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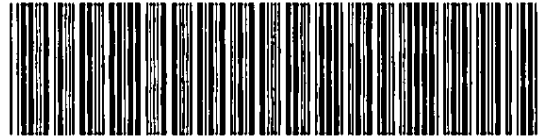
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COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: EAGLE CREEK VILLA HOMES NO. 1 NEIGHBORHOOD ASSOCIATION, INC.

DOCUMENT NUMBER: N14088

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following

LEE-ANNE BOSCH
(Name of Contact Person)

GOEDEL ADAMCZYK, DEBOEST & CROSS, PLLC
(Firm/ Company)

6609 WILLOW PARK DRIVE, SECOND FLOOR
(Address)

NAPLES, FL 34120
(City/ State and Zip Code)

LBOSCH@GADOLAW.COM
E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

LEE-ANNE BOSCH 239 331-5100
(Name of Contact Person) at (Area Code) (Daytime Telephone Number)

Enclosed is a check for the following amount made payable to the Florida Department of State:

- | | | | |
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| <input checked="" type="checkbox"/> \$35 Filing Fee | <input type="checkbox"/> \$43.75 Filing Fee &
Certificate of Status | <input type="checkbox"/> \$43.75 Filing Fee &
Certified Copy
(Additional copy is
enclosed) | <input type="checkbox"/> \$52.50 Filing Fee
Certificate of Status
Certified Copy
(Additional Copy is
Enclosed) |
|---|--|---|--|

Mailing Address
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address
Amendment Section
Division of Corporations
The Centre of Tallahassee
2415 N. Monroe Street, Suite 810
Tallahassee, FL 32303



FLORIDA DEPARTMENT OF STATE
Division of Corporations

June 13, 2021

LEE-ANNE BOSCH
GOEDE, ADAMCZYK ET AL
6609 WILLOW PARK DRIVE - SECOND FLOOR
NAPLES, FL 34120

SUBJECT: EAGLE CREEK VILLA HOMES NO. 1 NEIGHBORHOOD
ASSOCIATION, INC.
Ref. Number: N14088

We have received your document for EAGLE CREEK VILLA HOMES NO. 1 NEIGHBORHOOD ASSOCIATION, INC. and your check(s) totaling \$35.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

Please file the document as either Articles of Amendment or Restated Articles of Incorporation pursuant to applicable Florida Statutes.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

Irene Albritton
Regulatory Specialist II

Letter Number: 321A00013096

Prepared by and return to:
Goede, Adamczyk, DeBoest & Cross, PLLC
6609 Willow Park Drive, Second Floor
Naples, Florida 34109
(239) 331-5100

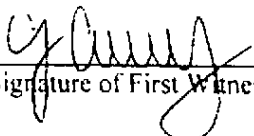
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**CERTIFICATE OF AMENDMENT
TO
NEIGHBORHOOD COVENANTS FOR EAGLE CREEK VILLA HOMES
AND
ARTICLES OF INCORPORATION
OF EAGLE CREEK VILLA HOMES NO. 1 NEIGHBORHOOD ASSOCIATION, INC.
AND
BYLAWS
OF EAGLE CREEK VILLA HOMES NO. 1 NEIGHBORHOOD ASSOCIATION, INC.**

I HEREBY CERTIFY that the following amendments to the Neighborhood Covenants for Eagle Creek Villa Homes, the Articles of Incorporation of Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., and the Bylaws of Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., were duly adopted by the Association membership at the duly noticed meeting called for that purpose and held on the 1st day of December 2020. Said amendments were approved by a proper percentage of voting interests of the Association.

The original Neighborhood Covenants for Eagle Creek Villa Homes and the original Articles of Incorporation and Bylaws of Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., were recorded at Official Records Book 1224, Page 336 of the Public Records of Collier County, Florida.

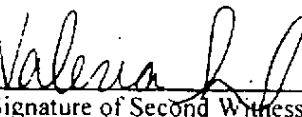
WITNESSES



Signature of First Witness

Cassie Jo Caraway

Printed Name of First Witness



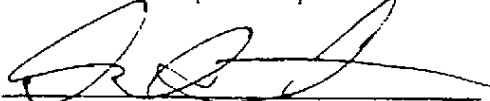
Signature of Second Witness

Valeria Silva

Printed Name of Second Witness

**EAGLE CREEK VILLA HOMES NO. 1
NEIGHBORHOOD ASSOCIATION, INC.,**

A Florida not for profit corporation



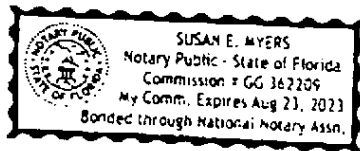
By: Drew Krimski
Title: President

STATE OF Florida
COUNTY OF Collier

The foregoing instrument was acknowledged [or if an affidavit "sworn to and subscribed"]
before me, by means of ☒ physical presence or ☐ online notarization, this 8 day of December,
2020, by Drew Krimski, who [☒] is personally known to me, or [☐] has produced
_____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 8 day of
December 2020.

(NOTARY STAMP/SEAL)



Susan E. Myers (SEAL)
Notary Public for the State of Florida
Print Name: Susan E. Myers
My Commission Expires: Aug 23, 2023

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2021 MAY 25 PM 3:06
CLERK OF DISTRICT COURT
NINTH JUDICIAL CIRCUIT
MIAMI, FLORIDA

NOTE: SUBSTANTIAL REWORDING OF ENTIRE DECLARATION. FOR PRESENT TEXT SEE EXISTING DECLARATION AND AMENDMENTS THERETO.

**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
EAGLE CREEK VILLA HOMES NO. 1 NEIGHBORHOOD ASSOCIATION, INC.**

Pursuant to Section 617.1007, Florida Statutes, these Articles of Incorporation of Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on March 28, 1986, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1002, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments, adopted pursuant to Section 617.1002, Florida Statutes, and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., shall henceforth be as follows.

ARTICLE I

NAME: The name of the corporation is Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., sometimes hereinafter referred to as the "Association".

ARTICLE II

PRINCIPAL OFFICE: The principal office of the corporation shall be as listed with the Florida Department of State Division of Corporations.

ARTICLE III

PURPOSE AND POWERS: This Association will not permit pecuniary gain or profit nor distribution of its income to its Members, officers, or Directors. It is a nonprofit corporation formed for the purpose of establishing a corporate residential community homeowners association which, subject to the Declaration of Neighborhood Covenants for Eagle Creek Villa Homes, originally recorded in the Public Records of Collier County, Florida, at O.R. Book 1224 at Page 336, *et seq.*, and as amended, has the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not for profit consistent with these Articles, the Bylaws of the corporation, and with said Declaration and shall have all of the powers and authority reasonably necessary or appropriate for the operation and regulation of a residential community, subject to said recorded Declaration, as it may from time to time be amended, including, but not limited to, the power:

(A) to fix, levy, collect, and enforce payment by any lawful means all charges, assessments, or liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes, or governmental charges levied or imposed against the property or the corporation;

(B) to make, amend, and enforce reasonable rules and regulations governing the use of the Association Property and the operation of the Association;

(C) to sue and be sued, and to enforce the provisions of the Declaration, the Articles, the Bylaws, and the reasonable rules of the Association;

(D) to contract for the management and maintenance of the Association Property and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;

(E) to employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the properties;

(F) to dedicate, sell, or transfer all or any part of the Association Property 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 dedication, sale, or transfer shall be effective unless first approved by two-thirds (2/3rds) of the Voting Interests, present and voting, in person or by proxy at a duly called meeting of the membership;

(G) to borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred if first approved by the Board,

(H) to maintain, repair, replace, and provide insurance for the Association Property;

(I) to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the corporation;

(J) to grant, rescind, modify, or move easements;

(K) to exercise any and all powers, rights and privileges which a corporation organized under Chapters 617 and 720 of Florida Statutes may now or hereafter have or exercise, subject always to the Declaration as amended from time to time.

All funds and the title to all property acquired by the Association shall be held for the benefit of the Members in accordance with the provisions of the Declaration, these Articles of Incorporation, and the Bylaws.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS: Membership and voting rights shall be as set forth in the Bylaws of the Association.

ARTICLE V

TERM; DISSOLUTION: The term of the Association shall be perpetual. The Association may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3rds) of the total Voting Interests of the Association. Upon dissolution of the Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was formed. In the event there is a refusal to accept such dedication, then such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization which is devoted to purposes similar to those of this Association.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Board of Directors or upon a petition of twenty-five percent (25%) of the Voting Interests at any regular or specially called meeting of the Members and shall be submitted to a vote of the Members not later than the next annual meeting.

(B) Vote Required. Except as otherwise required by Florida law or as provided elsewhere in these Articles, these Articles of Incorporation may be amended if the proposed amendment is approved by the affirmative vote of at least two thirds (2/3rds) of the Voting Interests who are present and voting, in person or by proxy, at a duly called meeting of the Members of the Association.

(C) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida with the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE VIII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors. Directors are required to be Members of the Association, except that if a Lot is owned by an entity, such entity may only appoint a partner, shareholder, member, manager, director, or officer of such entity on its behalf to be eligible to serve on the Board.

