**1.27** "**Lands**" or "**Property**" means the land described in Exhibit "A" to this Declaration, attached hereto.

**1.28** "**Lease**," when used in the context of the renting of Lots, means the grant by a Lot Owner of a right of use of the Owner's Lot for consideration including but not limited to a grant of use pursuant to a license, transient rental agreement or any other arrangement wherein the occupant has paid, will pay or has had or will have paid on their behalf any form of consideration to the Owner or any other person or entity for the right of use including but not limited to barter, home exchange, raffle or contest.

**1.29** "**Lot**" or "**Plot**" as that term was used in the original Neighborhood Declaration means a portion of the Neighborhood as shown on the Plat upon which a Dwelling Unit is permitted to be constructed. Unless the context clearly requires a different interpretation, the term "Lot" shall be interpreted as if it were followed by the words "and the Dwelling Unit constructed thereon."

**1.30** "**Lot Owner**" or "**Owner of Lot**" means the owner of the fee simple title to a Lot. A Lot Owner shall not mean nor refer to a holder of a mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure proceedings or by deed in lieu of foreclosure; nor shall the term "Lot Owner" mean or refer to any lessee or tenant of a Lot Owner.

**1.31** "**Maintain**" or "**Maintenance**" as it pertains to the Common Areas, means the exercise of reasonable care to keep the roads, landscaping, lawns, lakes, lighting and other related improvements, and fixtures in a condition comparable to their original condition, normal wear and tear expected. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy environment for optimum plant growth.

**1.32** "**Member**" means a record owner of a Lot as more particularly described in the Articles.

**1.33** "**Neighborhood**" means all real property comprising Eagle Pointe Phase I, as described in Exhibit "A", and the improvements thereon.

**1.34** "**Neighborhood Common Area**" or "**Association Property**" means the real  
EAGLE POINTE PHASE I-AMENDED AND RESTATED DECLARATION

property, including any improvements and fixtures thereon, which is owned, leased, dedicated to, operated or maintained by the Association. It includes Tracts "A" and "B" of Eagle Pointe Phase I, a subdivision according to the Plat thereof recorded in Plat Book 45, Pages 76-79 inclusive, as well as Tract "A" of Cypress Pointe Phase II, a plat recorded in Plat Book 51, Pages 61-64, Public Records of Lee County, Florida. The Plats are attached and shown as Exhibit "B" to this Amended and Restated Declaration.

**1.35 "Neighborhood Governing Documents"** means, in the aggregate, this Amended and Restated Declaration, the Articles, Bylaws, any rules and regulations of the Association which may be promulgated, all of the instruments and documents referred to therein and executed in connection therewith, and all amendments to the foregoing.

**1.36 "Occupant"** when used in connection with a Dwelling Unit, means a person who is physically present in a Dwelling Unit on two (2) or more consecutive days, including staying overnight for at least one (1) night.

**1.37 "Owner"** means the record owner of legal title to any Lot within Eagle Pointe Phase I.

**1.38 "Parcel" or "Tract"** means any and all platted or unplatted portions of the Neighborhood.

**1.39 "Plat"** means the subdivision Plats of Eagle Pointe Phase I, which is the Plat of the Neighborhood as recorded in Plat Book 45, Pages 76 through 79 and the Plat of Cypress Pointe Phase II, as recorded in Plat Book 51, Pages 61-64, of the Public Records of Lee County, Florida.

**1.40 "Property"** means the real property described on Exhibit "A" attached hereto.

**1.41 "Public Records"** means or refers to the land records of the Lee County Clerk of Courts.

**1.42 "Resident"** means any person who is occupying a Dwelling Unit for thirty (30) days, whether or not consecutive, in any calendar year and shall include, as applicable, Owners, tenants and members of their respective Families who reside in the Dwelling Unit.

**1.43 "Road Rights of Way"** means the rights of way within which roads, sidewalks, curbs, gutters, sewers, storm sewers, water mains, electric cables, telephone cables, and other utilities may be constructed, maintained and used, as depicted on the Plat, or deeded or dedicated to the Association or to the public.

**1.44 "Rules and Regulations"** means the administrative regulations governing use of the Common Areas and procedures for administering the Association, as adopted, and amended from time to time by resolution of the Board of Directors.

**1.45 "Site Plan"** means or refers to the recorded subdivision plats for Eagle Pointe Phase I and Cypress Pointe Phase II.

**1.46 "Street(s)"** shall mean the right(s)-of-way of and for all streets, roads, drives, courts, ways and cul de sacs within the Neighborhood as the same are described and depicted on the Plats, together with all paving, curbing, gutters, sidewalks and other improvements, facilities

and appurtenances from time to time located therein, including street lights and utility lines, which are shown on the Subdivision Plat and regardless whether same have been dedicated to the Association or to the public; but, specifically excluding, however, such utility lines, facilities and appurtenances as are located within such right(s)-of-way as may be owned by private or public utility companies or governmental agencies from time to time providing utility services to the Neighborhood.

**1.47 "Structure"** means something built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground, or which is attached to something having a permanent location on the ground. The term shall be construed as if followed by the words "or part thereof."

The term includes, without limitation, all Living Units, swimming pools, spas, fences, flagpoles, antennas, swing sets and/or other play equipment.

**1.48 "Surface Water Management System"** means and refers to the natural and artificial conditions and improvements (including lakes, canals, swale areas, retention areas, culverts, pipes, pumps, catch basins, grading, drainage structures and related appurtenances) for the management of surface water within the Community as described and regulated pursuant to a permit issued by the South Florida Water Management District, as amended from time to time. The Gateway Services District is the responsible entity which is the permittee under the SFWMD permit.

**1.49 "Voting Interest" or "Membership Interest"** means the record Owner of each Lot is assigned one (1) vote. There are one hundred twenty-four (124) Lots and therefore one hundred twenty-four (124) voting interests.

## **2. LAND USE COVENANTS; MASTER ASSOCIATION RIGHTS AND POWERS; .**

**2.1 Ownership in Gateway Greens.** By taking title to a Plot, each Owner becomes subject to the terms and conditions of the Master Declaration. The Master Declaration provides, among other things, that an Owner shall become a member of the Master Association, shall acquire certain property rights to the Common Areas within Gateway Greens, shall become subject to the assessments of the Master Association and shall be subject to its restrictions. In the case of any inconsistencies between the terms of this Declaration and the Master Declaration, the terms of the more restrictive provision shall control unless such terms of this Declaration are prohibited by the Master Declaration, in which event the terms of the Master Declaration shall control.

**2.2 Supremacy of Master Declaration.** In addition to all the rights and obligations which have been conferred or imposed upon the Neighborhood Association pursuant to this Declaration and the Articles and Bylaws of the Neighborhood Association, the Neighborhood Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to the Master Declaration and its Bylaws. The Neighborhood Association and all committees thereof shall also be subject to all superior rights and powers that may have been conferred upon the Master Association pursuant to the Master Declaration and its Bylaws. The Neighborhood Association shall take no action in derogation of the rights of, or contrary to, the interests of the Master Association.

**2.3 Termination of the Neighborhood Association.** The Neighborhood Association shall not be terminated without the prior written consent of the Board of Directors of the Master Association. Furthermore, the Neighborhood Association shall not be terminated without providing for the maintenance, repair and replacements of the common areas. In the event the Neighborhood Association is terminated for any reason, the Master Association shall have the power, but not the duty, to maintain the Common Areas and perform all functions of the Neighborhood Association.

**3. THE NEIGHBORHOOD ASSOCIATION'S PURPOSES AND POWERS.** The primary purposes of the Association are to hold title to, operate, maintain, repair and replace the Common Areas of the Neighborhood; to enforce restrictive covenants applicable to the Neighborhood; to provide architectural and aesthetic control; and to take such other action as the Neighborhood Association is authorized or required to take with regard to the Neighborhood pursuant to the Governing Documents. The Neighborhood Association shall operate, insure, maintain and repair all property and related improvements designated by the Neighborhood Association as Common Areas, regardless of whether legal right to that property has been formally conveyed to the Association.

**3.1 Neighborhood Association Property.** The Neighborhood Association Property shall consist of the recreation and drainage maintenance areas located on Tracts "A" and "B" as shown on the Eagle Pointe Phase I Plat and Tract "A" of the Cypress Pointe Phase II Plat, and such other property that was conveyed by the Declarant to the Neighborhood Association. Neighborhood Association Property shall be used for proper purposes by the Neighborhood Association and the Lot Owners and their family members, guests, invitees and lessees in accordance with the Neighborhood Documents.

**3.2 Maintenance, Operation and Repair of the Neighborhood Association Property and Common Areas.** If the Master Association and Lee County are not responsible for the maintenance, operation and repair of the following items, then the Neighborhood Association shall be responsible for their maintenance, operation and repair regardless of whether the following items are Common Areas:

**3.2.1** Such security systems and facilities, and signage areas, if any, which shall be operated and maintained for the benefit of the Lots within the Neighborhood.

**3.2.2** All bikepaths and crossovers within any portion of the Neighborhood which are not publicly dedicated. All Streets in the Neighborhood may be publicly dedicated.

**3.2.3** The surface water and stormwater management systems.

**3.2.4** The areas, if any, in which entrance signs are placed identifying the Neighborhood and the entrance signs located in such areas.

**3.2.5** Any Common Areas or other areas conveyed, dedicated, or leased to or



used by the Neighborhood Association, including any improvements on such Common Areas including but not limited to maintenance of any wall constructed on a Lot by the Declarant and/or the Neighborhood Association to separate the Lot from a public road.

The aforescribed items shall be maintained and operated in a first class condition.

**3.3 Management of the Neighborhood Association Property and Common Areas.**

The Neighborhood Association's authority to manage the Neighborhood Association's property and Common Areas shall include:

**3.3.1** The right to establish rules and regulations governing the use of the Neighborhood Association's property and Common Areas.

**3.3.2** The right to charge reasonable admission and other fees or Assessments for the use of the Neighborhood Association property and Common Areas;

**3.3.3** In accordance with Florida Statute Section 720.305, the right to suspend a Member's right to vote, and a Member's right to use Neighborhood Association Common Areas, for any period during which any assessments against the Member's Lot or any obligation of the Member to the Neighborhood Association remains unpaid, and for a reasonable period during or after any infraction of the Neighborhood Association's rules and regulations.

**3.3.4** The right to dedicate or transfer all or any part of Neighborhood Association property and Common Areas to any governmental agency, public authority, or utility.

**3.3.5** The right to borrow money for the purpose of improving Neighborhood Association property and Common Areas or property which is to be publicly dedicated but required to be upgraded or maintained by any local, state or federal government agency, and in aid thereof to mortgage the same.

**3.3.6** The right to take such steps as are reasonably necessary to protect Neighborhood Association property and Common Areas against foreclosure.

**3.3.7** Subject to the limitations described in Section 4.4, the right to grant easements to all or any part of Neighborhood Association property and/or Common Areas to any Person.

**3.3.8** The right and obligation to establish a budget for its fiscal operations and to establish the assessments needed for such fiscal year.

**3.3.9** The right to enforce the provisions of this Declaration, or any other applicable recorded instrument adopted by the Neighborhood Association, including the Articles of Incorporation and Bylaws of the Neighborhood Association, and any rules and regulations governing use and enjoyment of the Neighborhood Association property and Common Areas adopted by the Neighborhood Association.

**3.4 Insurance.** The Neighborhood Association shall maintain insurance on the Neighborhood Association Property and Common Areas of such types, in such amounts and with such companies as the Neighborhood Association Board of Directors deems appropriate. In addition, the Association shall cause all persons with access to Association funds to be insured or bonded with adequate fidelity insurance or bonds.

**3.5** All costs associated with operating and maintaining Association Property shall be the obligation of the Association, except as responsibility for maintenance is otherwise set forth herein.

**3.6 Private Use.** For the term of this Neighborhood Declaration, Association Property is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of the Association, the Lot Owners in the Neighborhood, and their family members, guests, invitees and lessees, but only in accordance with this Neighborhood Declaration.

**3.6.1** The administration, management, operation and maintenance of Association Property shall be the responsibility of the Association, all as is provided herein and in the other Neighborhood Documents.

**3.6.2** The right to use Association Property shall be subject to any Association rules.

**3.7 Rules and Regulations.** The Association, by its Board, shall have the right to promulgate and impose rules. and regulations and thereafter to modify, alter, amend, rescind and augment any of the same (collectively, the "Association Rules" as defined in this Declaration) with respect to the use and operation of the Association Property and the Lots. The Association Rules so promulgated shall in all respects be consistent with the use covenants set forth in this Declaration, with the architectural and beautification plan for the Neighborhood as may be established and with the provisions of the Master Declaration. The Board may modify, alter, amend and rescind such Association rules provided such modifications, alterations, amendments and rescissions are consistent with the use covenants set forth in this Declaration and the Master Declaration.

**3.8 Manager.** The Association may contract, employ and pay for the services of an entity or person to assist in managing its affairs and carrying out its responsibilities, and may employ other personnel as the Association shall determine to be necessary or desirable.

**3.9 Personal Property.** The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

**3.10 Express and Implied Powers.** The Association may exercise any rights, powers or privilege given to it expressly by the Governing Documents or by the law in effect at the time this Amended and Restated Declaration is recorded, and every other right, power or privilege reasonably inferable therefrom.

**3.11 Acts of the Association.** Unless the approval or affirmative vote of the Members is specifically made necessary by some provision of applicable law or the Governing Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Members. The officers and Directors of the Association have a fiduciary relationship to the Members. A Member does not have the authority to act for the Association by reason of being a Member.