(B) Directors of the Association shall be elected by the Members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the Members of the Association and shall serve at the pleasure of the Board.

ARTICLE IX

INDEMNIFICATION:

(A) Indemnity. The Association shall indemnify any officer, Director, or committee member who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is

or was a Director, officer, or committee member of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their officers, Directors, and committee members as permitted by Florida law.

(B) Defense. To the extent that a Director, officer, or committee member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section (A) above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

(C) Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding on behalf of the affected Director, officer, or committee member. The Director, officer or committee member shall repay such amount if it shall ultimately be determined that said Director, officer or committee member is not entitled to be indemnified by the Association as authorized by this Article IX.

(D) Miscellaneous. The indemnification provided by this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a Director, officer, or committee member and shall inure to the benefit of the heirs and personal representatives of such person.

(E) Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, committee member, employee, or agent of the Association, or a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

(F) Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article IX may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

The date of each amendment(s) adoption: 12/01/2020, if other than the date this document was signed

Effective date if applicable: _____
(no more than 90 days after amendment file date)

Note: If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

Adoption of Amendment(s) (CHECK ONE)

☒ The amendment(s) was/were adopted by the members and the number of votes cast for the amendment(s) was/were sufficient for approval.

☐ There are no members or members entitled to vote on the amendment(s). The amendment(s) was/were adopted by the board of directors.

Dated 3/24/2021

Signature _____

(By the chairman or vice chairman of the board, president or other officer if directors have not been selected, by an incorporator – if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

DREW KRIMSKI

(Typed or printed name of person signing)

PRESIDENT

(Title of person signing)

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
EAGLE CREEK VILLA HOMES**

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NOTE: SUBSTANTIAL REWORDING OF ENTIRE DECLARATION. FOR PRESENT TEXT
SEE EXISTING DECLARATION AND AMENDMENTS THERETO.

AMENDED AND RESTATED
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
EAGLE CREEK VILLA HOMES

KNOW ALL PERSONS BY THESE PRESENTS that on October 17, 1986, the original Declaration of Neighborhood Covenants for Eagle Creek Villa Homes was recorded in Official Record Book 1224, at Page 336, *et seq.*, of the Public Records of Collier County, Florida. That Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety.

The land subject to this Declaration (hereinafter the "Property") is legally described in Exhibit "A" hereto. No additional land is being added by this instrument and no land is being removed by this instrument. The covenants, conditions, and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future Owners. The acquisition of title to a Lot or any other ownership interest in the Property, or the lease, occupancy, or use of any portion of a Lot or the Property, constitutes an acceptance and ratification of all provisions of this Declaration, as amended from time to time, and an agreement to be bound by its terms.

1. **DEFINITIONS.** The following words and terms used in this Declaration or any of the Governing Documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.1 **"Architectural Review Committee" or "ARC"** means and refers to the Board of Directors of the Community Association, or a Committee appointed by the Board of Directors of the Community Association pursuant to the Master Covenants.

1.2 **"Architectural Review Committee Handbook" or "ARC Handbook"** means the established architectural standards and guidelines for improvements and modifications to Units, including structures, landscaping, and other items on Lots, as governed by the Community Association.

1.3 **"Assessments"** means a share of the funds required for the payment of Common Expenses and individual expenses which from time to time are assessed by the Association against an Owner, including individual assessments, special assessments, and any other assessments and monetary fines and charges which are or may be levied by the Association in accordance with the Governing Documents.

1.4 **"Articles" and "Bylaws"** as used herein, means the Amended and Restated Articles of Incorporation and Bylaws of Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., as amended from time to time. A copy of the Amended and Restated Articles and Bylaws are attached hereto as Exhibits "B" and "C", respectively.

1.5 "Association" means Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., a Florida not for profit corporation.

1.6 "Common Areas" means any portion of the Property which is not (i) a Lot; (ii) dedicated to the public; (iii) dedicated to or owned by a governmental or quasi-governmental body or public or private utility (including cable television) company; or (iv) declared to be a common area under the Master Covenants, and which is or shall be owned or maintained by the Association, as set forth in this Declaration and/or the Plat, for the common use and enjoyment of the Owners in Eagle Creek Villa Homes. Common Areas shall also include any and all improvements thereto, including private roadways within the Property, but specifically excluding street lighting and common irrigation systems to the extent same are operated or maintained by the Community Association or the Country Club, and any public utility installations not made Common Areas.

1.7 "Common Expenses" means the expenses incurred by the Association in the course of performing its duties under the Governing Documents and the law. Common Expenses of the Association include the costs of operating the Association, the costs of administration, maintenance, operation, repair, and replacement of the Common Areas, other expenses declared by the Governing Documents to be Common Expenses, and any other valid expenses or debts of the Property as a whole which are assessed against the Lot Owners.

1.8 "Community Association" shall mean and refer to Eagle Creek Community Association, Inc., a Florida corporation not for profit, having responsibility for the operation of Eagle Creek.

1.9 "Common Surplus" means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits, and revenues over the Common Expenses.

1.10 "Country Club" shall mean and refer to Eagle Creek Golf and Country Club, Inc., a Florida corporation, being the entity operating the country club located within Eagle Creek, and its successors and assigns and, where the context so requires, the portion of Eagle Creek owned and/or operated by the Country Club.

1.11 "Declaration" means this Declaration, as it may be amended from time to time.

1.12 "Eagle Creek" and "Community" shall mean and refer to all land and all improvements thereto as may be, from time to time, subject to the Master Covenants (as hereinafter defined) and, to the extent not included in the foregoing, all real property and improvements thereto owned and/or operated by the Country Club from time to time.

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

- (a) One natural person.
- (b) Two or more natural persons who commonly reside together as a single housekeeping and economic unit.

1.14 "Governing Documents" means and includes this Declaration, the Articles, the Bylaws, the Maintenance Chart (as defined in Section 5.2), and the rules and regulations, and all recorded exhibits thereto, as they may be amended from time to time.

1.15 "Guest" means any person who is not the Owner or a lessee of a Lot or a member of the Owner's or lessee's family, who is physically present in, or occupies a Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration. Unless otherwise determined by the Board of Directors of the Association, a person occupying a Unit for more than one (1) month shall not be deemed a guest but shall rather be deemed a tenant for purposes of this Declaration, regardless of whether a lease exists or consideration is paid, and shall be subject to the provisions of this Declaration applying to tenants.

1.16 "Improvement" means all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Community, including, but not limited to, buildings, walkways, recreation areas and facilities, parking areas, berms, fountains, sprinkler systems, gatehouses, streets, drives, roads, driveways, stairs, landscaping, trees, hedges, plantings, poles, swings, gym sets and play structures, swimming pools, covered patios, screen enclosures, paths, mailboxes, and signs.

1.17 "Lease" means the grant by an Owner of a temporary right of use of the Owner's Unit and Lot with or without valuable consideration. The term "lease" and all its derivations as used herein applies to any type of occupancy for which the occupant has paid consideration to the Owner, including, but not limited to, occupancy pursuant to a license.

1.18 "Limited Common Areas" shall mean and refer to such portions of the Common Areas which are intended for the exclusive use (subject to the rights, if any, of Collier County, the Community Association, the Association, and the public) of the Owners of specific Lots. Unless otherwise provided specifically to the contrary, reference to the Common Area shall include the Limited Common Areas.

1.19 "Lot" means the lots of land located within the real property according to the Plat. That description is hereby incorporated by reference. No Lot shall include the Common Areas. No Lot may be subdivided or joined together without the consent of the Association. The Lots may be depicted and numbered on sketches or surveys, as recorded in the Public Records of Collier County, Florida.

1.20 "Master Covenants" shall mean and refer to the Master Covenants for Eagle Creek, originally recorded January 20, 1986 in Official Records Book 1174, Page 1946 of the Public Records of Collier County, Florida, and restated and recorded on May 19, 2016 in Official Records Book 5274, Page 2367 of the Public Records of Collier County, Florida. Unless the context prohibits, "Master Covenants" shall also refer to the Articles of Incorporation, Bylaws, and Rules and Regulations of the Community Association, all as now or hereafter are further amended, modified, or supplemented.

1.21 "Members" means and refers to those persons who are entitled to membership in the Association as provided herein and in the Articles and Bylaws.

1.22 "Occupy" when used in connection with a Unit, means the act of staying overnight in a Unit. "Occupant" is a person who occupies a Unit.

1.23 "Owner" or "Lot Owner" means the record owner of legal title to a Lot.

1.24 "Plat" means that certain plat of Eagle Creek Country Club as recorded in the Public Records of Collier County, Florida and shall include any amendment or replat of all or any portion thereof.

1.25 "Property" or "Community" means all the real property which is subject to this Declaration.

1.26 "Structure" means that which is 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. The term shall be construed as if followed by the words "or part thereof". The term includes, without limitation, swimming pools, fences, flagpoles, antennas, playground equipment, and storage sheds.

1.27 "Unit" means a residential dwelling unit which is constructed on a Lot for use and occupancy as a Single-Family residence.

1.28 "Voting Interests" means the voting rights distributed to the Association Members pursuant to the Bylaws.

2. ASSOCIATION.

2.1 Membership. Every Owner of a Lot shall be a Member of the Association, and by acceptance of a deed or other instrument evidencing his or her ownership interest, each Owner accepts his or her membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of the Governing Documents, as amended from time to time. Notwithstanding anything else to the contrary set forth in this Section 2, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association.

2.2 Voting Rights. Voting rights are set forth in the Bylaws of the Association.

2.3 Delegation of Management. The Association may contract for the management and maintenance of those portions of the Property it is required to maintain, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing functions which may include, but are not limited to, the submission of proposals, collection of assessments, keeping of records, enforcement of rules, and maintenance, repair, and replacement of the Property with funds made available by the Association for such purposes.

2.4 Acts of the Association. Unless the approval or affirmative vote of the Lot Owners is specifically made necessary by some provision of the 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 Owners. The officers and Directors of the Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for or bind the Association by reason of being an Owner.

2.5 Powers and Duties. The powers and duties of the Association include those set forth in Chapters 617 and 720, Florida Statutes, and in the Governing Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management,

and operation of the Common Areas. The Association has the power to enter into agreements to acquire leaseholds, memberships, and other ownership, possessory, easement, or use interests in lands or facilities for the use and enjoyment of the Owners.

2.6 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by Members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the Member seeking copies.

2.7 Purchase of Lots. The Association has the power to purchase Lots in the community in connection with the foreclosure of an Association lien for assessments, charges, or fines, or any other foreclosure of an interest that affects the Association's lien and to hold, lease, mortgage, encumber, or convey them with such power to be exercised by the Board of Directors, without prior approval of the Owners.

2.8 Interests in Real Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 2.7 above and Section 4 below, the power to acquire, encumber, or convey ownership interests in real property, including recreational facilities, whether or not contiguous with the Property, shall be exercised by the Board of Directors only after approval by at least a majority of the Voting Interests of the Association.

2.9 Disposition of Personal Property. Any personal property owned by the Association may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without authorization of the Owners.

2.10 Roster. The Association shall maintain a current roster of names and mailing addresses of Owners, based upon information supplied by the Owners. Owners are responsible for notifying the Association of any change in their mailing address. All such notices shall be in writing. A copy of the roster shall be made available to any Member upon request.

2.11 Common Areas. The Common Areas, except for the Limited Common Areas, are dedicated non-exclusively to the joint and several use, in common, of the Owners of all Lots that may from time to time constitute part of the Property, and their family members, guests, invitees, and tenants, all as provided and regulated herein or otherwise by the Association and the Community Association. All costs associated with operating, maintaining, repairing, and replacing the Common Areas shall be the obligation of the Association. For the term of this Declaration, the Common Areas, except as otherwise provided in this Declaration, are not for the use and enjoyment of the public, but are expressly reserved for the private use and enjoyment of the Association and the Owners and their family members, guests, invitees, and tenants, for recreational and social purposes as well as other proper purposes in accordance with the Governing Documents. Common Areas may not be altered, modified, removed, or replaced by the Owners or their family members, guests, invitees, or tenants.

2.12 Limited Common Areas. At the time that title to a Lot is conveyed to an Owner thereof, there shall be deemed to have vested in such Owner, as an appurtenance to the Lot (and not separately alienable therefrom), the exclusive right to use (but not title to or any other ownership interest in) the applicable Limited Common Areas, as defined in Section 1, if any, subject always, however, to the rights, if any, of Collier County, the Association, and the public with respect thereto.

3. **ASSESSMENTS.** The provisions of this Section 3 shall govern assessments payable by all Owners of Lots, for the Common Expenses of the Association not directly attributable to one of the Lots.

3.1 **Covenant to Pay Assessments.** Each Owner of a Lot by the act of becoming an Owner covenants and agrees, and each subsequent Owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (a) The Lot's pro-rata share of annual assessments based on the annual budget adopted by the Board of Directors of the Association;
- (b) The Lot's pro rata share of special assessments for capital improvements or other Association expenditures not provided for by annual assessments; and
- (c) Any charges properly levied against individual Lot Owner(s) ("individual assessments") without participation from other Owners.

3.2 **Liability for Assessments.** Assessments and charges shall be established and collected as provided herein and elsewhere in the Governing Documents. The Owner of each Lot, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Except as provided in Section 3.12 below, whenever title to a Lot is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. No Owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the Common Areas, by abandonment, or otherwise. Except as provided elsewhere in the Governing Documents as to institutional mortgagees, no Owner may be excused from the payment of assessments unless all Owners are similarly excused. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No Lot Owner has the right to claim, assign, or transfer any interest therein except as an appurtenance to his Lot. No Owner can withdraw or receive distribution of his prior payments to the common surplus or Association reserves, except as otherwise provided herein or by law. Unless assumed by the Community Association, it shall be the legal duty and responsibility of the Association to enforce payment of the assessment hereunder. Failure of a collecting entity to send or deliver bills or notices of assessments shall not relieve Owners from their obligations hereunder. All assessments, late charges, interest, penalties, fines, attorney's fees, and other sums provided for herein shall accrue to the benefit of the Association.

3.3 **Purposes of Assessments.** The assessments levied by the Association shall be used for the purposes of promoting the general welfare of the Owners and residents; to operate, maintain, repair, improve, construct, and preserve (on a non-profit basis) the Common Areas for the benefit of its Members and their guests, tenants, and invitees; and to perform all other duties and responsibilities of the Association as provided in the Governing Documents.

3.4 **Individual Assessments.** All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense or charge of the Association attributable to or on behalf of an individual Owner pursuant to the Governing Documents, shall be an individual assessment and shall

become a lien against such Owner's Lot, to the extent permitted by law, which may be foreclosed or otherwise collected as provided herein.

3.5 Lien. The Association has a lien on each Lot for unpaid past due assessments and charges, together with interest, late payment penalties, costs, and reasonable attorney's fees incurred by the Association in enforcing the lien. The lien is perfected by recording a Claim of Lien in the public records of the county, which Claim of Lien shall state the description of the property encumbered thereby, the name of the record Owner, the amounts then due and the dates when due. The Claim of Lien must be signed and acknowledged by an officer or agent of the Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid assessments, fines and charges, interests, late fees, costs, and attorney fees which are due, and which may accrue or come due after the recording of the Claim of Lien and before the entry of a final judgment of foreclosure. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

3.6 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments or charges by the procedures and in the same manner as is provided in Section 720.3085 of the Florida Statutes, as it may be amended from time to time hereafter, for the foreclosure of a lien upon a Lot for unpaid assessments. All unpaid assessments and charges also constitute a personal obligation of the Owners, and the Association may, in addition to any other remedy herein provided, bring an action at law against any Owner liable for unpaid charges or assessments. If a final judgment is obtained, such judgment shall include interest on the assessments as above provided and reasonable attorney's fees to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney's fees in connection with any appeal of such action.

3.7 Priority of Liens. The Association's lien for unpaid charges, assessments, and all other amounts shall be subordinate and inferior to any recorded institutional first mortgage, unless the Association's Claim of Lien was recorded before the mortgage but shall relate back to the date the original Declaration was recorded in the Public Record and be superior to, and take priority over, any other mortgage, lien, or interest recorded after that date. Any lease of a Lot shall be subordinate and inferior to the lien of the Association, regardless of when the lease was executed.

3.8 Application of Payments; Failure to Pay; Interest. Assessments, charges, and installments thereon paid on or before thirty (30) days after the date due shall not bear interest, but all sums not so paid shall bear interest at a rate determined by the Board of Directors, calculated from the date due until paid. In addition to interest, the Association may also charge an administrative late payment fee in an amount not to exceed the maximum amount allowed by law. Assessments, charges, and installments thereon shall become due, and the Lot Owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. Any restrictive endorsement on or accompanying a payment notwithstanding, all payments made to the Association by or on behalf of a Lot Owner shall be applied first to interest, then to late fees, then to costs (including, but not limited to, collection charges imposed by the management company, attorney, and court) then to attorney's fees, then to fines (if permitted by law), then to other charges, and then to the oldest outstanding unpaid regular, special, or individual assessments. No payment by check is deemed received until the check has cleared. The Association shall also have the right to require any tenant occupying the Lot during any period in which assessments for the Lot are due but have not been paid to the Association to pay the rent to the Association. Further, any and all

persons acquiring title to or an interest in a Lot as to which the assessments are delinquent, including, without limitation, persons acquiring title by operation of law and by judicial sales, shall not be entitled to the occupancy of such Lot or the enjoyment of the Common Areas until such time as all unpaid and delinquent assessments due and owing from the selling owner have been fully paid; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Sections 3.6 and 3.12.

3.9 Acceleration. If any special assessment or installment of a regular assessment as to a Lot becomes more than thirty (30) days past due and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Lot's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney's fees, and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the Owner's last known address and shall be deemed given upon mailing of the notice, postpaid.

3.10 Removal of Property. After the Association successfully performs a foreclosure on the Lot, if the Owner does not remove personal property from the foreclosed premises, such property will be deemed forfeited to the Association, and the Association may authorize removal and may sell such forfeited property after ten (10) days' written notice by certified mail addressed to the Owner at the last known address or at such address on record as provided to the Association by the Owner. Such remedy shall be in addition to all other remedies available to the Association under applicable laws, rules, and regulations, including the right to compel removal of the property and right to impose any and all fines.