**3.12 Articles of Incorporation.** A true and correct copy of the Amended and Restated Articles of Incorporation of the Association and as may be amended later, as amended and restated, are attached as Exhibit "D."

**3.13 Bylaws.** The Bylaws, as amended and restated, of the Association are attached as Exhibit "E."

**3.14 Official Records.** The official records of the Association shall be maintained within the State of Florida and as required by Florida Statute Section 720.303 and must be open to inspection and available for photocopying by Members or their authorized agents at reasonable times and places within ten (10) business days after receipt by the Association of a written request for access.

**3.14.1** This requirement may be complied with by having a copy of the official records available for inspection or copying within the Neighborhood or at the management company's office, or by making the records available to an Owner electronically through the internet.

**3.14.2** The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspection, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying.

**3.14.3** The Association shall maintain an adequate number of copies of the recorded Governing Documents, to ensure their availability to Members and prospective Members, and may charge its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

**3.14.4** The personnel records of Association and management company employees are exempt from this requirement to be available to the Owners and are protected from disclosure. This protection shall include but not be limited to disciplinary, payroll, health and insurance records, but does not include written employment agreements or budgetary and financial records that indicate the compensation paid to an employee.

**3.15 Services.** The Association may, if it decides to do so, perform any of the following services:

**3.15.1** Provide maintenance of the Association Property and any other areas

specifically designated herein or in an amendment hereto, as the maintenance responsibility of the Association. The Association may, to the extent permitted by the appropriate governmental authority, also provide maintenance of all city, county, or municipal properties including, but not limited to, publicly dedicated rights-of-way which are located within or in a reasonable proximity to the Property to the extent that their deterioration would adversely affect the appearance of the Property. The Association may adopt and may amend and/or supplement standards of maintenance and operation applicable to the Property which is the maintenance responsibility of another entity or person to assure that such maintenance responsibilities are carried forth in a manner so as to maintain the beauty and aesthetic quality of the Neighborhood.

**3.15.2** Provide maintenance of any real property upon which the Association has accepted, in an amendment hereto or in another writing, an easement for said maintenance.

**3.15.3** Provide maintenance service to the Lots and Dwelling Units with regard to the Storm Water Management System.

**3.15.4** Provide insect and pest control to the Association Property and the Lots to the extent that it is necessary or desirable in the judgment of the Association to supplement any service provided by the State and local governments in relation thereto.

**3.15.5** Take any and all actions the Board deems necessary to enforce all covenants, conditions and restrictions affecting any part of the Property and to perform any of the functions or services delegated to the Association in any of the Neighborhood Documents or the Master Documents.

**3.15.6** Conduct the business of the Association, including, but not limited to, the hiring of professionals to provide services such as legal, accounting, financial and communication services and inform Members of activities, meetings and other important events as the Board deems necessary or appropriate.

**3.15.7** Purchase general liability and hazard insurance covering Improvements and activities on the Association Property, if any.

**3.15.8** Publish and enforce, as the Association deems necessary, the Association rules.

**3.15.9** Provide and maintain traffic calming devices or install lighting of roads, sidewalks and bike paths, if any.

**3.15.10** Construct, repair and maintain Improvements on the Association Property and Lots, as specified herein.

**3.15.11** Provide, to the extent deemed necessary by the Board, any and all services, and do any and all things which are incidental to or in furtherance of things listed above, or to carry out the Association mandate to keep and maintain the Association Property and the Lots in

a proper and aesthetically pleasing condition and to provide the Lot Owners with services, amenities, controls and enforcements which will enhance the quality of life in the Neighborhood.

#### **4. MEMBERS' RIGHTS AND EASEMENTS**

**4.1 Members Rights' and Easements.** Every member shall have a right of enjoyment and use in and an easement to Neighborhood Association Common Areas, which right and easement shall be appurtenant to and shall pass with the title to every Lot subject to the rights of the Neighborhood Association under the rights of the Master Association under Article 4 of this Amended and Restated Neighborhood Declaration.

#### **4.2 Delegation of Right.**

**4.2.1** A member may delegate his or her right of use and easement to Common Areas to the members of his or her family, to residential tenants who reside on the Member's Lot and to the Member's guests, but only to the extent and subject to conditions, limitations and restrictions as may be provided for in the Bylaws and in accordance with the Neighborhood Association's rules and regulations.

**4.2.2** Each Member shall be responsible for the actions of any Person to whom the Member has delegated his or her right of use to the Common Areas. Any unpaid charge against such Person shall be charged against such Member personally and be assessed against such Member's Lot. Any infraction of the Neighborhood Association's rules and regulations by such Person shall be deemed to be an infraction by such Member.

**4.3 Easements and Common Area.** The following easements are hereby granted and/or reserved.

**4.3.1** A non-exclusive and perpetual easement across the area, if any, where each Lot or Tract as shown on the Subdivision Plats (as defined below) fronts a street, is deeded and dedicated to the governmental agencies and public utility companies, for the installment, repair, and maintenance of cable, common utilities and drainage.

**4.3.2** A non-exclusive and perpetual easements to enter upon, across, above and under the area shown on the Subdivision Plat as an "Access Easement" is deeded and dedicated to the Master Association, Neighborhood Association, and their successors and assigns.

**4.3.3** A non-exclusive and perpetual easements for drainage across, above and under the area shown on the Subdivision Plat as a "Drainage Easements" is dedicated to the Gateway Services District

**4.3.4** Easements over, across and through the Neighborhood are hereby reserved throughout the Common Areas, by Declarant for its use and the use of its agents, employees, licensees and invitees including, without limitation, the streets to be constructed. Notwithstanding any provision in this Declaration to the contrary, it is expressly understood that

Declarant shall have the right to dedicate the streets (or any part of the streets) to any governmental agency or public authority.

**4.3.5** Easements over, across and through the Neighborhood are hereby granted to the Neighborhood Association for the purpose of access to each Lot for the purpose of providing necessary maintenance of the Lot as determined by the Neighborhood Association.

**4.4 Restriction on Owner Easements.** No Owner shall grant any easement upon any portion of the Neighborhood to any Person or entity, without the prior written consent of the Declarant and thereafter without the prior written consent of the Neighborhood Association if the easement has not been previously granted.

**5. ASSOCIATION MEMBERSHIP VOTING RIGHTS.** Every Owner of record legal title to a Lot within the Neighborhood shall be a member of the Association as further defined in this Section 5.1 below. Membership is appurtenant to, and may not be separated from, ownership of a Lot. The rights, powers, duties and privileges of Members shall be as set forth in this Amended and Restated Declaration and in the Amended and Restated Articles of Incorporation and Amended and Restated Bylaws of the Association.

**5.1 Classes of Membership.** The Association has one (1) class of voting membership, which shall be the Owners of Lots within the Neighborhood. Each Lot has only one (1) indivisible vote. The Association has the right to suspend the voting rights of any Owner who becomes more than ninety (90) days delinquent in the payment of any monetary obligation to the Association and for any infraction of its Governing Documents.

**5.2 Association Rights and Easements.** Members in good standing have the non-exclusive right to use the Common Areas subject to:

**5.2.1** The right of the Association, by and through its Board of Directors, to adopt the annual budget and to determine the Assessments to be paid by Members;

**5.2.2** The right of the Association, by and through its Board of Directors, to suspend a Member's right to use Common Areas for a period during which any Assessment, Charge or other monetary obligation against the member's Lot or Dwelling Unit remains unpaid and past due for more than ninety (90) days and for a reasonable period during or after any infraction of the Association's rules and regulations;

**5.2.3** The right of the Association, by and through its Board of Directors, with the prior written consent of at least two-thirds (2/3rds) of the entire voting interests, to dedicate or transfer all or any part of the Common Areas to any governmental agency, public authority or utility;

**5.2.4** The right of the Association, by and through its Board of Directors, to grant easements over, across and through the Common Areas;

**5.2.5** The right of the Association, by and through its Board of Directors, to open the Common Areas for temporary use by non-Members of the Association, or non-Owners;

**5.2.6** The right of the Association, by and through its Board of Directors, with the prior consent of two-thirds (2/3rds) of the voting interests present, in person or by proxy, and voting, at a duly called meeting of the membership, to borrow money for the purpose of improving the Common Areas, and in aid thereof, to pledge or mortgage any Association property and/or Common Areas;

**5.2.7** The right of the Association, by and through its Board of Directors, to take such steps as are reasonably necessary to protect the Common Areas;

**5.2.8** The right of the Association, by and through its Board of Directors, to close or restrict access to the Common Areas for limited periods of time to conduct special events; and

**5.2.9** The provisions of this Amended and Restated Declaration, the Amended and Restated Articles of Incorporation and the Amended and Restated Bylaws of the Association; and any rules and regulations governing use and enjoyment of the Common Areas adopted by the Association.

**5.2.10** Notwithstanding anything contained herein to the contrary, portions of Association Property may be dedicated to any public agency, authority or utility subject to such conditions as the Lot Owners may agree upon the approval of two-thirds (2/3rds) of all Lot Owners.

**5.2.11** If and as long as the Neighborhood is an approved FHA or VA project, the Association Property cannot be conveyed (except for the conveyance described in Section 5.2.10 hereof) or mortgaged without consent of two-thirds (2/3rds) of all Lot Owners.

**5.3 Obligation of the Association.** The Association may carry out the functions and services as specified in this Section 5 to the extent such functions and services can be provided with the proceeds, first from Individual Lot Assessments and then, if necessary, from Special Assessments. The functions and services referred to in this Section 5 to be carried out or offered by the Association at any particular time shall be determined by the Board, taking into consideration the proceeds of Assessments and the needs of the Members and of the Neighborhood. The functions and services which the Association is authorized to carry out or to provide may be added to or reduced at any time upon the affirmative vote of a majority of the Board.

**5.4 Relationship between the Association and the Master Association.**

**5.4.1 The Master Association.** The Neighborhood is a component of the larger master planned community known as Eagle Pointe Phase I. The Neighborhood is a "Neighborhood" and the Association is a "Neighborhood Association" as those terms are defined in the Master Declaration. All Lot Owners, lessees, and occupants of Dwelling

Units in the Neighborhood shall have access to and use of various services and facilities provided by the Master Association, subject to the provisions of the Master Declaration. Every Lot Owner, by acceptance of a deed to a Lot, acknowledges that, in addition to being subject to and bound by the Neighborhood Documents, he or she is subject to the Community Documents and that he or she is automatically a member of and subject to assessment by the Master Association in accordance with the terms of the Community Documents. Each Lot Owner covenants and agrees to pay all assessments levied against such Lot Owner's Lot by the Master Association, whether billed directly by the Master Association or by the Association on behalf of the Master Association.

**5.4.2 Supremacy of the Master Declaration.** In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to the Neighborhood Documents, the Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to the Community Documents. The Association and all committees thereof shall also be subject to all superior rights and powers which have been conferred upon the Master Association pursuant to the Community Documents. The Association shall take no action in derogation of the rights of the Master Association.

**5.4.3 Cumulative Effect; Conflict.** The provisions of the Neighborhood Documents shall be cumulative with the provisions of the Community Documents; however, in the event of conflict between or among the provisions of the Neighborhood Documents and the Community Documents, the latter shall be superior to those of the Association. The foregoing priorities shall not prevent enforcement by the Association of provisions or rules which are stricter than those of the Master Association.

**6. USE RESTRICTIONS.** The Neighborhood is subject to the following restrictions, reservations and conditions which shall be binding upon each Owner who shall acquire hereafter a Lot or any portion of the property, and shall be binding upon their respective heirs, personal representatives, successors and assigns.

**6.1 Use.** Each Lot shall be occupied by only one (1) Family at any time, as a Dwelling Unit and for no other purpose whatsoever. The letting of rooms, taking in "boarders" or allowing paying "house mates" is not permitted. Fractional ownership is not permitted.

**6.2 Commercial Activities.** No trade, business, profession or other commercial activities may be conducted on any Lot or within any Dwelling Unit, nor may the name of the Community or the address of any Lot or Dwelling Unit be publicly advertised or registered with applicable governmental agencies as the location of any business. The use of a Dwelling Unit as a public lodging establishment shall be deemed a business or commercial use. This Section 6.2 shall not be construed to prohibit any Owner or Resident from maintaining a personal or professional library, from keeping his or her personal, business or professional records in his or her Dwelling Unit or from handling his or her personal, business or professional telephone calls or written correspondence in and from his or her Dwelling Unit; provided that such use do not involve customers or clients coming into the Community, the posting of any signage in the Community, the storage of



any equipment, products or materials in the Community, nor more than two (2) regular deliveries per day of correspondence or similar items from customary express delivery services. Such uses are expressly declared customarily incident to residential use. This Section 6.2 is, however, intended to prohibit commercial or business activity by an Owner or Resident that would unreasonably disrupt the residential ambiance of the Community or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Community by persons making deliveries or pick-ups, by employees or other business associates, or by customers or clients.

**6.3 Nuisance.** The Lot shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, or which shall unreasonably interfere with the quiet possession or enjoyment of the Lot, or which becomes a source of annoyance to the Neighborhood Residents, or which will increase insurance rates. No noxious or offensive use may be made of a Lot and no such activity will be carried on any Lot, which would be a nuisance by reason of unsightliness or excessive emission of noise, odors, liquids, gases, dust, vibration, fumes or smoke. All property shall be kept in a neat and orderly manner. The Lot shall be used in accordance with all federal, state and local laws and ordinances. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Lot Owner shall be located, used or placed on any Lot, or exposed to the view of other Lot Owners without the prior written approval of the Board.