3.11 Certificate as to Assessments; Mortgagee Questionnaires. Within ten (10) working days after request by a Lot Owner or mortgagee, the Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the Lot Owner with respect to the Lot have been paid. Any person other than the Lot Owner who relies upon such certificate shall be protected thereby. The Association may charge up to the maximum amount allowed by law to issue an estoppel certificate. The Association may but is not obligated to respond to mortgagee questionnaires. If the Association chooses to respond to a mortgagee questionnaire, the Association may charge up to \$150.00 (in addition to any charge for an estoppel certificate) plus attorney's fees for doing so.

3.12 Mortgage Foreclosure. Unless otherwise provided by law, if the mortgagee of a first mortgage of an institutional mortgage of record acquires title to a Lot as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer of title shall be liable for the share of Common Expenses or assessments attributable to the Lot, or to the former Owner of the Lot, which came due prior to the mortgagee's acquisition of title as required by Section 720.3085, Florida Statutes, as it may be amended from time to time. Any unpaid share of Common Expenses for which such acquirer is exempt from liability becomes a Common Expense collectible from all Owners, including such acquirer and his successors and assigns. All other persons or entities acquiring title to a Lot as the result of a foreclosure or other court-ordered sale shall be obligated to pay all past due assessments due and owing at the time of sale, regardless of whether or not the Association has

recorded a lien. No Owner or acquirer of title to a Lot by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of his ownership.

3.13 Determining Amount of Assessments. The total anticipated operating expenses for each calendar year shall be set forth in an estimated operating budget ("Budget") prepared by the Board as required under the Governing Documents. Each Lot shall be assessed its pro rata portion of the total anticipated operating expenses, which shall be the individual assessment as to each Lot. Operating expenses for the Common Areas shall be divided by the number of Lots.

3.14 Assessment Payments. Regular assessments for operating expenses shall be payable quarterly, in advance, on the first day of January, April, July, and October of each year, provided, however, at the Association's option, regular assessments may be payable monthly. Regular assessments, and the quarterly or monthly installments thereof, may be adjusted from time to time by the Board to reflect changes in the Budget or in the event the Board determines that an assessment or any installment thereof is either less than or more than the amount actually required. In the event no notice of the general assessment for a new period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

3.15 Special Assessments. Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses, pursuant to the procedure set forth in Section 6.6 of the Bylaws. Special assessments shall be paid in installments or in a lump sum, as the Board may determine from time to time.

4. EASEMENTS.

4.1 Members Easements. Except for Limited Common Areas, each Member and their family members, tenants, guests, and invitees shall have a non-exclusive permanent and perpetual easement over and upon the Common Areas for the intended use and enjoyment thereof in common with all other such Members and Member's family members, tenants, agents, and invitees, in such manner as may be regulated by the Association. The easements provided in this Section 4.1 shall be appurtenant to and shall pass with the title to each Lot but shall not be deemed to grant or convey any ownership interest in the Common Area subject thereto.

4.2 Utility Easements. Use of the Common Areas for utilities, as well as use of the other utility easements as shown on the relevant plats, shall be in accordance with the applicable provisions of this Declaration and said plats. Within these easements, no structure, planting, or other material may be placed or permitted to remain that will interfere with or prevent the maintenance of utilities.

4.3 Drainage Easements. Easements for drainage are reserved as shown on the recorded plats covering the Property and as provided herein. No Owner shall install any plantings, landscaping, levees, and/or other improvements whatsoever in, on, over or across any drainage easement.

4.4 Easement to Enter Upon Lots. An easement or easements for ingress and egress in favor of the Association, including the Board or the designee of the Board, to enter upon the Lots for the purposes of fulfilling its duties and responsibilities of ownership, maintenance, and/or repair in accordance with the Governing Documents, including, by way of example, the making of such repairs, maintenance, or reconstruction as are necessary for the Common Areas and to maintain any Lot in the event the Owner thereof fails to do so.

4.5 Easement as to Waterbodies. The Country Club shall have, and is hereby granted, a perpetual easement over all lakes and other waterbodies now or hereafter located within the Property for the purpose of drawing water therefrom for golf course irrigation and related purposes and for maintaining the water quality of such lakes and waterbodies for such purposes as the Country Club shall elect. The right to maintain such water quality shall rest exclusively with the Country Club and shall not be interfered with by the Association or any Owners or occupants of Lots. The Country Club shall also have, and is hereby granted, a perpetual easement over, under, upon, and through the Common Areas for the purpose of affording access to lakes and other waterbodies in connection with the aforesaid uses thereof including, without limitation, for the installation, operation, maintenance, repair and replacement of all pipes, lines, pumps, and equipment necessary or convenient for golf course irrigation purposes.

4.6 Public Easements. Fire, police, health and sanitation, park maintenance, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas in the performance of their respective duties.

4.7 Easements for Encroachment. Any Owner of a Lot which contains a structure which encroaches upon another Lot or the Common Areas shall have a valid easement for the encroachment and maintenance of same, as long as it stands and exists. The foregoing easement shall also extend to, include, and permit any portion of a Unit on a dominant lot (e.g., roof overhangs, downspouts, gutters, or air conditioning equipment) to extend onto or over the adjoining servient lot, but in no event to an extent greater than when such portion was initially constructed or installed.

4.8 Platted Easements. All other easements as shown on the Plat, as amended, for the purposes stated therein.

4.9 Assignments; Additional Easements. The easements reserved hereunder may be assigned by the Association in whole or in part to any city, county, or state government or agency thereof, or any duly licensed or franchised public utility. The Association shall have and hereby reserves the right to modify, relocate, or grant and/or reserve additional easements over, under, and upon the Property or portions thereof (including the portion of Lots where no physical structure of the Unit is located) which may be necessary or desirable by the Association. The Owners hereby authorize the Association to execute, on their behalf and without any further authorization, such modifications, relocations, and grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Property or portions thereof in accordance with the provisions of this Declaration. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots.

4.10 Subordination. Notwithstanding any of the foregoing to the contrary, it is understood that these covenants and restrictions are subordinate and will be subordinate without the necessity of any other instrument, to any existing easement or easements to any public or quasi-public utility for the installation and maintenance of service lines on the Common Areas.

4.11 Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) the right of the Association, in accordance with its Governing Documents, to borrow money for the purpose of improving and/or maintaining the Common Areas and

- providing the services herein, and, in aid thereof, to mortgage said properties;
- (b) the right of the Association to a non-exclusive easement over, across, and through each Lot as necessary to meet the Association's maintenance responsibilities;
 - (c) Easements over and upon the Common Areas in favor of the Country Club, the Community Association, and all other associations governing certain other lots within Eagle Creek and in favor of all persons having the right to use the common areas governed by the Community Association or any such other association; provided, however, that this subsection shall not, in itself, be deemed to grant any easements or use rights which are not specifically granted elsewhere herein or in any other document to which the Property is now or hereafter subject;
 - (d) The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration;
 - (e) The right of the Association to suspend the Member's (and the Member's family members, tenants, guests, and invitees') right to use the recreational facilities for any period during which any assessment against the Lot remains unpaid;
 - (f) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities situated on the Property;
 - (g) The right of the Association and the Community Association to adopt at any time and from time to time and enforce rules and regulations governing the use of the Common Areas and the Lots and all facilities at any time situated thereon, including the right to fine Members. Any rule or regulation so adopted by the Association or the Community Association shall apply until rescinded or modified as if originally set forth at length in this Declaration;
 - (h) The right of the Association to have, grant, and use general ("blanket") and specific easements over, under, and through the Common Areas;
 - (i) The right of Association, by a 2/3rds affirmative vote of the entire membership, to dedicate or convey portions of the Common Areas to the Community Association or any public or quasi-public agency, community development district, or similar entity under such terms as the Association deems appropriate and to create (subject to Community Association approval) or contract with the Community Association, the Country Club, community development and special taxing districts for lighting, roads, recreational, or other services, security, or communications, and other similar purposes deemed appropriate by the Association (to which such dedication or contracts all Owners, by the acceptance of the deeds to their Lots, shall be deemed to have consented, no consent of any other party, except the Declarant, being necessary); and
 - (j) The rights of the Country Club provided for herein, in the Master Covenants or as may otherwise exist as law or by agreement.

5. MAINTENANCE.

5.1 Common Areas. The Association shall, in addition to other maintenance obligations contained elsewhere herein, have the maintenance, repair, and replacement responsibility for the

Common Areas and all improvements and facilities located over, through, and upon the Common Areas, including, to the extent not otherwise provided for by the Community Association, Country Club, or other parties, the paving (except the walkways and driveways), drainage structures, landscaping, improvements, and other structures (except public utilities, to the extent they have not been made Common Areas), situated on the Common Areas, if any, all such work to be done as ordered by the Board of Directors. Maintenance of street lighting fixtures shall include and extend to payment for all electricity consumed in their illumination.

5.2 Maintenance Chart. With respect to any maintenance of the Units or the Lots not addressed in this Declaration, the Association has maintained and shall continue to maintain a chart defining the respective maintenance, repair, and replacement obligations of the Association and the Owners (hereinafter "Maintenance Chart"). The Maintenance Chart may be amended from time to time by a majority vote of the Board of Directors. In the event of a conflict between the Maintenance Chart and this Declaration, this Declaration shall control.

Except as otherwise provided herein or by the Maintenance Chart, the Lot Owners shall keep and maintain the Lot, Unit, and the other improvements on the Lot, including equipment and appurtenances, in good order, condition, and repair, and must promptly perform all maintenance, repair, and replacement work within, upon, and outside the Unit which, if omitted, could adversely affect Eagle Creek Villa Homes, other Owners, or the Association and its Members. The Lot and all structures, including the Unit, shall be maintained in a neat, orderly, and attractive manner and consistent with the general appearance of the Property and Eagle Creek as a whole. The minimum, though not sole, standard for the foregoing shall be consistent with the general appearance of the Property and Eagle Creek as initially constructed.

5.3 Lot Maintenance. The Community Association shall maintain the Lots by mowing, trimming, pruning, and fertilizing landscaping. All maintenance of the Lots not performed by the Community Association shall be performed by the Association or the Owners in accordance with the Maintenance Chart.

5.4 Unit Maintenance. The Association shall be responsible for exterior painting of the Units and any other maintenance required to be performed by the Association pursuant to the Maintenance Chart. Except as otherwise provided herein or by the Maintenance Chart, the Unit Owner shall be responsible for the maintenance, repair, and replacement of the Unit, including, but not limited to, the following:

- (a) All interior walls, floors, ceilings, partitions, cabinets, plumbing, and all other interior components;
- (b) Interior and exterior electrical lines and hookups, all air conditioning components, appliances, TV cables and connections, telephone, and other similar lines and connections, water lines, sewer pipes, and septic systems serving the individual Lot;
- (c) Insect and pest control within the Unit, except to the extent that the Association elects to contract for such services;
- (d) Climate control, keeping the Unit clean, promptly repairing any leaks, and taking necessary measures to retard and prevent mold, fungi, mildew, and mycotoxins from accumulating in the Unit.

(e) The roof and all roofing components of the Unit.

5.5 **Party Walls.** Each wall and fence built as part of the original construction of the Units or Lots upon the Property and placed on the dividing line, as shown on the site plan of the Property, between the Lots thereof and acting as a commonly shared wall or fence shall constitute a party wall, and each Owner shall own that portion of the wall and fence which stands on his own Lot, with a cross-easement of support in the other portion. If a wall or fence separating two (2) Units or Lots, and extensions of such wall or fence, shall lie entirely within the boundaries of one Lot, such wall or fence, together with their extensions, shall also be a party wall and the Owner of the adjacent Lot shall have a perpetual easement to maintain the encroachment. Easements are reserved in favor of all Lots over all other Lots and the Common Areas for overhangs or other encroachments resulting from original construction and reconstruction. Anything to the contrary herein notwithstanding, where adjacent Units share only a portion of a wall (e.g., where a one-story Unit abuts a two-story Unit), only that portion of the wall actually shared by both Units shall be deemed a party wall. That portion of the wall lying above the one-story Unit and used exclusively as a wall for the second floor of the abutting two-story Unit shall not be deemed a party wall but shall be maintained and repaired exclusively by the Owner of the two-story Unit even if lying in whole or in part on the abutting Lot. Easements are reserved over the abutting Lot on which the one-story Unit is constructed and over the roof and other portions of such abutting one-story Unit to permit the upper portion of the wall of the two-story Unit to be maintained and repaired by the Owner of the Lot on which such two-story Unit is constructed.

- (a) **Sharing of Repair and Maintenance.** The costs of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.
- (b) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore same but shall not construct or extend same to any greater dimension than that existing prior to such fire or other casualty, without the prior written consent of the adjacent Lot Owner. The extension of a party wall used by only a two-story unit abutting a one-story Unit shall be promptly and diligently repaired and/or replaced by the Owner of the two-story Unit at his sole cost and expense, even if lying in whole or in part on the abutting Lot. No part of any addition to the dimensions of said party wall, or of any extension thereof already built, that may be made by any of said Owners, or by those claiming under any of them, respectively, shall be placed upon the Lot of the other Owner, without the written consent of the latter first obtained, except in the case of the wall of a two-story Unit. If the other Owner thereafter makes use of the party wall, he shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.
- (c) **Weatherproofing.** Notwithstanding any other provision of this Section 5, any Owner who, by his negligent or willful act, causes that part of the party wall not previously exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (d) **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Section 5.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. Upon conveyance or other transfer of title, the liability of the prior Owner shall cease.

- (e) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 5.5, each party shall choose one arbiter, and such arbiters shall choose one additional arbiter, and the decision of a majority of all the arbiters shall be final and conclusive of the question involved. If a panel cannot be designated pursuant hereto, the matter shall be arbitrated pursuant to the rules of the American Arbitration Association, or its successors in function. Any decision made pursuant to this Section 5.5 shall be conclusive and may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code.

5.6 Shared Roof Maintenance; Disputes. In the event of a dispute between Owners regarding the maintenance, repair, or replacement of a shared roof, the matter shall be submitted to arbitration upon the written request of any of the adjacent Owners of the common roof. Arbitration shall take place within twenty (20) days of a written request and the arbitration committee shall consist of three (3) members appointed by the Board of Directors. The arbitration committee shall timely issue a written decision and the committee decision shall be binding on the adjacent Owners. Neither the arbitration committee nor any member thereof, nor its duly authorized committee representative, shall be liable to the Association or any Owner or any other person or entity for any loss, damage, or injury arising out of or in any way connected with the performance or nonperformance of the committee's duties hereunder, unless due to the willful misconduct or bad faith of a member, and only that member shall be liable therefore. The committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval from the standpoint of structural safety or conformance with building, health, or other codes.

If an Owner shall refuse to repair or reconstruct the shared roof as required by the arbitration committee, or to pay his or her share of the cost, the Association may, but shall not be obligated to, have the shared roof repaired or reconstructed and shall be entitled to a lien on the parcel of the Owner so failing to perform the necessary maintenance, together with attorneys' fees and costs incurred by the Association and incident to collection in the same manner as an individual assessment. In the event repairs or replacement shall be necessary, all necessary entries on the adjacent parcels shall not be deemed a trespass so long as the repairs and replacement shall be done in a workmanlike manner, and consent is hereby given to enter on the adjacent parcels to effect necessary repairs and replacement.

5.7 Other Properties. To the extent permitted by the appropriate governmental authority, the Association may, but shall not be obligated to, also provide maintenance of all City, County, district, or municipal properties, which are located within or in a reasonable proximity of the Property to the extent that their deterioration or unkempt appearance would adversely affect the appearance of the Property, including the right to enhance the landscaping in any public right of way.

5.8 Cost of Maintenance. All expenses incurred or allocated to the Association pursuant to this Declaration and the Maintenance Chart shall be paid for by the Association through assessments (either general or specific) imposed in accordance herewith. The Community Association, on behalf of itself and/or the Association and/or other affected associations, shall have the power to incur, by way of contract, the provisions of the Master Covenants, or otherwise, expenses general to all or applicable portions of Eagle Creek and the Community Association shall then allocate portions of such expenses among the Community Association, the Association and other affected associations based on such formula as may be adopted by the Community Association, or as provided in the covenants administered thereby. The portion of Community Association maintenance expense for Lots allocated to the Association shall be deemed a general expense (or in the case of charges applicable to only one

or more specific Lots to the exclusion of others, a special expense to be allocated only among the affected Lots), collectible through assessments (either general or special) against applicable Lots.

5.9 Association's Right of Entry. The Association has a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of Eagle Creek Villa Homes.

5.10 Incidental Damages. Should any incidental damage be caused to any Lot by virtue of any work which may be performed or caused to be performed by the Association in the maintenance, repair, or replacement of the Common Areas, the Association shall, at its expense, repair such incidental damage. The Association shall not, however, be responsible for any loss of use, hardship, Owner's time, or any other consequential or punitive damages.

5.11 Negligence or Misuse by Owner. Should the maintenance, repair, replacement, and other obligations provided for above be caused by the negligence of or misuse by an Owner or such Owner's family, guests, invitees, or tenants, such Owner shall be responsible therefor, and the Association shall have the right to levy an assessment against such Owner's Lot and said assessment shall constitute a lien upon the Lot.

5.12 Modifications and Alterations. The Lot Owner shall be responsible for insurance, maintenance, repair, and replacement of all modifications, alterations, installations, or additions to the Lot or Common Areas made by the Lot Owner or his predecessors in title with approval, and the cost of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the properties for which the Association is responsible.

5.13 Liability for Damages Caused by Failure to Maintain Lot; Negligence. The Owner of each Lot shall be responsible for any damages caused by a failure to so maintain the Lot and the Unit, and any other improvements thereon. Each Lot Owner shall be liable for the expenses of any maintenance, repair, or replacement of Common Areas, other Lots or Units, or personal property made necessary by his act or negligence or by that of any member of his family or his guests, employees, agents, or lessees.