**6.4 Plans, Specifications and Locations of Buildings.** No building or structure of any kind including additions, alterations, pools, fences, walls, patios, terraces or barbecue pits shall be erected or altered until the plans and specifications, exterior colors, location and sealed plot plan thereof, in detail and to scale, shall have been submitted to and approved by the Association. Failure to submit the plans, specifications, exterior colors, location and plot plan in detail and to scale, or failure to obtain approval of the Association shall be deemed a material breach of this Restriction. The Association shall then have the right to proceed in the courts to obtain a mandatory injunction requiring any construction done without the approval to be removed forthwith. The plans and specifications and location of all construction thereunder, and every alteration of any building or structure shall be in accordance with the building, plumbing and electrical requirements of all regulatory codes. It shall be the responsibility of the Owner to obtain from the Lee County Building Department, or other appropriate authority, the necessary technical data with regard to construction elevations prior to the start of any construction. The Association will not assume any responsibility in this regard before, during or after construction on any of the lots in the neighborhood, it being understood that the approval of the Association relates only to the aesthetics of the improvements shown on the plans, and not to their technical sufficiency. The aforementioned technical data must be detailed on the final plans and specifications when submitted to the Association before plan approval will be given. No exterior colors on any building or structure on any lot shall be permitted that, in the sole judgment of Association, would be inharmonious or discordant or incongruous for the Neighborhood. Any future exterior color changes desired by Owner must be first approved by the Association in writing.

**6.4.1** No structure of any kind of what is commonly known as "factory built" or "modular" type construction shall be erected in the Neighborhood without written permission of Association. Owner must submit to Association full plans, specifications, name of manufacturer and place of manufacture for consideration of permission. In the event permission is denied by Association, Association shall not have any liability for any loss that might be sustained by Owner.

**6.4.2** Pitched roofs shall have such pitch as shall be acceptable to the Association in its sole discretion and shall be constructed of flat or barrel cement or metal tile, hand-sawn or split cedar shakes, shingle, slate or copper, all as defined by attractive material for roofing surfaces is discovered, or invented, the Association may, in its sole discretion, approve the use of such new materials. All roofs must be approved by the Board of Directors prior to being replaced.

**6.4.3** Flat roofs may be utilized over porches, Florida rooms and utility rooms only if approved in writing by Association, and provided that the flat roof area does not compromise over 40% of the total roof area. Such flat roofs are to be located to the rear of the building. Notwithstanding the above, a mansard roof or a flat roof located elsewhere than to the rear of the building may be permissible if approved in writing by the Association. All electric, telephone, gas or other utility connections must be installed underground. All utility and storage rooms are to be located to the rear of the building.

**6.4.4** The plans and specifications shall contain a sealed plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs on the lot. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Association. Landscaping as required shall be completed at the time of completion of the building, as evidenced by the issuance of a Certificate of Occupancy by the appropriate governing body. No gravel or blacktop or paved parking strips are to be allowed except as approved by Association. The location, style and type of mailbox must be approved by Association prior to installation. All mailboxes must be maintained in good condition as determined by Association. In the event any person or entity fails to obtain approval of building plans and specifications, and site plans including additions, alterations, fences and walls, the Association shall have the right to obtain a mandatory injunction to remove any unapproved structures built or a prohibitory injunction to prevent any unapproved structure from being built, and will also be entitled to attorneys' fees and court costs in obtaining either a mandatory or prohibitory injunction against any person or entity in violation of these restrictions. Refusal of approval of plans and specifications, location and plot plan, by the Association may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Association.

**6.4.5** All lot areas not covered by approved buildings, structures or paved parking facilities shall be maintained as lawn or landscaped areas and shall be maintained to the pavement edge with any abutting street right of way or to the waterline within any abutting lake or canal tracts. No stone, gravel, or paving of any type shall be used as a lawn unless approved as part of a landscape plan.

**6.4.6 Garages, Carports and Storage Areas.** No garage shall be erected which is separated from the main building, and no unenclosed storage area shall be allowed. No enclosed storage area shall be erected which is separated from the building. Each single family

residence is required to have a two (2) car garage. Carports shall not be permitted. Repair of vehicles shall be permitted only inside the garage. Association may require that all garages be equipped with automatic door openers and closers; and Association may require that when ingress and egress is not desired to the garage, the garage door shall remain closed.

**6.4.7 Parking and Driveways.** No concrete, asphalt or paved residential driveways or parking areas will be permitted unless first approved by Association. Gravel or other unpaved driveways or parking areas shall not be permitted unless approved by Association. Driveways and parking areas must be constructed with materials first approved by Association. Adequate permanent paved parking shall be constructed and maintained on each lot in accordance with standards acceptable to Association for such use. Driveways larger in width than the garage they serve are prohibited. Parking of automobiles, trucks and other motor vehicles on or along streets and roads within the subdivision will not be generally permitted. However, the Association may promulgate rules to accommodate street parking for special occasions.

**6.4.8 Outdoor Lighting.** No outdoor lighting shall be permitted unless the plans and specifications are submitted to and approved by Association in writing prior to installation thereof.

**6.4.9 Walls and Fences.** No wall or fence shall be constructed with a height of more than five (5) feet above the ground level (at the property line) of adjoining party, and no hedge or shrubbery abutting the property lines shall be permitted with a height of more than six (6) feet without written approval by Association. No wall or fence shall be constructed on any lot until its height, length, type, design, composition, material and location shall have been approved in writing by Association. The height of any wall or fence shall be measured from the then existing property elevations. Any dispute as to height, length, type, design, composition or material shall be resolved by Association, whose decision shall be final. No wood fencing material shall be permitted unless approved in writing by Association. Hurricane or storm shutters shall not be stored on the exterior of the residence without the prior approval of Association in writing. No awnings or shutters shall be used without the prior approval of Association in writing.

**6.4.10 Reconstruction or Remodeling of Existing Dwelling Units, Commencement and Completion.** In the case of any reconstruction or major remodeling or additions to existing dwelling units, once the construction of any building or other improvement is commenced, substantial work toward the completion of the construction will be pursued diligently and the buildings and other improvements completed within a reasonable period of time after commencement. If, for any reason, no substantial progress is made toward the completion of a building or other improvement commenced on a Lot, for a period of ninety (90) days, the Association may enter upon the premises and take such action as the Association may deem appropriate to correct the undesirable appearance of the partially completed buildings and improvements, including completion thereof, at the cost and expense of the Owner of the Lot. For purposes of this Declaration, sums owing the Association by reason of the foregoing will be deemed to be a Charge, which shall be secured by a lien for Charges, secured in the same manner, and foreclosed in the same fashion as an Assessment lien. Any member of the ACC or its agents shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to

inspect for the purposes of ascertaining whether or not these restrictive covenants have been or are being satisfied. Such persons shall not be deemed guilty of trespass by reason of such entry.

**6.4.11 Maintenance.** Buildings, driveways, and other structures or improvements made on a Lot will be regularly and continuously maintained in good condition and in a well-kept appearance by the Owners. All driveways, walkways, sidewalks and other hard surface areas will be swept, cleaned and power washed regularly and cracks and damaged areas replaced, repaired or otherwise kept in good condition and appearance by the Owners. If, after reasonable notice, an Owner fails to maintain his or her property as required, the Association shall have the right to institute legal proceedings at law or in equity to enforce compliance, or to take any and all other lawful actions to remedy such violation, including entering upon the property and performing the maintenance functions, in which event the Owner shall be charged for the costs of such activities by the Association, which shall be deemed a Charge, which shall be secured by a lien for Charges, secured in the same manner and foreclosed in the same fashion as the Assessment lien.

**6.4.12 Miscellaneous.** The exterior of all buildings constructed on a Lot will be of colors which are harmonious with the colors of natural surroundings and nearby buildings. It is intended that the ACC will have broad discretion in determining whether prefabricated housing is to be considered as being a mobile home or conventional housing, and any doubt concerning the matter will be resolved in favor of the decision reached by the ACC.

**6.4.13 Garbage and Trash.** Garbage, trash and other refuse (including horticultural debris) may be stored on a Lot for collection or other disposition for no more than a reasonable period of time, and then only in containers which are reasonably acceptable to the Association. Horticultural debris which is bundled and tied neatly together is also acceptable. However, seed pods must be placed in a container with a lid. All garbage, trash or horticultural debris must be put out and placed to the curb in the Owner's own driveway or property for pick up no earlier than twenty-four (24) hours before pick-up and all garbage or trash containers, and all horticultural debris, may not remain at the curb for more than twenty-four (24) hours after pick-up. Trash containers stored or used on a Lot must be stored in such manner as not to be visible from any road easement, street, highway or other Lot. These items must be stored either inside buildings or behind a visual barrier of an aesthetically pleasing appearance, which must be approved by the ACC. Visual barriers may consist of earth mounding, landscaping, walls, fencing or a combination thereof.

**6.4.14 Pool Maintenance Equipment.** Pool maintenance equipment stored or used on a Lot must be stored in such manner as not to be visible from any road easement, street or other Lot. These items must be stored behind a visual barrier of an aesthetically pleasing appearance, which must be approved by the ACC. Visual barriers may consist of earth mounding, landscaping, walls, fencing or a combination thereof.

**6.4.15 Landscaping.** Any Lot yard areas will be sodded and buildings, parking spaces, areas and driveways and other improvements will be substantially landscaped in an aesthetically pleasing manner by the Owner unless an alternate landscape plan has been previously approved by the ACC. All landscaping and yard areas will be irrigated, fertilized, mowed, trimmed and cared for regularly, diseased and dead plant and grass replaced, and otherwise maintained at all times in an aesthetically pleasing manner by the Owner. Each Lot Owner shall

be required to maintain any grassed in or landscape features that lie within the road right-of-way as though it was part of the Lot to the pavement edge. In the event that the Owner fails to maintain the landscaping, the Association shall have the right, after 15-day written notice to Owner, to undertake the maintenance at the Owner's expense in which event the Owner shall be charged for the costs of such activities by the Association, which shall be deemed a Charge, which shall be secured by a lien for Charges, secured in the same manner, and foreclosed in the same fashion as the Assessment lien.

**6.4.16 Signs.** All signs located within the Neighborhood must comply with the following guidelines. Signs will not be located on any building exterior walls or "stand out" from interior or exterior wall or window surfaces on any Lot. Excluding a security services sign of reasonable size placed within ten feet (10') of a dwelling entrance, not more than two (2) signs may be erected or maintained on any Lot at any one time, except "For Sale" signs. Two (2) "For Sale" signs advertising a Lot and/or improvements thereon for sale may be displayed in both the front and rear of a Lot but must comply with the Gateway standards for signs. No signage that advertises an occupant's business, trade or profession is allowed. "For Rent" or "Available for Rent" signs are not allowed. When a home is being constructed, reconstructed or added to or renovated, one (1) contractor's sign may be displayed and only for that period. No political signs, banners, or flags may be displayed on a Lot or Home.

**6.4.17 Flags.** Any Lot Owner may erect a freestanding flagpole no more than twenty feet (20') high on any portion of the Owner's Lot if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The Lot Owner may only display in a respectful manner from that flagpole up to two (2) 4 ½ feet by 6 feet flags of the type permitted by Chapter 720 Florida Statutes as amended from time to time. . Other flags may be permitted as determined by the Board.

**6.4.18 Vehicle Storage and Parking.** All Dwelling Units will include an attached garage which will have adequate parking space to store and park at least two (2) cars or motor vehicles for use to which the Lot is committed. Overnight parking on or along streets and roads within the Community is not permitted. Parking spaces and driveways shall be used solely and exclusively for that purpose by permitted automobiles, SUVs, trucks, vans and/or minivans. No commercial vehicles are permitted except as provided below., No buses, flat-bed vehicles, campers, mobile homes, motor homes, motorcycles, motor scooters, mopeds, golf carts, off road vehicles, inoperable vehicles, boats or trailers of any kind shall be parked or stored on any Lot or driveway, unless parked unobtrusively within an unenclosed garage, or stored as allowed by Florida Statute 720.3045, or the commercial markings are fully covered by magnetic panels that match or closely match the color of the vehicle in which case they may be parked outside of the garage. This provision applies to all Owners, tenants, Residents, occupants, guests and other licensees and invitees of Owners and tenants. This provision shall not apply to the temporary (less than 12 hours) parking of motorhomes, solely for the purposes of loading and unloading commercial vehicles and flat-bed vehicles used by outside vendors to furnish commercial services to the Lot Owner nor temporary parking by guests and invitees. The Board of Directors shall be authorized to promulgate additional rules regarding parking within the Neighborhood. Any vehicle parked in violation of this Section or any rules adopted by the Board, is subject to being towed away at the owner's expense without further warning.

The following definitions shall apply for purposes of this provision:

**"Truck"** means all vehicles of every kind, including pick-up trucks, with a three-quarter (3/4) ton or greater rated weight-carrying capacity, which are manufactured, designed, marketed or used for transporting goods of any nature. "Truck" shall include, but shall not be limited to, step, panel or cargo vans of any weight or size. Provided, however, the term "truck" shall exclude passenger vans primarily designed for the carriage of eight (8) or less passengers, and not primarily designed for the carriage of goods. The term "truck" shall also exclude "mini-vans", marketed under nameplates such as Honda Odyssey, Toyota Sienna, Dodge Caravan, Plymouth Voyager, Chevrolet Astro, Ford Aerostar, and vehicles of similar design and size. Further, the term "truck" shall exclude "sport utility vehicles" primarily designed, marketed or used for the carriage of eight (8) or less passengers, and not primarily designed, marketed or used for the carriage of goods. Sport utility vehicles marketed under the nameplates Honda Pilot, Toyota Rav4, Ford Explorer, and vehicles of similar design and use shall not be considered "trucks" for purposes of this provision. "Hybrid" vehicles marketed under the nameplates Chevrolet Avalanche, Ford Explorer Sport Trac, Cadillac EXT, Hummer H2 SUV and vehicles of similar design and use shall be considered "trucks" for purposes of this provision if they have a greater than one-half (1/2) ton rated weight-carrying capacity.

**"Commercial Vehicles"** means all vehicles of every kind whatsoever (including regular passenger automobiles) which, from viewing the exterior of the vehicles or any portion thereof, shows or tends to show any commercial or charitable institution (e.g. church or school) markings, signs, displays, tools, toolboxes, bins, equipment, racks, altered beds, ladders, apparatus, or otherwise indicates a commercial or other non-personal use. Any vehicle which contains exterior graphics or markings (painted, magnetic or wrapped in vinyl) bearing signage, business logos, telephone numbers, advertising and/or internet/website addresses shall be a commercial vehicle and shall only be permitted when parked inside a garage, unless said markings are fully covered by magnetic panels that match or closely match the color of the vehicle and then they may be parked outside of the garage. Vehicles not primarily designed for family transportation (including but not limited to limousines, hearses and taxi cabs) shall be considered commercial vehicles whether or not actually so used for the purpose for which the vehicle was originally designed. For purposes of this provision, the term "commercial vehicle" shall exclude any law enforcement or emergency vehicle. The foregoing notwithstanding the Board may prohibit commercial vehicles that in its sole and exclusive discretion cannot comply with the foregoing exceptions.

**"Governmental Vehicles"** means all vehicles of any kind whatsoever which contain markings or apparatus indicating that the vehicle is used in the performance of governmental services or functions, and not primarily as a passenger automobile. By way of example, but not limitation, fire trucks, ambulances and City or County staff vehicles are included within the description of governmental vehicles. These types of governmental vehicles may be parked overnight in the driveway of the Owner's Lot.

**"Bus"** means all vehicles of any kind whatsoever, including vans, manufactured, designed, marketed or used as a bus, for transport of nine (9) or more passengers, or the carriage of goods.

**"Off-Road Vehicles"** means all vehicles or conveyances which are primarily designed or marketed for non-highway recreational or commercial use. By way of example, but not limitation, "ATVs", "dune buggies", "souped-up" passenger vehicles, "dirt bikes", "mini-bikes"

and "swamp buggies" shall be considered off-road vehicles.

**"Campers" or "Travel Trailers" or "Recreational Vehicles"** means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property, whether or not self-propelled or built on a motor vehicle chassis.

**"Mobile Homes"** means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent or temporary dwelling.

**"Motor Homes"** means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles which contain showers, restrooms facilities, or cooking facilities shall also be considered motor homes.

**"Motorcycles"** means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground.

**"Motor Scooter"** means any two (2) wheel, self-propelled vehicle, other than a bicycle, motorcycle or moped, whether used for highway or off-road travel.

**"Moped"** means any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels, with a motor rated not in excess of two brake horsepower and not capable of propelling the vehicle at a speed greater than thirty (30) miles per hour on level ground; and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed fifty (50) cubic centimeters.

**"Golf Cart"** means any motor or electronic vehicle other than a bicycle, motorcycle, or moped, designed and manufactured for operation on a golf course, or other conveyance for sporting or recreational purposes.

**"Inoperable Vehicle"** shall include any vehicle, of any nature whatsoever, which is not capable of normally and safely engaging in highway travel. Any vehicle which does not display a current automobile license tag shall also be deemed an "inoperable" vehicle.

**"Boats"** means anything manufactured, designed, marketed or used as a craft for water flotation, capable of carrying one (1) or more persons, or personal property, including personal watercraft such as "jet skis."

**"Trailers"** means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.

**6.4.19 Inoperable Vehicles.** Vehicles that are inoperable, on blocks or similar devices, covered with a tarpaulin, or which do not have current operating licenses shall not be permitted within the Community unless kept in an enclosed garage. No vehicle maintenance or repairs may be performed, including changing of oil or engine fluids unless performed inside the

enclosed garage.

**6.4.20 Motorized Scooters, ATVs, etc.** The operation of any motor vehicle as defined under Chapter 322, Florida Statutes, which is compelled by any power other than human muscular power including, but not limited to, gasoline power or electric power and which further would require the operator of that vehicle while on public streets, roads and thoroughfares within the State of Florida to possess a valid driver's license shall be prohibited to be operated or used on streets, roads, and/or sidewalks within the Neighborhood, on Lots within the Neighborhood, whether vacant, completed or under construction, or in or on the Common Area of the Neighborhood, unless the motor vehicle is operated by a person with a valid driver's license and the motor vehicle complies with all prerequisites established under Florida law for operating said vehicle on public streets, roads and thoroughfares. The term "motor vehicle" extends to and includes, but is not limited to, motorized bicycles (mopeds), motorized skateboards, motorized scooters (mopeds), go-carts, golf carts, and similar motorized toy vehicles. The term "motor vehicle" does not include motor wheelchairs that are operated by persons who require wheelchairs for mobility. All unlicensed electric or motorized vehicles operated on Common Areas, including but not limited to golf carts, motorized scooters, and other "gas powered" or "electric powered" vehicles (referred to herein collectively as "Unlicensed Electric or Motorized Vehicles") must be equipped with sufficient working brakes, working headlights, taillights, reliable steering apparatus, safe tires, a rearview mirror, and red reflectorized warning devices in both the front and rear and must be operated as set forth herein.

**6.4.20.1** The owner of an Unlicensed Electric or Motorized Vehicle who intends to operate the Unlicensed Electric or Motorized Vehicle on the streets and roads which service this Neighborhood must register the Unlicensed Electric or Motorized Vehicle with the Association and complete all applications and forms promulgated by the Board of Directors relative to such registration, including but not limited to releases and waivers as to all individuals who will be operating the Unlicensed Electric or Motorized Vehicle on the Common areas. At the time of registration, the owner of the Unlicensed Electric or Motorized Vehicle must provide proof of insurance for the Unlicensed Electric or Motorized Vehicle. No person may operate an Unlicensed Electric or Motorized Vehicle without a release on file with the Association.

**6.4.20.2** Unlicensed Electric or Motorized Vehicles shall not be driven or operated on sidewalks adjacent to Common Areas or on any grass, landscaping or portions of the Community other than driveways and roadways.

**6.4.20.3** Unlicensed Electric or Motorized Vehicles must yield to pedestrians, bicyclists, and any other non-motorized vehicles or devices as well as all licensed motor vehicles.

**6.4.20.4** Unlicensed Electric or Motorized Vehicles must observe and obey all road signs on Common Areas, including but not limited to speed limit signs and stop signs.

**6.4.20.5** Unlicensed Electric or Motorized Vehicles may be  
EAGLE POINTE PHASE I-AMENDED AND RESTATED DECLARATION



operated only during the hours of 7:00 a.m. and 10:00 p.m.

**6.4.20.6** Any person operating an Unlicensed Electric or Motorized Vehicle must have in his or her possession a valid automobile driver's license and must be at least eighteen (18) years of age.

**6.4.20.7** No open containers of alcohol, including cans, bottles, glasses or other containers are permitted on an Unlicensed Electric or Motorized Vehicle at any time. No person who is under the influence of alcohol or whose blood alcohol level would be considered above the legal limit for driving a motor vehicle on public roadways may operate an Unlicensed Electric or Motorized Vehicle on Common Areas. No person under the influence of over-the-counter, prescription and/or other illegal drugs that impairs a person's ability to operate a motor vehicle may operate an Unlicensed Electric or Motorized Vehicle on Common Areas during such period of impairment.

**6.4.20.8** The Board of Directors shall be authorized to promulgate additional rules regarding the use of Unlicensed Electric or Motorized Vehicles on the Common Areas.

**6.4.21 Moving Vans, PODs and Home Renovation Storage Containers.**

Moving vans, including placement and storage of PODs and similar containers and home renovation storage containers may only be parked or stored on a Lot Owner's driveway on a temporary basis as defined and otherwise specified by the Board from time to time. In no event shall the time exceed five (5) days unless the Board agrees otherwise. Dumpsters, trailers and home renovation storage containers may only be parked or stored on the Lot Owner's driveway and only for a very limited timeframe as specified by the Board. The Board may impose a requirement that in person moving into or out of the community must pay a refundable "moving deposit" of up to \$500.00 which may be used by the Association to pay for any damage caused to the Common Area during the move.

**6.4.22 Exterior Lighting and Mailboxes.** Each building will have exterior night lighting to discourage theft and vandalism within the Community. All exterior lighting is subject to the approval of the ACC. Lot Owners must provide, install, cause to be operational, repair and replace as necessary or when deemed necessary in the sole discretion of the ACC an approved mailbox together with an appropriate post or base, adjacent to driveway entries before occupying any improvement on said Lot or Lots. The ACC is granted the right to approve the mailbox to be furnished and erected by any Owner(s) prior to installation. The intent of this provision is to maintain the level and character of the Community for the benefit of all Owners. All exterior lighting is subject to the approval of the ACC.

**6.5 Animals and Pets.** No reptiles, livestock, poultry, pigs (including potbellied pigs) or animals of any kind, nature, or description shall be kept, bred, or raised upon subject Community unless specifically approved in writing by the Association, except for dogs, cats, birds, or other usual and customary household pets which may be kept, raised and maintained upon subject Dwelling Unit, provided that the same are not kept, raised or maintained thereon for business or commercial purposes, or in numbers deemed unreasonable by the Association in the exercise of their reasonable discretion. Without limiting the generality of the foregoing, if the

number of animals kept in a Dwelling Unit at any time is deemed by Lee County Domestic Animal Services or applicable local ordinance as unreasonable or excessive, the same shall be automatically deemed unreasonable hereunder. "Dangerous Dogs" are defined as (a) a dog that has aggressively bitten, attacked or endangered or has inflicted severe injury on a human being on public or private property; (b) has more than once severely injured or killed a domestic animal; or (c) has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority. No reptiles, animals, birds or other pets may be kept, raised or maintained in the subject Dwelling Unit under circumstances which, in the good faith judgment of the Association, shall constitute an unreasonable annoyance or nuisance to the Residents in the vicinity or an unreasonable interference with the comfortable and quiet use, occupation, and enjoyment of other Residents or adjoining Common Areas. Any pet or animal must be carried or kept on a leash when outside a Dwelling Unit or fenced-in-area. Each Owner shall be responsible for his or her pets and animals and the pets and animals of any person residing in his or her Dwelling Unit. All owners of pets and animals are responsible for the actions of the pet or animal and shall indemnify and hold harmless the Association and its officers or directors from claims for injuries or damage caused by the pet or animal. The Association may require a Dangerous Dog or pet in violation of this Section to be immediately and permanently removed from the Community, or may seek other remedies as provided in this Declaration or Florida law. No exotic pet or any animal of any kind which has venom or poisonous defense or capture mechanisms, or if let loose would constitute vermin, shall be allowed on any portion of the Community. Qualified service and assistance animals will be kept in direct custody of the assisted person or the qualified person. Pets may not be kept, bred or maintained for any commercial purpose. No pet or animal shall be kept tied outside a Dwelling Unit. No dogs will be curbed in any landscaped area or close to any walk, but only in special areas designated by the Board, if any, provided this statement shall not require the Board to designate any such area. An Owner shall immediately pick up and remove any solid animal waste deposited by his or her pet/animal on the Common Areas or on other Lots. The Owner shall compensate any person hurt or bitten by his or her pet and shall indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal within the Community. If a dog or any other animal becomes obnoxious to other Residents by barking or otherwise, the Owner thereof must cause the problem to be corrected; or, if it is not corrected, the Owner, upon written notice by the Association, will be required to permanently remove the animal from the Dwelling Unit. The Association will promulgate rules and regulations from time to time designating other rules as necessary to regulate pets. Violation of any of the animal/pet restrictions contained herein or rules adopted by the Board may result in a fine and/or reported to Lee County animal control.

**6.6 Playground Equipment, Lawn Equipment and Clotheslines.** Playground equipment and other lawn equipment, including but not limited to, swings, merry-go-rounds, play pens, sandboxes and toys will be located in the rear yard of a Lot, not in the front yard. Clotheslines must be located within the confines of a lanai at the rear of the Lot.

**6.7 Sight Distance at Intersections.** Building of particular walls, fences, or accessory enclosures is strictly prohibited unless approved by the ACC. No fence, wall, hedge or shrub planting which obscures or obstructs sight lines at elevations between two (2') and six (6') feet above the roadway may be placed, maintained or permitted on any corner in the Community

within the triangular area formed by street property lines and an imaginary line connecting then at points twenty-five feet (25') from the intersection of the street Lot lines. No trees will be placed, maintained or permitted within this area unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

**6.8 Driveways.** All driveways shall be designed and constructed only in accordance with the design and with the materials as approved by the ACC in writing and must be maintained in a clean, neat and attractive manner. Driveway surfaces may consist of approved materials in accordance with the Design Review Guidelines. Asphalt or loose gravel, rock, shell, dirt, clay or other soft or loose surface driveway or parking areas are not acceptable, unless approved in writing by the ACC. No driveway barriers, such as chains or chain link fences, shall be permitted unless approved by the ACC.