5.14 Enforcement of Maintenance. If the Owner of a Lot fails to maintain his Lot as required by the Governing Documents or as required by the Community Association, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including, but not limited to, entering the Lot and remedying the violation, with or without consent of the Lot Owner, but only after ten (10) days' written notice of intent to do so. The Association may repair, replace, or maintain any item which constitutes a hazard to other property or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the Property. Any expenses so incurred by the Association shall be billed directly to the Owner of the Lot to which such services are provided and shall be an individual assessment charged against the Lot, secured by a lien against the Lot as provided in Section 3 above. Further, if the failure to comply relates to the Owner's obligations to maintain insurance, the Association shall be entitled, although not obligated, to obtain the required coverage itself and to levy on the offending Owner an assessment equal to the cost of premiums, and any such assessment shall constitute a lien upon the applicable Lot and Unit with the same force and effect as a lien for assessments. The determination of whether an Owner is failing to properly maintain

and care for the property for which he has the maintenance responsibility under the Governing Documents shall be determined in the sole discretion of the Association.

6. **USE RESTRICTIONS.** All of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions and the Governing Documents, which may, from time to time, be amended.

6.1 **Architectural Control.** All Owners shall at all times comply with the architectural review provisions of this Declaration and the Master Covenants. All architectural review provided for in or pursuant to this Declaration and the Master Covenants shall be exercised and enforced by the Community Association. However, the Community Association may delegate (subject to later re-assumption) to the Association all or any part of such rights and duties, on an exclusive or non-exclusive basis, upon written notice and acceptance of the Association. In the event that the Community Association delegates any architectural review functions to the Association in accordance with the Master Covenants or this Section 6.1, the Association may, in the Board's sole discretion, establish an architectural review committee, which, together with the Board, to the extent applicable, shall enforce and be bound to follow the architectural review provisions of the Master Covenants.

Without limiting the generality of any provision hereof giving the Master Covenants priority over this Declaration, no architectural approval shall be effective if same is in violation of, or inconsistent with, the Governing Documents or any standards imposed thereby or policies or other things adopted or done by the Community Association in connection therewith.

6.2 **Unit.** Each Unit shall be occupied by only one family at any time. Each Unit shall be used as a home and for no other purpose. However, "no impact" or "low impact" home-based business in and from a Unit are allowed. Such uses are expressly declared customarily incident to residential use. Examples of businesses which are prohibited and are considered "impact" businesses are businesses or commercial activity or ventures that create customer traffic to and from the Unit, create noise audible from outside the Unit, or generate fumes or odors noticeable outside the Unit, including but not limited to, a home daycare, beauty salon/barber, and animal breeding. This provision is intended to be and shall be retroactive to and effective from the date of recording of the original Declaration, however, any persons in violation of this amended provision on the date it is recorded in the Public Record shall be given a grace period of up to ninety (90) days to comply before enforcement action shall be commenced. In order to avoid undue hardship, the Board of Directors may, in its sole discretion, extend the grace period once for up to an additional ninety (90) days.

6.3 **Animals.** No animals of any kind, including reptiles, monkeys, rodents, amphibians, poultry, swine, rabbits, ferrets, horses, wildlife, livestock, and poultry, shall be raised, bred, or kept on any Lot, except no more than two (2) household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any neighbor by reason of barking or otherwise. All pet owners are required to ensure that their pets are compliant with all applicable ordinances regarding licensing, vaccinations, etc. of pets. No dogs or other pets shall be permitted to have excretions on any Common Areas, except areas designated by the Association, and Owners shall be responsible to clean-up any such improper excretions. For purposes hereof, "household pets" shall mean dogs, cats, and other animals expressly permitted by the Association, if any. Pets shall also be subject to all applicable rules and regulations. Nothing contained herein shall prohibit the keeping of fish or domestic (household-type) birds, as long as the latter are kept indoors and do not become a source of annoyance to neighbors. Animals must be

leashed at all times when outside the Owner's Unit. An Owner shall immediately pick up and remove any solid animal waste deposited by the Owner's pet on the Property. Keeping of animals is a privilege, not a right, and the Board of Directors is empowered to fine an Owner and/or order and enforce the removal of any animal that becomes a source of unreasonable annoyance or a danger to the health, safety, and welfare of other residents. No pet shall be kept tied up outside of a Unit or in any screened porch or patio, unless someone is present inside the Unit. An Owner is responsible for the cost of repair or replacement of any Common Areas damaged by such Owner's pet. No commercial breeding or boarding of animals of any type is allowed. Each Owner who determines to keep a pet hereby agrees to indemnify the Association and hold the Association harmless against any loss or liability of any kind or character whatsoever arising from or growing out of such Owner having any animal on the Property.

6.4 Nuisances. No Owner shall use his Unit or Lot, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another Unit, or which would not be consistent with the maintenance of the highest standards for a first-class residential community nor permit the premises to be used in a disorderly or unlawful way. No use or practice shall be allowed in or around the Units or Lots which interferes with the peaceful possession or proper use of the Units or the surrounding areas. No loud noises or noxious odors as determined by the Board shall be permitted in any improvements, Units, or Lots. 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, unlicensed off-road motor vehicles, or any items which may unreasonably interfere with television or radio reception of any Owner, shall be located, used, or placed on any Lot, or exposed to the view of other Owners without the prior written approval of the Board. The use of each Unit shall be consistent with existing laws and the governing documents, and Occupants shall at all times conduct themselves in a peaceful and orderly manner. No solicitation will be allowed at any time within the community. The Board of Directors' determination as to what constitutes a nuisance or annoyance shall be dispositive and shall control without regard to any legal definition of such terms.

6.5 No Improper Use. No improper, offensive, hazardous, or unlawful use shall be made of any Unit or Lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Property. All valid laws, zoning ordinances, orders, rules, regulations, codes, and other requirements of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, ordinances, orders, rules, regulations, codes, or other requirements of any governmental agency having jurisdiction thereover relating to any Unit or Lot shall be corrected by, and at the sole expense of, the Owner of said Unit and/or Lot.

6.6 Signs. No sign of any kind shall be displayed to the public view on the Property, except only one sign of not more than one (1) square foot used to indicate the name of the resident or one sign of not more than five (5) square feet advertising the property for sale or for rent, in locations and in accordance with the ARC Handbook. No sign of any kind shall be permitted to be placed inside a Unit or on the outside walls of the Unit or on any fences within the Property, nor on the Common Areas, nor on dedicated areas, nor on entryways or any vehicles within the Property, except such as are placed by the Association. Without limiting the generality of this Section 6, in the event that similar requirements of the Community Association are more restrictive than those set forth herein, such more restrictive requirements shall supersede and control.

6.7 Trash and Other Materials. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on the Lots and/or Common Areas, or other portions of the Property, except in sanitary, self-locking containers approved by applicable waste management authority and located in appropriate areas (not visible from the street or any other Lot other than at times of scheduled trash pick-up), and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, offensive, detrimental, or a nuisance to Owners or to any other property in the vicinity thereof or to its occupants. Recycle and trash receptacles shall not be put on the curb for pick-up prior to 6:00 p.m. the night before the scheduled pick-up and shall be removed from the curb no later than 6:00 p.m. the day of pick-up. No stripped vehicles, lumber, or other building materials, grass, tree clippings, metals, scrap, automobile pieces or parts, refuse, or trash shall be stored or allowed to accumulate on any portion of the Property (except when accumulated during construction approved by the ARC or when accumulated by the Association for imminent pick-up and discard).

6.8 Temporary Structures. No tent, shack, shed, or other temporary building or improvement shall be placed upon any portion of the Property, either temporarily or permanently. No trailer, motor home, or recreational vehicle shall be: (a) used as a residence, either temporarily or permanently, or (b) parked upon the Property.

6.9 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, boring, or mining operations of any kind shall be permitted upon or on any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot. No gas tank, gas container, or gas cylinder shall be permitted to be placed on a Lot, except for one (1) gas cylinder, not to exceed 20 lbs., connected to a barbecue grill.

6.10 Sewage Disposal. No individual sewage disposal system shall be permitted on any of the Property, provided that a central sewage disposal system is being operated in accordance with the requirements of the governmental regulatory body having jurisdiction over said central system.

6.11 Water Supply. No individual water supply system shall be permitted on any of the Property, provided that one or more central water supply systems are being operated in accordance with requirements of the governmental body having jurisdiction over said central system.

6.12 Increase in Insurance Rates. No Owner or other person may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering the Property or with respect to any portion of the Property not owned by such Owner.

6.13 Commercial Trucks, Trailers, Campers and Boats.

- (a) No trucks or commercial vehicles, or campers, mobile homes, motorhomes, house trailers, or trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers, or vans, shall be permitted to be parked or to be stored at any place on the Property, nor in dedicated areas, except in (i) enclosed garages and (ii) spaces for some or all of the above specifically designated by the Association, if any. For purposes of this Section 6.13, "commercial vehicles" shall mean those which are not designed and used for customary, personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The prohibitions on parking contained in this

Section 6.13 shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up and delivery and other commercial services, nor to passenger-type vans for personal use which are in acceptable condition. No on-street parking or parking on lawns shall be permitted, except as is otherwise provided in the Master Covenants with respect to golf or tennis tournaments and related activities.