**6.9 Use of Retention Area.** The Owners of property included in the Community may utilize the lakes for any lawful purposes as long as their doing so does not cause any nuisance or interfere with the rights of other Owners and provided that no irrigation system may make use of the lakes without written approval from the Association and/or the Gateway Services District.

**6.10 Underground Utilities.** All utilities provided to Lots and Dwelling Units will be means of underground transmission lines, cables and pipes. No overhead transmission lines or cables will be permitted within the Community without advance approval of the Association.

**6.11 Television and Other Outdoor Antennae.** No television, radio, satellite or other antenna or satellite system may be installed on the Common Areas by any person other than the Association, except as provided herein. Certain television, satellite or other antenna systems may be erected or installed on Lots subject to compliance with the following requirements:

Permitted antennas include (collectively hereinafter referred to as "antennas"):

- Direct broadcast satellite dishes (DBS) that are less than one (1) meter in diameter.
- Multi-channel, multi-point distribution services (MMDS) that are less than one (1) meter in diameter or diagonal measurement. Such devices may be mounted on "masts" to reach the height needed to establish line of sight contact with the transmitter provided no mast may be higher than twelve feet (12') above the roof line of a Dwelling Unit without prior written approval of the Association.
- Television broadcast antennas for local stations, which may be any reasonable size, which may be secured to a mast located no higher than twelve feet (12') above the roofline. Any mast located higher than twelve feet (12') above the roofline must be approved in writing by the Association.

**6.11.1 Location of Antenna.** To the extent feasible, all antennas must be placed in locations that are not visible from any street and in a location to minimize annoyance or inconvenience to other Residents of the Community if this placement would still permit reception of an acceptable quality signal.

**6.11.2 Color of Antennas.** All antennas shall be painted to blend into the background against which it is mounted for so long as the paint will not interfere with an acceptable quality signal. If the antenna is not mounted on a building, it must be made the color

of the exterior walls of the Dwelling Unit on that Lot.

**6.11.3 Safety Requirements.** To safeguard the safety of the Owners and occupants of the Lot on which the antenna is located, neighboring Owners and other Owners and Members in the Community, it shall be the obligation of the Owner to comply with all applicable local, state and federal safety requirements, including but not limited to obtaining a permit for the installation of the antenna, if any, hiring licensed contractors with sufficient expertise and adequate insurance to protect their work, installing the antennas away from power lines and other potentially dangerous areas, installing and using the antenna in accordance with safety recommendations and requirements of the antenna manufacturer, and in accordance with the customs and standards for the antenna industry, including compliance with electrical code requirements to properly ground the antenna, and installation requirements to properly secure the antenna. An Owner shall indemnify and hold harmless the Association, and all other Owners, for any property damage that an antenna causes or any injury to persons.

**6.12 Trees.** No tree or shrub, the trunk of which exceeds four inches (4") in diameter, shall be cut down or otherwise destroyed without the advance approval of the ACC. The ACC may require, as a condition of approval for development of a Lot, the removal of certain trees which are not protected by county ordinance. The planting of melaleuca, Brazilian pepper, Australian pine and mangrove trees is absolutely forbidden within the Community. The ACC may add to this list of prohibited vegetation at its discretion.

**6.13 Artificial Vegetation.** No artificial trees, shrubs, grass or other vegetation will be placed or maintained on any Lot without the advance approval of the ACC.

**6.14 Water Management and Drainage Areas.**

**6.14.1** The water management and drainage areas for the Neighborhood shall be Common Areas and will be dedicated to the Gateway Services District or Lee County at the time of platting of the various phases of Gateway Greens. The Gateway Services District shall have the responsibility and obligation to maintain said areas unless Lee County has undertaken the maintenance obligation in accordance with the permit conditions of the South Florida Water Management District and applicable Lee County ordinances and regulations.

**6.14.2** No structure of any kind shall be constructed or erected, nor shall an Owner or Neighborhood Association in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of a water management and drainage area or swale area reserved for, or intended by the Developers to be reserved for, drainage ways, sluiceways or for the accumulation of runoff waters, as reflected in any plat or instrument of record, without the specific written permission of the Master Association and the Gateway Services District.

**6.14.3** Neither an owner nor the Neighborhood Association shall deny or prevent ingress and egress by the Master Association and/or the Gateway Services District to such water management and drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of the Master Association, Gateway Services District or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

**6.14.4** No Lot shall be increased in size by filling in any water retention or drainage areas on which it abuts. Neither an Owner nor the Neighborhood Association shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created by easement without the prior written consent of the Master Association.

**6.14.5** No vehicles having gas power propulsion shall be permitted on any of the water management and drainage areas. Neither the Master Association nor the Neighborhood Association assume any responsibility for injury or damages resulting from the use of water management and drainage areas for recreational purposes, as the lakes are only intended for water management purposes.

**6.15 Association Waiver.** In the event that a violation of any of these restrictions shall occur, which violation shall not be of such nature to defeat the intent and purpose of these covenants, the Board shall have the right and authority to waive such violation.

**7. MEMBERSHIP IN THE COMMUNITY ASSOCIATION AND ASSESSMENTS.**

Each Owner will be a Member of the Association. Membership in the Association will be appurtenant to, and may not be separated from, ownership of a Lot. Each Owner will be entitled to vote upon all matters coming before the membership as provided in the Articles and the Bylaws. The Association will make, levy and collect Assessments made against Lots as provided in the Articles and Bylaws and as follows:

**7.1 Common Expense.** The costs and expenses incurred by the Association with regard to the ownership, operation, maintenance and repair of the Common Areas, and the administration of affairs of the Association shall constitute Common Expenses. Other expenses properly and reasonably incurred by the Association in performing and carrying out its duties and obligations as specified in the Governing Documents, by the Act or other applicable law, or as determined proper by the Board of Directors shall constitute Common Expenses.

**7.2 Allocation of Assessments.** Except for any maintenance surcharge which may be imposed on any Lot pursuant to this Declaration, Assessments of the Association shall be the same for each Lot subject to Assessments. As such, Assessments of the Association shall be apportioned on a 1/124<sup>th</sup> basis.

**7.3 Purpose of Assessment.** There is hereby imposed upon each Lot and its Owner, the affirmative covenant and obligation by acceptance of a deed or title to a Lot to pay the Association; and upon the Association the obligation to assess, collect and expend for the Association's expenses as listed but not necessarily limited to:

**7.3.1** Charges levied for utility services to the Common Areas, whether supplied by a private or public firm, including without limitation, charges for water, gas, electricity, telephone, sewer and any other type of utility or service charge for Common Areas. Communication services may be provided to Lots through contract of the Association, as a Common Expense.

**7.3.2** The premiums on any policy or policies of insurance required herein, together with the costs of such other policies of insurance as the Board shall determine to be in the best interest of the Association.

**7.3.3** The cost to the Association of purchasing adequate fidelity insurance or bonds to protect against dishonest acts on the part of Officers, Directors, trustees, agents and employees of the Association and other persons who operate or are responsible for operating the Association.

**7.3.4** Expenses incurred in maintaining, preserving, repairing, replacing, and improving the Common Areas and other facilities within the jurisdiction of the Association including, but not limited to, the operation, maintenance and, if necessary, repair, replacement or improvement of the Surface Water Management System, to the extent the Association is responsible for any portion of same, together with the costs of acquiring additional Common Areas and maintaining, preserving, repairing, replacing and improving same.

**7.3.5** Sums necessary to improve, repair, replace, add to, construct or reconstruct buildings or improvements located in the Common Areas to the extent insurance proceeds are insufficient to pay the costs thereof.

**7.3.6** The costs of administration for the Association, including any secretaries, bookkeepers and other employees or agents necessary to carry out the obligations and covenants of the Association under the Declaration, Articles or Bylaws. In addition, the Association may retain a manager or management company to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company so retained are a Common Expense.

**7.3.7** The costs of acquiring materials, supplies, and other equipment for the Common Areas and for the operation of the Association, as may be determined by the Board.

**7.3.8** The costs to the Association to indemnify its Officers and members of the Board for costs and expenses incurred in pursuance of their duties, obligations and functions hereunder.

**7.3.9** The costs of establishing an adequate reserve fund for the replacement and/or capital refurbishment of the Common Areas in amounts determined proper and sufficient by the Board. Each Owner understands that no Owner shall have any separate or divisible interest, claim or right to any such funds comprised of the same.

**7.3.10** Special Assessments that may be levied to defray Common Expenses for which insufficient funds exist or are expected to be produced under the budget.

**7.3.11** Expenses properly incurred by the Association, including but not limited to expenses of the operation, maintenance, repair, replacement, protection of the Common Area, costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as Common Expenses by the Act, the Declaration, the Articles, the Bylaws or applicable law.

**7.3.12** Other costs and expenses determined by the Board to be reasonable and necessary in carrying out and accomplishing the purposes, duties and obligations of the Association that are not inconsistent with this Declaration, the Articles or the Bylaws.

**7.4 Budget.** The Board shall prepare and adopt an estimated annual budget, as required by the Bylaws of the Association, which shall reflect the estimated Common Expenses for  
EAGLE POINTE PHASE I-AMENDED AND RESTATED DECLARATION

the next succeeding year.

**7.5 Amendment of Budget.** Adjustments may be made by the Board in Assessments from time to time to allow for any changes for Common Expenses.

**7.6 Liability for Payment.** The Owners of a Lot at the time an Assessment is made by the Association against the Lot will pay to the Association the amount assessed against each Lot together with interest thereon at the maximum rate from time to time allowable by law, late fees as established by the Board and costs of collection and attorneys' fees incident to collection from the date due and payable until paid in full, and the costs incurred by the Association in collecting the same, if any.

**7.7 Time of Payment.** Regular Assessments shall be payable by Owners to the Association as set forth in the Bylaws and as determined by the Board.

**7.8 Special Assessments.** In addition to the regular Assessments, the Board has the power and the authority to levy regular or annual assessment as well as any special assessment as the Board, in their sole discretion determines necessary and may levy in any Assessment year, a Special Assessment for Common Expenses which are not funded through the Budget.

**7.9 Liens.** Assessments for Common Expenses, including regular Assessments and Special Assessments, and installments thereof, and Charges, along with interest thereon at the highest rate allowed by law and all costs and expenses of collection (including but not limited to late fees), including reasonable attorneys' fees and costs incurred in attempting to collect said Assessments or Charges before suit or after the filing of suit, at the trial level, appellate level or otherwise, are hereby declared to be a continuing lien upon the Lot against which such Assessments or Charges are made. Each Assessment and all Charges against a Lot, together with interest thereon at the highest rate allowed by law, late fees, and costs and expenses of collection thereof, including attorneys' fees, shall be the personal obligation of the person, persons or entity owning the Lot assessed or charged and shall be the joint and several liability of all future Owners of the Lot. Except as provided below, any person or entity which acquires title to a Lot, including a purchaser at a judicial sale, shall be jointly and severally liable with their predecessor in title for all unpaid Assessments and Charges against the predecessor for his or her share of the Assessments and Charges, including interest, late fees, attorneys' fees and all other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid by the transferee. The lien shall set forth the Assessments due to the Association as of the date the lien is signed and shall be acknowledged by an officer or agent of the Association. The lien shall secure additional Assessments that become due, as well as interest, late fees, attorneys' fees and all other costs and expenses of collection that are due and become due after recordation of the lien. Upon recordation in the Public Records of Lee County, Florida, the lien shall relate back to the date of recording of the Original Declaration, except as to first mortgages of record. As to first mortgages of record, the Association's lien is only effective from and after recording of a claim of lien against the Lot. Upon full payment of all sums secured by the lien and costs and fees accrued, the party making payment shall be entitled to a recordable satisfaction of lien. If any first Mortgagee obtains title to a Lot as a result of a foreclosure of a first mortgage or a deed is given in lieu of foreclosure of a first mortgage of record, such acquirer of title shall be liable for the share of Assessments or Charges pertaining to such Lot or chargeable to the former Owner, and which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu of

foreclosure of said first mortgage of record as provided in Section 720.3085 of the Act.

**7.10 Remedies for Delinquency.** In the event any Owner fails to pay Assessments or any installment thereof charged to his or her Lot by the date due, an administrative late charge as provided by law or twenty-five dollars (\$25.00) or five percent (5%) of the installment, whichever is more, shall become due along with interest at the maximum rate permitted by law, and the Association through its Board, shall have, but not be limited to, the following remedies:

**7.10.1** To accelerate the entire amount of any Assessments or Charges for the remainder of the calendar year, notwithstanding any provisions for the payment thereof in installments.

**7.10.2** To advance on behalf of said Owner funds to accomplish the needs of the Association. The amount or amounts of money so advanced, including attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of said Owner, together with interest at the highest rate allowable by law, may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.

**7.10.3** To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in a like manner as the foreclosure of a mortgage on real property or as otherwise provided by law.

**7.10.4** To file an action at law to collect said Assessments or Charges, plus late fees, interest at the highest rate allowable by law plus all expenses and costs of collection, without waiving any lien rights and/or rights of foreclosure by the Association.

**7.10.5** To suspend Common Area use rights, voting rights and the right to serve on the Board as provided by law.

The Association may choose any of these courses of action, as the Board deems appropriate without same constituting a waiver or election of remedies.

**7.11 Attachment of Rental Income When Lot is Delinquent.** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws or applicable law, the Association shall have the following options when payment of Assessments or Charges is in default (more than thirty (30) days in arrears). The Association may, without order of the Court, direct rental income (by written notice to the tenant(s) with copy to the Owner) from a Lot in default to be paid directly to the Association until all outstanding Assessments, Charges, interest, late fees, costs, collection expenses, attorneys' fees and receivers' fees, if applicable, are satisfied. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceed paid on account of a Lot in default paid directly to the Association, the Court registry or a receiver, as the Court may direct. The Association may choose any of these courses of action as the Board deems appropriate without same constituting a waiver or election of remedies.

**7.12 Application of Payments.** Payments received after the due date established by the Board shall be applied first to interest, late fees, costs and attorneys' fees and then to the



principal owed regardless of any restrictive endorsement included with the payment.

**7.13 Non-Use.** No Owner may waive or otherwise escape liability for payment of Assessments, Charges, interest, late fees or costs by reason of the failure to improve his or her Lot or the non-use or abandonment of the Common Areas.

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

## **8. ARCHITECTURAL AND AESTHETIC CONTROL.**

**8.1 Purpose of the Architectural Control Committee ("ACC").** The purpose of the ACC is to assure that the installation, construction, alteration or location of any Structure (i) is in conformity and harmony with the Development-Wide Standard and the Design Guidelines and (ii) is in harmony with surrounding topography and surrounding Structures. Unless the Board actually appoints other persons to serve on the ACC, the Board shall serve as the ACC.

**8.2 ACC Approval Required.** Each fee simple owner of any land within the Community shall submit detailed plans and specifications (including color and materials) to the ACC prior to the construction or reconstruction of any Structure within the Community. Unless plans and specifications for a Structure have been approved by the ACC as provided in this Section, no Structure shall be constructed, placed, moved onto or permitted to remain within the Community. The Structure as built or installed must comply in all respects with the plans and specifications approved by the ACC. Once a Structure has been built or installed in compliance with plans and specifications approved by the ACC, no alteration or modification to the exterior of any Structure (including homes, garages, and attachments thereto) or to its windows or exterior doors shall be made unless detailed plans and specifications for the alteration have been approved in advance by the ACC. Alterations requiring ACC approval shall include, but not be limited to, addition or alteration of a film on a window, addition or alteration of awnings, shutters, storm doors, screens, screen doors, security doors, security windows, porches or sky lights, and any other change to the outside appearance of a home or other Structure. An Owner will be permitted to repaint the exterior of a Structure within the Community provided that the paint color is identical to the original color of the Structure. Any alteration of the color of the exterior of a Structure shall require advance submission to and approval by the ACC. An Owner will be permitted to re-roof a Structure provided the roof membrane utilized is identical (in color, grade, style and manufacturer) to the original roof membrane. Any substitute roof membrane shall be submitted to and approved in advance by the ACC. No alteration of the color, design, appearance or surface of a driveway (from that originally installed) shall be made without submission of detailed information regarding the alteration to the ACC and advance written approval by the ACC of the alteration.

**8.3 Operations of the ACC.** The ACC shall establish the time, date and place of its meetings as it, in its discretion may deem reasonably necessary. Notice of meetings of the ACC shall be given to the ACC member by telephone, fax, e-mail, mail or in person. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or

after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC the presence of a majority of the ACC members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present.

**8.4 Design Guidelines.** The ACC may from time to time adopt, promulgate, amend and revoke guidelines (the "Design Guidelines") for the purposes of (a) governing the form and content of plans and specifications to be submitted to the ACC; (b) governing the procedure for such submission of plans and specifications; (c) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures, landscaping to accompany the construction or alteration of any Structure, preservation of trees and other natural resources, setbacks, and the design, location and uses of driveways, fences and walls; and (d) establishing guidelines governing the location, parking and storage of property which is not a "Structure" such as operable vehicles.

**8.5 Approval of Plans and Specifications.** Approval of plans and specifications for improvements or features on any Lot shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications or features (or elements included therein) if subsequently submitted for use in in connection with any other Lot. Approval of any such plans and specifications relating to any Structure on a particular Lot, however, shall be effective as to that Structure on that Lot and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

**8.6 Disapproval of Plans and Specifications.** The ACC shall have the right to disapprove any plans and specifications submitted to it because of any of the following: (a) failure to include information in such plans and specifications as may have been reasonably requested; (b) failure of such plans or specifications to comply with this Declaration or the Design Guidelines; or (c) the judgment of the ACC that the proposed installation, construction or alteration of a Structure is not in harmony with the Development-Wide Standard or is incompatible with surrounding topography or surrounding Structures.

**8.7 Obligation to Act.** The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Failure by the ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

**8.8 Inspection Rights.** Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon the Lot for the purpose of ascertaining whether the installation, construction, existence, alteration, location or maintenance of any Structure on the Lot is in compliance with the provisions of this Declaration, and such entry

shall not constitute a trespass or wrongful act.

**8.9 Certification of Compliance.** The ACC may issue a certificate of compliance, identifying the Structure and the Lot upon which such Structure is located, stating that the Structure complies with approved plans and specifications. Any such certificate of compliance shall be prima facie evidence of the facts therein stated.

**8.10 Disclaimer as to ACC Approval.** Approval of plans and specifications by the ACC shall not be construed as a determination of the quality, function or workmanship of the Structure or to certify that the Structures comply with applicable building codes, rules or regulations. Neither the Association, the ACC or its appointees, the Board, nor the officers, directors, Members, employees, and agents of any of them (the indemnified parties), shall be liable for mistake in judgment, negligence or nonfeasance in connection with the approval or disapproval of any plans or specifications; every person who submits plans or specifications and every Owner, by acceptance of a deed to a Lot, shall be deemed to have released all claims, demands and causes of action against said indemnified parties arising out of or in connection with any judgment, negligence or nonfeasance by the indemnified parties.

**8.11 Fees.** The ACC may impose and collect a reasonable and appropriate fee to cover the cost of making and distributing copies of the Design Guidelines and the costs of review of plans and of inspections performed.

**8.12 Variances.** The ACC may authorize variances from compliance with the Design Review Guidelines when circumstances such as topography, natural obstruction, hardship, aesthetics or environmental considerations require. No variance shall be effective unless in writing. No variance shall be deemed to be a waiver by the ACC of the right to refuse to grant a variance in any circumstance, including but not limited to the right to refuse a request for a variance as to a similar proposal or plan for which a variance was previously granted.

**9. COMMON AREAS; CONVEYANCE, USE AND MAINTENANCE.**

**9.1 Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every Lot, subject to the following provisions:

**9.1.1** The right of the Association to suspend the voting rights and right to use Common Areas, if any, by an Owner for any period during which any Assessment against his or her Lot remains unpaid; and for any infraction of its published rules and regulations for the duration of the infraction.

**9.1.2** The right of the Association to mortgage or convey the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such mortgage or conveyance shall be effective unless such mortgage, dedication, or transfer is approved by the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3rds) of the total votes of the Association and an instrument agreeing to such mortgage, dedication, or transfer is recorded in the public records of the County. If any Owner's ingress or egress to his or

her Dwelling Unit is through the Common Area, any conveyance or encumbrance of such section of the Common Area is subject to that Owner's easement.

**9.2 Delegate of Use.** Any Owner may delegate, in accordance with the Governing Documents, his or her right or enjoyment to the Common Areas to members of his or her family, his or her tenants or contract purchasers who reside in his or her Dwelling Unit, but not otherwise.

**9.3 Maintenance and Alteration.** The Association is responsible for the maintenance, repair, replacement, insurance, protection and control of all Common Areas in accordance with the applicable laws, and shall keep the same in a good, safe, clean, attractive and sanitary condition, and in good working order at all times. There shall be no material alterations of or substantial additions to the Common Areas costing more than five percent (5%) of the Association's annual budget (including reserves), in the aggregate during any fiscal year unless first approved by a majority of the entire membership of the Association. However, if work that is reasonably necessary to meet the Association's obligations under the first sentence of this Section 9.3 also constitutes a material alteration or substantial addition, no prior membership approval is required.

**9.4 Partition, Subdivision and Encumbrance.** Except as hereinafter provided, after legal title to the Common Areas, or any portion thereof, becomes vested in the Association, the Common areas shall not be abandoned, partitioned, subdivided, alienated, released, transferred, hypothecated, or otherwise encumbered, without first obtaining the approval of not less than two-thirds (2/3rds) of the voting interests. The foregoing shall not be construed to limit the authority of the Association through its Board of Directors to grant such easements over, across and through the Common Areas, as may be necessary for the effective and efficient operation of the facilities or for the general benefit of the Members. Nothing herein shall be construed to prohibit judicial partition of any Lot or neighbor Common Area.

**9.5 Association's Rights and Powers.** No Common Areas shall be used in violation of any rule or regulation or other requirement of the Association established pursuant to the provisions of this Declaration or the Bylaws.

## **10. SALES AND TRANSFERS OF OWNERSHIP AND GUEST OCCUPANCY RESTRICTIONS.**

**10.1 Maintenance of Community Interests.** In order to maintain a community of congenial Owners who are financially responsible, and thus protect the value of Eagle Pointe Phase I, the transfer of ownership of Lots by any Owner shall be subject to the following provisions, which provisions each Owner covenants to observe:

### **10.1.1 Forms of Ownership:**

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

B. Co-Ownership. Co-ownership of Lots may be permitted. If the co-owners are other than husband and wife or domestic partners, the Board shall condition its approval upon the

designation of one approved natural person as "Primary Occupant." The use of the Lot by other persons shall be as if the Primary Occupant was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the governing documents. No more than one change in Primary Occupant will be approved in any calendar year. No time share estates may be created. "Lot Sharing" by multiple families and "Fractional Ownership" are prohibited.

C. Ownership by Corporations, Partnerships, Limited Liability Companies, Trusts, or Other Artificial Entities. A Lot may be owned in trust, or by a corporation, partnership, limited liability company, or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the Lot may be used as a short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Lot, fractional ownership, or used as guest accommodations for employees, customers, or guests of Lots owned by business entities, religious, or charitable organizations, and the like. The approval of a partnership, trustee, corporation, limited liability company, or other entity as an Owner shall be conditioned upon designation by the Owner of one natural person to be the "Primary Occupant." The use of the Lot by other persons shall be as if the Primary Occupant were the only actual Owner. The Primary Occupant shall be the person entitled to vote on behalf of the Lot, and exercise rights of membership. Any change in this Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the governing documents. No more than one change in designation of Primary Occupant will be approved in any twelve (12) month period.

D. Life Estate. A Lot may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only Member from such Lot, and occupancy of the Lot shall be as if the life tenant were the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all Assessments and Charges against the Lot. Any vote, consent, or approval required by the governing documents or law may be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

## **10.2 Transfers Subject to Approval.**

**10.2.1.1 Sale or Other Transfer.** No Owner may dispose of a Lot or any interest in same by sale or other title transfer, without a "Consent to Transfer" form signed by the President, other officer or authorized agent of the Association and an estoppel letter completed and signed by the Association's management company. No Owner may dispose of a Lot or any interest therein by other means (including agreement for deed, installment sales contract, lease-option, or other similar transactions) without a "Consent to Transfer" form signed by the President of the Association and an estoppel letter completed and signed by the Association's President or its designee.

**10.2.2 Gift.** If any Owner is to acquire his or her title by gift, his or her ownership of his or her Lot requires a "Consent to Transfer" form signed by the President of the Association and an estoppel letter completed and signed by the Association's designee. Notice must be given at least thirty

(30) days prior to the intended closing or title transfer date.

**10.2.3 Devise or Inheritance.** If any person shall acquire his or her title by devise, inheritance, through other succession laws, the continuance of his or her ownership of his or her Lot requires a "Consent to Transfer" form signed by the President of the Association and an estoppel letter completed and signed by the Association's designee.

**10.2.4 Other Transfers.** If any Owner shall acquire his or her title by any manner not considered in the foregoing subsections, the continuance of his or her ownership of such Lot requires a "Consent to Transfer" form signed by the President of the Association and an estoppel letter completed and signed by the Association's management company. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the Lot before being approved by the Board of Directors under the procedures outlined below.

**10.3 Approval by Association.** The approval of the Association that is required for the transfer of ownership of Lots shall be obtained in the following manner:

**10.3.1 Notice to Board of Directors.**

A. Sale or Other Transfer. An Owner intending to make a bona fide sale or other title transfer of his or her Lot or any interest in it, including gifts, transfers to artificial entities, and the grant of partial estates, shall give to the Board of Directors notice of such intention, together with the name and address of the intended grantee, an executed copy of the purchase contract and its exhibits, or other documentation evidencing the transfer and such other information concerning the intended grantee and the transaction as the Board of Directors may reasonably require. The Board requires that an Application for Purchase to include, without limitation, a criminal background investigation on all proposed Lot occupants be completed prior to closing. The Association's approval of the Application for Purchase is required before ownership of a Lot can be transferred.

B. Devise or Inheritance. An Owner who has obtained his or her title by devise or inheritance, or operation of succession laws, shall give to the Board of Directors notice of the acquiring of his or her title, together with such information concerning the Owner as the Board of Directors may reasonably require, and a certified copy of the instrument evidencing the Owner's title.

C. Failure to Give Notice. If the above required notice to the Board of Directors is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Lot, the Board of Directors at its election and without notice may approve or disapprove the transaction or ownership. If the Board of Directors disapproves the transaction or ownership, the Board of Directors shall proceed as if it had received the required notice on the date of such disapproval.