- (b) Subject to applicable laws and ordinances, the Association is authorized to tow or place a disabling "boot" on any vehicle parked in violation of these or other restrictions contained herein or in the Rules and Regulations now or hereafter adopted, if such vehicle remains in violation for a period of twenty four (24) hours from the time a notice of violation is placed on the vehicle, and the cost of towing and/or booting shall be the obligation of the owner of the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion, or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean campers, mobile homes, and trailers. And affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

6.14 Parking and Vehicular Restrictions. Parking upon the Property shall be restricted to the driveway and garage located upon each Lot and designated parking areas within the Common Areas. No storage of any items, materials, or other personal property in the garage of a Unit is permitted to the extent such storage would limit or prohibit the use of the garage for the parking of vehicles. No parking on the streets or swales is permitted except as may be expressly permitted in the Governing Documents. No person shall keep any vehicle on any Lot which is deemed to be a nuisance by the Board. No repairs shall be conducted taking more than twenty-four (24) hours (except in an emergency or except within the garage of the Unit with the garage door closed) or restorations of any motor vehicle, boat, trailer, golf cart, or other vehicle upon any Lot.

6.15 Fences. No fences shall be permitted on any Lot or portion thereof except as originally installed when the Lot was developed.

6.16 Opening Blank Walls; Removing Fences. No Owner shall make or permit any opening to be made in any blank wall (except as such opening is initially installed) or masonry wall or fence. No such building wall or masonry wall or fence shall be demolished or removed without the prior written consent of the Association and the ARC.

6.17 Visibility at Intersections. No obstructions to visibility at street intersections or Common Area intersections shall be permitted.

6.18 No Drying. No clothing, laundry, or wash shall be aired or dried on any portion of the Property except on a portion of a Lot which is completely screened from the view of all persons other than those on the Lot itself. No towels, garments, rugs, etc., may be hung from windows or other parts of the Units.

6.19 Lakefront Property. As to all portions of the Property which have a boundary contiguous to any lake or other body of water, the following additional restrictions shall be applicable:

- (a) No boathouse, dock, wharf, or other structure of any kind shall be erected, placed, altered, or maintained on the shores of the lake.
- (b) No boat, boat trailer, or vehicular parking or use of lake slope or shore areas shall be permitted.
- (c) No solid or liquid waste, litter, or other materials may be discharged into/onto or thrown into/onto any lake or other body of water or the banks thereof.

6.20 Air Conditioning Units and Reflective Materials. No window or wall air conditioning units shall be permitted on any Lot. Compressors and fans for central air conditioning or heat pump systems which are located outside the exterior of a building shall be adequately screened to prevent their being viewed from any street, the golf course and adjacent Lot or Lots. No building shall have any aluminum foil placed in any window or glass door or any reflective substance or other materials (except standard window treatments) placed on any glass, except such as may be approved by the ARC or its equivalent for energy conservation purposes.

6.21 Renewable Resource Devices. Nothing in this Declaration shall be deemed to prohibit the installation of energy devices based on renewable resources (e.g., solar collector panels); provided, however, that same shall be installed only in accordance with the reasonable standards adopted from time to time by the Community Association and the ARC, or by the Board if such authority is delegated by the Community Association. Such standards shall be reasonably calculated to maintain the aesthetic integrity of the Property and Eagle Creek, without making the cost of the aforesaid devices prohibitively expensive.

6.22 Antenna. No antenna of any kind shall be placed or erected upon any Lot or affixed in any manner to the exterior of any building other than a satellite antenna less than one meter in diameter, an aerial designed to receive over-the-air television broadcast, or an antenna designed to receive multichannel, multi point distribution service, which may be installed only at a location on a Lot approved by the ARC. In approving the installation and location of any antenna, the ARC shall comply with all applicable laws, whether state or Federal.

6.23 Leasing, Transfer, and Occupancy of Lots. In order to foster a stable and congenial residential community and prevent a motel-like atmosphere, the leasing, conveyance, and occupancy of the Lots shall be subject to and regulated by the Community Association as provided in the Master Covenants.

All leases of Units must be in writing. An Owner may lease only his or her entire Unit, and then only in accordance with this Declaration and the Master Covenants. The lessee must be a natural person as opposed to an artificial entity such as a corporation, partnership, trust, etc. No subleasing or assignment of lease rights by the lessee is permitted. To prevent overtaxing of the facilities, an Owner whose Unit is leased may not use the recreation or parking facilities during the lease term.

All of the provisions of the Governing Documents of the Association shall be applicable and enforceable against any person occupying a Unit as a lessee or guest to the same extent as against the Owner. A covenant on the part of each occupant to abide by the Governing Documents, designating the Association as the Owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

7. **INSURANCE.** In order to adequately protect the Association and its Members, insurance shall be carried and kept in force at all times in accordance with the following provisions. The amounts of coverage shall be determined annually by the Board of Directors.

7.1 **Insurance Maintained by Association.** The insurance carried by the Association shall afford at least the following provisions:

- (a) **Casualty.** All improvements located on the Common Areas from time to time, together with all fixtures, building service equipment, personal property, and supplies constituting the Common Areas or owned by the Association, if any (collectively the "Insured Property"), which shall be insured in an amount not less than one hundred percent (100%) of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against (i) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and (ii) such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism, malicious mischief and those covered by the standard "all risk" endorsement. Such coverage shall be in the name of the Association on behalf of itself and each Owner and Mortgagee, as their respective interests may appear.
- (b) **Liability.** Comprehensive general public liability and automobile liability insurance covering injury, loss, or damage resulting from accidents or occurrences on or about or in connection with the Common Areas or adjoining driveways and walkways, or any work, matters, or things related to the Common Areas (including, but not limited to, liability arising from lawsuits related to employment contracts to which the Association is a party), with such additional coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for bodily injury and property damage for each accident or occurrence with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa. The liability insurance shall provide for, among other things, coverage of bodily injury and property damage resulting from the operation, maintenance, or use of the Common Areas and any legal liability resulting from employment contracts to which the Association is a party.
- (c) **Directors and Officers Liability Coverage.** Adequate directors' and officers' liability coverage.
- (d) **Other insurance.** The Association may also maintain worker's compensation or such other insurance as the Board may reasonably determine from time to time is necessary to protect the health, safety, and welfare of the Owners.

7.2 **Premiums.** Premiums on insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium occasioned by misuse, occupancy, or abandonment of any one or more Units or their appurtenances or of the Common Areas by, or any other action or omission of, particular owners shall be assessed

against and paid by such Owners. Premiums may be financed in such manner as the Board of Directors deems appropriate.

7.3 Condemnation. In the event the Association receives any award or payment arising from the taking of any Common Areas or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and improvements thereon to the extent deemed advisable by the Board and approved by at least two-thirds (2/3) of the total Voting Interests, and the remaining balance thereof, if any, shall then be distributed pro rata to Owners and mortgagees of Lots, as their respective interests may appear.

7.4 Insurance Maintained by Owners. Each Lot Owner shall at all times maintain flood insurance if mandated by FEMA and casualty insurance on his or her Unit in an amount equal to the full insurable replacement value thereof. The Association shall be named as a Certificate Holder and as an Additional Interest on the insurance policy. In the event that an Owner fails or refuses to procure or maintain insurance as provided herein, the Association may purchase such insurance for the Owner and charge the premium to the Owner, which charge may be collected in the same manner as assessments, in accordance with Section 3. Owners shall provide evidence of said coverage annually and failure to provide proof of coverage shall be deemed a violation of this Section 7.4. The Association shall not be deemed to have assumed any duty to guarantee that all Owners maintain the coverages set forth in this Section 7.4 or as required by law or otherwise.

7.5 Duty to Reconstruct.

- (a) If any Unit or other improvements located on any Lot or Unit are destroyed or damaged, the Owner shall cause repair or replacement to be commenced within ninety (90) days from the date that such damage or destruction occurred, and to complete the repair or replacement within nine (9) months thereafter, unless each and every Owner of a Unit in the building containing the substantially damaged Unit elects, with the consent of their respective mortgagees, not to rebuild or restore the applicable Unit. All such repairs or replacements must restore the improvements to substantially their original character, design, and condition and shall utilize and conform with the original foundation and appearance of the original improvements, except as otherwise approved by the ARC, such that when the work is completed, the exterior of the Unit shall have an appearance which is as close as feasible to its original appearance and to that of the adjoining Unit(s).
- (b) The Unit Owner shall be responsible for promptly repairing, restoring or reconstructing all damaged portion(s) of the Unit and Lot, at his or her sole cost and expense. All such repair, restoration, and/or reconstruction shall be made in accordance with the original plans and specifications for the Unit so that when such work is completed the exterior of the Unit shall have an appearance which is as close as feasible to its original appearance and to that of the adjoining Unit(s). It shall be permissible, however, for the Owner to make such changes to the interior of the Unit as such Owner desires as long as same (1) are consistent with, and permitted under, Section 6; (2) do not otherwise negatively effect in any manner the structural integrity of the overall building (i.e., cluster of Units) in which the applicable Unit is located; and (3) do not result in a change in the exterior appearance of the Unit. Changes in the Unit and/or plans and

specifications therefor which are required by changes in building codes and/or other applicable laws, ordinances, rules or codes shall likewise be permitted, provided that the Owner(s) shall use his or her best efforts to cause the exterior appearance of the Unit as repaired, restored, or reconstructed to be as close possible to its original appearance. The Board of Directors may, based on its sole and exclusive discretion, extend the time periods for reconstructions contained herein.