**10.3.2 Certificate of Approval.**

A. Sale or Other Title Transfer. If the proposed transaction is a sale or other prospective title transfer, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by Board of Directors, the Board of Directors must either approve or disapprove the proposed transaction.

B. Devise or Inheritance. If the Owner giving notice has acquired his or her title by devise, inheritance, or through succession law, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by the Board of Directors, the Board of Directors must either approve or disapprove the continuance of the Owner's ownership of his or her Lot.

C. Approval of Occupant. If the grantee is a corporation, partnership, trust, limited liability company, some other entity, or more than one individual who are not husband and wife or Domestic Partners, the approval of ownership by the corporation, partnership, trust, other entity, or multiple persons shall be conditioned upon approval of a Primary Occupant.

**10.4 Disapproval by Board of Directors.** Disapproval of title transfers or the continuation of ownership shall be made by the Board of Directors, if it is determined that the potential Owner does not facially qualify for membership in the Association, or if the proposed transaction will result in a violation of the governing documents. Only the following may be deemed to constitute good cause for disapproval on the grounds that the proposed purchaser does not facially qualify for membership in the Association or the proposed transaction will result in a violation of the governing documents: (In determining good cause the Board on a case by case basis will consider mitigating factors such as the recency of events and the detrimental impact on the community and its residents. The Association is an equal opportunity provider of housing and no transfer will be denied for an illegal discriminatory reason.) The Association may conduct background and credit checks on all adults intending to own or occupy the Home. Any person not approved for occupancy in the initial application must be approved and may be disapproved in the manner provided for herein.

**10.4.1** The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval (which shall hereinafter include all proposed occupants) intends to conduct himself in a manner inconsistent with the governing documents;

**10.4.2** The person seeking approval (which shall hereinafter include all proposed occupants) has been convicted of or has pleaded no contest to:

A. a felony involving violence to persons, theft, arson or destruction of property within the past twenty (20) years;

B. a felony demonstrating dishonesty or moral turpitude within the past ten (10) years;

- C. a felony involving illegal drugs within the past ten (10) years;
- D. any other felony in the past five (5) years;
- E. a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction occurred.

**10.4.3** The person seeking approval or any proposed occupant has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that conviction occurred or when that label occurred;

**10.4.4** The person seeking approval or any proposed occupant is currently on probation or community control;

**10.4.5** The person seeking approval or any proposed occupant 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 or associations, or by his or her conduct in this community or other Dwelling Units as a tenant, occupant, guest or Owner;

**10.4.6** The person seeking approval or any proposed occupant failed to provide the information, fees or appearance required to process the application in a timely manner;

**10.4.7** The Owner requesting the transfer has had fines assessed against him or her which have not been paid;

**10.4.8** All Assessments and other charges against the Lot have not been paid in full.

If the Board disapproves a transfer for good cause, the Association shall have no duty to purchase the Lot or furnish an alternate purchaser, and the transaction shall not be made, or if made, shall be rescinded in the manner determined by the Board.

**10.5 Transfer Fee.** The Association may Charge a processing fee for the approval of transfers of title. The fee may not exceed the maximum permitted by law per transaction. The Association or its authorized agent may also charge a reasonable fee for the preparation of a certificate, commonly known as an estoppel certificate, stating all assessments and other monies owed to the Association by the Owner with respect to the Lot. The fee for the preparation of such certificate shall be established by a written resolution of the Board or provided for in a management, bookkeeping, or maintenance contract.

**10.5.1 Resale Capital Assessment.** The Association shall require all persons or entities that acquire title to a each Lot, at the time of the conveyance of title from the transferor to the transferee, to pay the Association a resale capital assessment. The amount of any such resale capital assessment shall be \$1,000.00 and thereafter as determined by the Board of Directors of the Association annually. The funds derived from the resale capital assessments shall be used at the sole discretion of the Board of Directors as needed to meet necessary and proper Association expenses. The resale capital assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the transferee of title to the Lot and shall also be a charge against the Lot secured by a continuing lien



upon the Lot. Said lien may be foreclosed in the same manner as provide herein for an assessment lien. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Lot by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer to a bank holding a first mortgage on the Lot via foreclosure or deed in lieu of foreclosure, or death of the transferor, nor to a transfer of title to a trust or other estate planning entity where the transferor retains the primary beneficial interest in the Lot or to a transferor's spouse without changing occupancy, solely for estate planning or tax reasons.

**10.6 Exceptions.** An institutional first mortgagee that takes title to a Unit via foreclosure or deed in lieu of foreclosure is not subject to approval. However, a transferee of a first mortgagee shall be required to be approved by the Association and comply with all other terms of the governing documents as a condition of ownership and holding title to a Lot in the Association.

**10.7 Unauthorized Transactions.** Any sale, lease, mortgage or other transfer of ownership or possession not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

**10.8 Guest Occupancy.** A "guest" is defined as a person who enters upon the Community property at the invitation of an Owner (or their respective families), for the purpose of visiting the Owner (or his or her respective family), utilizing the Common Areas, or to deliver products or to provide services to the Owner (e.g. home and lawn maintenance persons, contractors, caregivers, nurses, pet sitters, homewatch persons, etc.) Use or visitation without payment of rent or any other compensation or remuneration distinguishes a guest usage from a rental tenancy or lease. Leasing or rental is governed by Section 10.9 herein. The Association may restrict or prohibit guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. There are various types of guest uses, which are regulated as follows:

**10.8.1 Non-Overnight Visitation by Guests When Owner is in Dwelling Unit.** There is no restriction against this type of guest usage, provided that same does not create a nuisance or annoyance to other residents, nor prevent their peaceful enjoyment of the premises. Non-overnight guests need not be registered with the Association. However, non-overnight guests shall be entitled to use the common areas only when accompanied by the Owner (or an adult resident member of the Owner's family). The Board may establish additional restrictions on non-overnight guest usage of common areas, such as maximum numbers of guests who may use common facilities, maximum numbers of common facility usages per guest, and the like.

**10.8.2 Overnight Guests When Owner is in Dwelling Unit.** Owners (and their respective family) may have related or unrelated overnight guests, so long as the Owner is in simultaneous Dwelling Unit. There is no requirement for registration of overnight guests with the Board when the Owner is in Dwelling Unit.

**10.8.3 Non-Overnight Guests in the Absence of the Owner.** Owners are not permitted to have non-overnight guests use the common areas when the Owner is absent from the Dwelling Unit. Owners may have their Dwelling Unit inspected by caretakers, family members, etc. However, such individuals shall not be permitted to use common areas.

**10.8.4** Overnight Guests in the Absence of the Owner. Owners are permitted to have overnight guests in the absence of the Owner subject to the following conditions, and such other rules and regulations as may be deemed necessary by the Board to effectuate the residential, non-transient nature of this Association.

A. Non-Related Overnight Guests in the absence of the Owner will be limited to two (2) occupancies per calendar year. Each occupancy may not exceed thirty (30) days. Ten (10) days prior notice to the Association is required. The Board is authorized to make exceptions to the frequency and notice requirement for bona fide pet sitters.

B. Related Overnight Guests may occupy a Dwelling Unit in the absence of the Owner. For the purpose of this clause, "related" means all persons who are staying in the Dwelling Unit on an overnight basis, in the absence of the Owner, are related to the Owner or primary occupant (by blood, marriage, or adoption) to the following degree: parent, grandparent, child, grandchild, or sibling. The limitation on Lot density in 10.8.2 applies. Forty-eight (48) hours prior notice to the Association is required.

**10.9 Leasing.** The lease of a Lot (which, as used in this Section 10.9 shall be deemed to include the Dwelling Unit located thereon, and reference to a Dwelling Unit shall, where appropriate, be deemed to include the Lot on which the Dwelling Unit is located) is defined as occupancy of the Lot by any person other than the Owner, whether pursuant to verbal or written agreement, where said occupancy by the non-Owner involves consideration (the payment of money, the exchange of goods or services, or any other exchange of value). Any Resident occupying a Lot in the absence of an Owner, regardless of whether consideration is involved, shall be considered a tenant and subject to the approval provisions of this Section 10.9 as if the Lot were being leased by the Resident. No individual rooms may be rented and no transient tenants may be accommodated. Internet, web-based room or house sharing services including, but not limited to, "Airbnb" and "Home Away" are not permitted. In addition, listing one's Dwelling Unit as being available for transient-based use by others on an internet based room or house sharing service shall be proof that the Owner is not in compliance with this restriction and seeks to violate same. "Rent sharing," "room for rent" and subleasing are prohibited. No Lot may be leased or rented to a person who has not attained the age of twenty-five (25) years and the person leasing or renting same must reside in the Dwelling Unit for the duration of the lease or rental period. While a Lot is leased, all tenants and Residents must be at least twenty-five (25) years of age except for children or other dependents who are members of a tenant's family. No Lot may be rented for a period of less than one hundred twenty (120) consecutive days and no Dwelling Unit may be rented more than three (3) times in any calendar year. Leases may be extended or renewed, subject to Board approval. No Lot may be advertised or offered for lease for a lease term of less than one hundred twenty (120) consecutive days.

**10.9.1** Two Year Leasing Moratorium. Notwithstanding any provision of this Declaration no Owner may lease his or her Lot for a period of two (2) years from the first date of ownership. The two (2) year leasing moratorium shall commence on the date the deed to the Lot is recorded in the public records of Lee County, Florida. The foregoing notwithstanding, if title to a Lot is transferred pursuant to a devise, intestate succession or dissolution of marriage and the grantor has owned the Lot for more than two (2) years the new Owner shall be exempt

from this provision but if the grantor has not owned the Lot for more than two (2) years, the grantee shall be prohibited from leasing the Lot for the remaining term of the moratorium. This leasing moratorium does not apply to a first mortgage holder that takes title to the Lot via foreclosure or deed in lieu of foreclosure.

**10.9.2 Maximum number of leased Lots.** Notwithstanding anything to the contrary contained herein or elsewhere at no time shall the number of Lots being leased exceed ten percent (10%). Limiting the maximum number of leased Lots is deemed to be in the best interest of the Association, and the Owners and is considered essential to maintaining and enhancing the property values by reducing transience.

All valid, approved and bona fide leases and tenants occupying Lots on the day this amendment is recorded in the Public Records of Lee County, Florida shall be honored, and the tenants allowed to continue to occupy the Lot and home in which they currently reside. All current tenants shall also be allowed to renew their current lease for the same Lot even if this results in the number of leased Lots exceeding twenty percent cap. However, any change in occupants under the lease shall constitute a new lease and said lease shall not be made except in accordance with these provisions. In this fashion, the number of leased Lots shall be reduced by natural attrition until no more than twenty percent are leased at any one time. The Board of Directors shall establish a waiting list for owners desiring to lease their Lot. The placement on the waiting list shall be on a first come first serve basis. When an opening occurs, the opportunity to lease a Lot shall be given to the Lot Owners whose name is first on the list. A request to be placed on the waiting list shall be made in writing and delivered to the Association by certified mail. No verbal requests shall be allowed or honored. A Lot Owner leases his or her Lot within the parameters hereof shall be allowed to renew the lease as long as the approved occupants and the lessor are unchanged. Should either the occupants, lessee or lessor be changed then any such lease shall be considered a new lease and may only be made if the owner is listed on the waiting list in the first position. The Board of Directors is authorized to adopt additional procedures, rules and forms designed to implement the provisions hereof. The Board of Directors is also authorized to make limited exceptions to these restrictions in order to avoid severe undue hardship, which said exception may include but not be limited to allowing one or more Lots to be leased beyond the maximum limits. However, said exceptions shall not be deemed a waiver of these restrictions and shall not vest any person granted an exception with any rights not expressly granted to said person by the Board. The Board may attach whatever conditions it deems necessary and desirable in granting an exception. This leasing cap does not apply to a first mortgage holder that takes title to the Lot via foreclosure or deed in lieu of foreclosure.

**10.9.1 Board Right of Approval.** The Board shall have the authority to approve all leases and renewals or extensions thereof, which authority may be delegated to a committee or agent. Any person residing in the Dwelling Unit after initial approval shall be subject to a separate application and approval process. No person may reside in a Dwelling Unit as a tenant, Family member of a tenant, Resident or otherwise without prior approval of the Board. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed tenant and all proposed Residents as the Board deems appropriate under the circumstances. The Board may require an interview of any proposed tenant and all proposed Residents of the Dwelling Unit as a condition for approval. The Association

may conduct background and credit checks on all adult Residents. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the tenant(s) and all occupants with seven (7) days' notice, without securing consent to such eviction from the Owner.

**10.9.2 Approval Process; Disapproval.** All leases must be in writing. Any Owner intending to lease his or her Dwelling Unit shall submit to the Association the name(s) of the proposed tenant(s) and all proposed Resident(s), a copy of the proposed lease, an application and any other information requested by the Association including, but not limited to, consenting to and paying for a background search which the Association shall have the right to request, and pay any application fee and/or expense incurred by the Association for ordering a background search of the proposed tenant(s) and all proposed Resident(s), at least twenty (20) days in advance of the commencement of the lease or renewal or extension term. Upon receipt of all information and fees required by the Association and an interview (if requested by the Board), the Board shall have the duty to approve or disapprove all proposed leases within twenty (20) days of receipt of such information for approval and the completion of the tenant/Resident interview (if required), by sending written notification to the Owner within such time frame. All requests for approval not acted upon within twenty (20) days of receipt of such information for approval and the completion of the tenant/Resident interview (if required) shall be deemed approved. Applications for renewals or extensions of lease agreements shall be submitted at least twenty (20) days in advance of the expiration of the lease agreement. The Association shall neither have a duty to provide an alternate tenant nor shall it assume any responsibility for the denial of a lease application if any denial is based on the following factors: (In determining good cause the Board on a case by case basis will consider mitigating factors such as the recency of events and the detrimental impact on the community and its residents. The Association is an equal opportunity provider of housing and no lease will be denied for an illegal discriminatory reason.)

**10.9.2.1** The person seeking approval (which shall hereinafter include all proposed Residents) has been convicted of or has pleaded no contest to:

**10.9.2.1.1** a felony involving violence to persons, theft, arson or destruction of property within the past twenty (20) years;

**10.9.2.1.2** a felony demonstrating dishonesty or moral turpitude within the past ten (10) years;

**10.9.2.1.3** a felony involving illegal drugs within the past ten (10) years;

**10.9.2.1.4** any other felony in the past five (5) years; or

**10.9.2.1.5** a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction occurred.

**10.9.2.2** The person seeking approval or any proposed occupant has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that conviction occurred or when that label occurred;

**10.9.2.3** The person seeking approval or any proposed occupant is currently on probation or community control;

**10.9.2.4** The person seeking approval or any proposed occupant has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

**10.9.2.5** The application for approval on its face, facts discovered in connection with the Association's investigation, or the conduct of the applicant, indicate that the person seeking approval or any proposed occupant intends to conduct himself in a manner inconsistent with the Governing Documents. By way of example, but not limitation, a tenant taking possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Governing Documents and may constitute grounds for denial;

**10.9.2.6** The person seeking approval or any proposed occupant has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his or her conduct in other housing facilities or associations, or by his or her conduct in this Neighborhood as a tenant, Resident, occupant or guest;

**10.9.2.7** The Owner or person seeking approval has failed to provide the information, fees, or appearances required to process the application in a timely manner;

**10.9.2.8** All Assessments, fines and other Charges and monetary obligations against the Lot and/or Owner have not been paid in full;

**10.9.2.9** The application or investigation by the Association reveals that the rental will result in a violation of the Governing Documents, including but not limited to the age restrictions set forth herein.

**10.9.3 Association Fee.** The Owner or tenant seeking approval of a lease or the extension of a renewal of a lease of a Dwelling Unit shall pay a transfer fee for each applicant in an amount determined by the Board.

**10.9.4 Security Deposit.** The Board of Directors shall have the authority, as a

condition of granting approval to a lease or renewal or extension thereof, to require that a prospective tenant or Owner place a security deposit in an amount not to exceed the equivalent of one month's rent into an escrow account maintained by the Association to protect against damage to the Common Areas. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided for in Part II of Chapter 83 of the Florida Statutes (2021), as amended from time to time.

**10.9.5 Tenant Conduct; Remedies.** The Board shall have the authority to promulgate a lease addendum. All leases shall include a lease addendum, if so promulgated by the Board. Said lease addendum and all other leases will provide, or be deemed to provide, that the tenant and all Residents have read and agreed to be bound by the Governing Documents. The lease addendum and other leases shall further provide or be deemed to provide that any violation of the Governing Documents shall constitute a material breach of the lease and subject the tenant to eviction as well as any other remedy afforded by the Governing Documents or Florida law. If a tenant, Resident, other occupant, guest, or invitee fails to abide by the Governing Documents, the Owner(s) shall be responsible for the conduct of the tenants, Residents, occupants, guests, and invitees and shall be subject to all remedies set forth in the Governing Documents and Florida law, without waiver of any remedy available to the Association as to the tenant. The Owner shall have the duty to bring his or her tenant's conduct (and that of the other Residents, occupants, guests and invitees) into compliance with the Governing Documents by whatever action is necessary, including, without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the Owner fails to bring the conduct of the tenant into compliance with the Governing Documents in a manner deemed acceptable by the Association, or in other circumstances as may be determined by the Board, the Association shall have the authority to act as agent of the Owner to undertake whatever action is necessary to abate the tenant's noncompliance with the Governing Documents (or the noncompliance of other Residents, occupants, guests or invitees), including without limitation the right to institute an action for eviction against the tenant in the name of the Association in its own right, or as agent of the Owner. The Association shall have the right to recover any costs or fees, including attorneys' fees, incurred in connection with such actions, from the Owner which shall be secured by a continuing lien in the same manner as Assessments, to wit, secured by a lien for Charges. Any uniform lease or lease addendum will provide, and all leases will be deemed to provide that the Association shall have the authority to direct that all rental income related to the Dwelling Unit be paid to the Association until all past due and current obligations of the Association have been paid in full, including, but not limited to, all past due Assessments, Charges, other monetary obligations, late fees, interest, attorneys' fees and costs and expenses of collection.

**10.9.6 Liability.** The liability of the Owner under the Governing Documents shall continue notwithstanding the fact that he or she may have leased or rented his or her Dwelling Unit.

**10.9.7 Use of Common Areas.** To prevent overtaxing the facilities, an Owner whose Dwelling Unit is leased may not use the Common Areas during the lease term.

**10.9.8 Lawn Care.** When a Dwelling Unit is leased the Owner must use the Association's lawn maintenance company to maintain the landscaping and lawn on a regular basis. The cost is an Individual Expense of the Owner.

**11. COVENANT AND RULE ENFORCEMENT: DISPUTE RESOLUTION.** The

Association has the power to enforce all covenants, conditions, restrictions, rules and agreements applicable to any real property within the Community, and is further empowered to promulgate and enforce administrative rules and regulations governing the use of the Common Areas.

**11.1 Owner and Member Compliance.** The protective covenants, conditions, restrictions and other provisions of the Governing Documents and the rules promulgated by the Association, shall apply to all Lot Owners, as well as to any other person occupying any Dwelling Unit. Failure of an Owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the Governing Documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each Owner shall be responsible for any and all violations by his or her tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his or her tenants, at any time. In addition, each Owner, their tenant(s) invitees, guests or agents, including lawn maintenance or landscaping service providers shall be responsible for any damage to any equipment or installation provided by the Association to any Lot or to any Common Area.

**11.2 Litigation.** Each Owner and the Owner's tenants, guests, and invitees, and the Association, are governed by and must comply with Chapter 720, Florida Statutes, the Governing Documents and rules of the Association. Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of the Governing Documents and Association rules may be brought by any Owner or the Association against:

- (A) the Association;
- (B) an Owner;
- (C) any occupant of a Dwelling Unit;
- (D) any Director or officer of the Association who willfully and knowingly fails to comply with these provisions; and.
- (E) any tenants, guests, or invitees occupying a parcel or using the Common Areas.

**11.3 Damages and Attorney's Fees.** Damages shall not be conclusively deemed adequate relief for any breach or violation of the Governing Documents or the rules. Any person or entity entitled to enforce any provision thereof shall be entitled to relief by way of injunction, as well as any other available relief either at law or in equity. The prevailing party in a proceeding to enforce any provision of the Governing Documents or rules, or to enjoin violation or breach of any provision hereof, or recover damages on account of such breach, against any person shall be entitled to recover reasonable attorney's fees and court costs (including those resulting from appellate proceedings).

**11.4 Fines and Suspension of Use Rights.** The Association may impose fines and suspend use rights as provided in the Bylaws.

**11.5 Right of Abatement.** In addition to the remedies provided above, the Association

shall have a right of abatement. The "right of abatement" as used in this Declaration means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation or breach, without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions. Before exercising its right of abatement, the Association shall mail written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the right of abatement. The costs of such abatement action, together with interest thereon at the highest rate permitted by law, shall be a binding personal obligation of such Owner enforceable in law, and the Association shall be entitled to recover from the Owner all court costs and attorneys' fees required in connection with such abatement and/or in collecting it from the Owner, all of which shall be secured by a lien on such Owner's Lot enforceable in the same manner and with the same priority as a lien for Assessments.

## **12. INSURANCE: RECONSTRUCTION AFTER CASUALTY.**

**12.1 Duty to Insure, and to Reconstruct or Clean Up.** Each Owner shall at all times maintain adequate property insurance on their Dwelling Unit and structures contained within their Lot, and all other insurable improvements, in amounts equal to the replacement cost thereof. If any Dwelling Unit or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner shall:

**12.1.1** Cause repair or replacement to be commenced within three (3) months after the date such damage or destruction occurred and complete the repair or replacement within nine (9) months thereafter. All such repairs or replacements must be approved in writing by the ACC. Unless changes are approved by the ACC, the Owner must restore the damaged property to substantially the same configuration as existed before the casualty, and structurally and architecturally compatible with any adjoining improvements; or

**12.1.2** Promptly cause all debris, damaged improvements, and other unsightly materials to be removed from the site.

**12.2 Failure to Comply.** If any Owner fails to comply with Section 12.1 above within the time periods provided, the Association shall be deemed to have been granted the right, but not the obligation, by the Owner as his or her or its attorney-in-fact, to either commence and complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements; or to remove the damaged improvements completely. If the Association exercises the rights afforded to it by this Section, the Owner shall be deemed to have assigned to the Association any right he or she or it may have to insurance proceeds that may be available because of the damage or destruction. The Association shall have the right to recover from the Owner any costs not paid by insurance as a Charge against their Lot, and shall have a lien on the Lot to secure payment.

**12.3 Association's Right of Entry.** For the purpose of performing the duties authorized



by this Section 12, the Association, through its duly authorized agents and employees, shall have the right to enter upon any Lot at reasonable hours and perform such duties.

**13. DURATION OF COVENANTS; AMENDMENT TO DECLARATION.**

**13.1 Duration of Covenants.** The covenants, restrictions and easements of this Amended and Restated Declaration shall run with and bind the properties and shall inure to the benefit of and be enforceable by the Association and any Owner, their respective legal representatives, heirs, successors and assigns, for a period which will expire on July 25, 2049, i.e. thirty (30) years from the date these governing documents were preserved, i.e. July 24, 2019 unless otherwise preserved under the Marketable Record Title Act ("MRTA") prior to that date or unless later revitalized pursuant to MRTA. Upon the expiration of the initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of potential successive ten (10) year periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, unless during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least two-thirds (2/3rds) of the Voting Interests vote in favor of terminating this Amended and Restated Declaration at the end of its then current term.

**14. AMENDMENTS.** Except as elsewhere provided herein, this Declaration may be amended in the following manner:

**14.1 Proposal.** Amendments to this Amended and Restated Declaration may be proposed at any time by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4<sup>th</sup>) of the Voting Interests. Any amendments so proposed must be submitted to a vote of the Owners not later than the next annual meeting.

**14.2 Vote Required.** Except as otherwise provided by law, or by specific provision of the Governing Documents, this Amended and Restated Declaration may be subsequently amended at any time if a duly proposed amendment is approved by at least two-thirds (2/3rds) of the Voting Interests of the Association, who are present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present or by written agreement of two-thirds (2/3rds) of the entire Voting Interests; provided that the text of each proposed amendment has been given to the Members with notice of the meeting. However, no amendment shall be effective to change the share of liability for Assessments or ownership of the common surplus of the Association or the voting rights, appurtenant to any Lot, unless the Owner and his or her institutional mortgage (if any) consent in writing to the amendment.

**14.3 Certificate; Recording.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to this Amended and Restated Declaration, which certificate shall identify the Book, Page or Instrument Number of the Public Records where this Amended and Restated Declaration is recorded, and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of the County. Within thirty (30) days after recording an amendment to the Declaration, the Association shall provide copies of the amendment to the Members or notice that it may be sent to any Member who requests same.

## **15. GENERAL PROVISIONS.**

**15.1 Waiver.** Any waiver by any person of any provisions of this Amended and Restated Declaration, or breach thereof, must be in writing to be effective, 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 Amended and Restated 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 its invalidity shall not affect the validity of the remaining portions.

**15.3 Headings and Capitalization.** The headings of the sections, subsections, paragraphs and subparagraphs herein, and the capitalization of certain words, are for convenience only, and are not intended to affect the meaning or interpretation of the contents.

**15.4 Notices.** Any notice required to be sent to any Owner under this Amended and Restated 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.

**15.5 Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Amended and Restated Declaration and its exhibits. Such interpretations shall be binding upon all parts 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.

**15.6 Conflicts.** In the event any inconsistencies exist among the provisions herein and the Articles of incorporation and Bylaws, the provisions herein shall be controlling overall and the provisions of the Articles of Incorporation shall control over those of the Bylaws.

**15.7 Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by the Governing Documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida, and venue shall lie in the County.

**15.8 Use of the Term “Eagle Pointe”.** No person shall use the term “Eagle Pointe” or any derivative thereof or logo in any printed, electronic or promotional material without the prior written consent of the Association. However, Owners may use the term “Eagle Pointe” in printed or promotional material where such term is used solely to specify the particular property is located within Eagle Pointe.

## **16. DISCLAIMER OF LIABILITY OF ASSOCIATION.**

**16.1 NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR**

**ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE “ASSOCIATION DOCUMENTS“), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:**

**16.2 IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;**

**16.3 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, & COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES OR PANDEMICS.**

**16.4 ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.**

**16.5 EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN.**

**16.6 AS USED HEREIN “ASSOCIATION” SHALL INCLUDE WITH ITS MEANING ALL OF THE ASSOCIATION’S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.**