- (c) In the event that the Association receives any insurance proceeds as a result of a casualty damage or loss as aforesaid, the Association shall hold and disburse same for the repair, restoration, or reconstruction of the Unit as required herein in such manner as is reasonably necessary to ensure the proper application of such proceeds; provided however, that if such proceeds are received as a result of concomitant damage to Common Areas, they shall first be applied to the repair, restoration, or reconstruction of the Common Areas so damaged, and the administrative and other costs incurred by the Association in such regard, with any remaining sums to then be applied to the repair, restoration, or reconstruction of the applicable Unit to the extent such application would not constitute a prohibited distribution of income under Chapter 617, Florida Statutes.
- (d) Without limiting the generality of Section 7.1 and this Section 7.5, the provisions of this Section 7.5 may be enforced by any party entitled to do so by appropriate action(s) under this Declaration and/or at law or equity, including specific performance and injunctive relief; provided, however, that the provisions of this Section 7.5 may be waived in whole or in part for good cause shown as long as such waiver is approved, in writing, by the following parties: the Association, the Community Association, any mortgagee of the applicable Unit, and the Owners and mortgagees of all Units in this building/cluster in which the applicable Unit is or was located.

7.6 Failure to Reconstruct. If the Owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 7.5 above, the Association shall give written notice to the Owner of his or her default. If after thirty (30) days the Owner has not made satisfactory arrangements to meet his or her obligations, the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the Unit and other improvements on the Lot. If the Association exercises the rights afforded to it by this section 7.6, which shall be in the sole discretion of the Board of Directors, the Owner of the Lot shall be deemed to have assigned to the Association any right he or she may have to insurance proceeds that may be available because of the damage or destruction of the Unit and improvements. The Association shall have the right to recover from the Owner any costs not paid by insurance and shall have a lien on the Lot and Unit to secure payment.

7.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners, and their mortgagees, as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, to hold the same in trust, and to disburse them for the purposes stated herein and for the benefit of the Owners and their respective mortgagees in the following shares:

- (a) Common Areas. Proceeds on account of damage to the Common Areas shall be

held in as many undivided shares as there are Lots, the shares of each Owner being the same as his share in the Common Areas.

- (b) **Mortgagee.** If a mortgagee endorsement has been issued as to a Unit, the shares of the mortgagee and the Owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against a Lot or Lots, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Owners in the following manner: The proceeds shall be paid to defray the costs of reconstruction or repair by the Association. Any proceeds remaining after defraying costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being paid jointly to them.

7.8 **Association as Agent.** The Association is hereby irrevocably appointed as agent for each Lot Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Units, Lots, or Common Areas.

7.9 **Damage to Common Areas.** Where loss or damage occurs to the Common Areas, it shall be mandatory for the Association to repair, restore, and rebuild the damage caused by the loss, unless within one hundred and eighty (180) days of the loss or damage a majority of the Voting Interests of the Association vote not to repair, restore, and rebuild the damage, and the following procedures shall apply:

- (a) The Board of Directors shall promptly obtain reliable and detailed estimates for the cost of repair and restoration and shall negotiate and contract for repair and reconstruction.
- (b) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Common Areas, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Lot Owners for the deficiency. Such special assessment need not be approved by the Lot Owners. The special assessment shall be added to the funds available for repair and restoration of the Property.

8. AMENDMENTS; TERMINATION.

8.1 **Amendments by Members.** Except as otherwise provided herein or by law, this Declaration may be amended at any time by the affirmative vote of at least two thirds (2/3) of the Voting Interests present and voting, in person or by proxy, at a duly called meeting of the members of the Association. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration is recorded and shall be executed by the 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 Collier County, Florida. Any proposed amendment to the Declaration which would affect the surface water

management system (including the water management portions of the Common Areas), shall be submitted to the Water Management District and any other governmental or quasi-governmental agency having jurisdiction over the surface water management system for a determination of whether the proposed amendment necessitates a modification of the Water Management District Permit for the Property.

8.2 Duration of Covenants. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association and any Owner or their respective legal representatives, heirs, successors, and assigns, for an initial period that expires on the ninety-ninth (99th) anniversary of the date of recordation of the Declaration of Covenants, Restrictions and Easements for Eagle Creek Villa Homes. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder 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; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4ths) of the votes cast at a duly held meeting of Members of the Association vote in favor of terminating this Declaration at the end of its then current term. Written notice of any meeting at which such a proposal will be considered shall be given at least forty-five (45) days before the meeting. If the Members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. The certificate shall be recorded in the Public Records of Collier County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

9. ENFORCEMENT; GENERAL PROVISIONS.

9.1 Enforcement. Enforcement of these covenant, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Association, its successors, or assigns, or by any Owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition, or restriction, either to restrain violation or to recover damages, and against any Lot to enforce any lien created by these covenants. Failure of the Association or any Owner to enforce any covenants, condition, or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter. Without limiting the generality of the foregoing, an Owner shall also be responsible for the payment of any and all legal fees incurred by the Association in connection with the enforcement of the Governing Documents, whether or not an action is actually begun. Any such legal fees shall be paid not later than thirty (30) days after written notice thereof and if not paid within such thirty (30) day period, shall constitute a lien upon the applicable Lot and Unit with the same force and effect as a lien for annual assessments.

9.2 Owner and Member Compliance. The protective covenants, conditions, restrictions, and other provisions of the Governing Documents shall apply to Members and all persons to whom a Member has delegated his or her right of use in and to the Common Areas, as well as to any other person occupying any Unit under lease from the Owner or by permission or invitation of the Owner or his tenants (express or implied), and their licensees, invitees, or guests. Failure of any 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 Lot Owner shall be responsible for any and all violations by his tenants, licensees, invitees, or guests and by the guests, licensees, and invitees of his tenants, at any time.

9.3 Litigation. Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of law, or of the Governing Documents, may be brought by any Owner or the Association against:

- (a) the Association;
- (b) the Lot Owner;
- (c) anyone who occupies or is a tenant or guest of a Lot; or
- (d) any officer or Director of the Association who willfully and knowingly fails to comply with these provisions.

9.4 Attorney Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, residential Lot Owner, officer, Director, or the Association to comply with the requirements of the law or the Governing Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney's fees as may be awarded by the court.

9.5 No Election of Remedies. All rights, remedies, and privileges granted to the Association or the Owners under the law and the Governing Documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

9.6 Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, to the last known address of the Owner appearing in the records of the Association, or to the address of the Member's Unit. Notice to one of two or more co-Owners of a Lot shall constitute notice to all co-Owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address.

9.7 Severability. Should any covenant, condition, or restriction herein contained, or any section, subsection, sentence, clause, phrase, or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. Nothing contained in this Declaration is intended to affect vested rights. If any provision contained herein is deemed by a competent court of law to have such affect, then such provision will be deemed null and void but have no effect on the remaining provisions herein.

9.8 Interpretation; Disputes. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits and the other Governing Documents of the Association. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any

dispute as to whether the use of the Property complies with the covenants and restrictions contained in the Governing Documents, the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties.

9.9 Non-Profit Status. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its non-profit status under applicable state or federal law.

9.10 Use of Singular and Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

9.11 Headings. The headings used in the Governing Documents are for reference purposes only and do not constitute substantive matter to be considered in construing the terms and provisions of the documents.

10. DISCLAIMER OF LIABILITY OF ASSOCIATION. 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:

10.1 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;

10.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, COLLIER COUNTY, AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES. THE ASSOCIATION SHALL NOT BE RESPONSIBLE FOR THE PREVENTION OF DISEASE CAUSED BY PANDEMIC VIRUSES OR ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY SPECIAL OR CONSEQUENTIAL DAMAGES, PROPERTY DAMAGES, PERSONAL INJURY, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE, LOSS OF INCOME, DIMINUTION OR LOSS OF VALUE OF THE UNIT, ECONOMIC DAMAGES, AND ADVERSE HEALTH EFFECTS RELATING TO, ARISING FROM, OR CAUSED BY ANY PANDEMIC VIRUS, REGARDLESS OF THE CAUSE OF SAID PANDEMIC VIRUS. EACH UNIT OWNER (BY VIRTUE OF HIS OR HER ACCEPTANCE OF TITLE TO HIS OR HER UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY

USE OF, ANY PORTION OF THE PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS, DAMAGES, CAUSES OF ACTION, LIABILITIES LOSSES, AND EXPENSES, WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR UNFORESEEN, THAT PURCHASER, OWNER, AND INTEREST HOLDER HAS, OR MAY HAVE IN THE FUTURE, IN LAW OR IN EQUITY ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH A PANDEMIC VIRUS.

10.3 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.

10.4 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 CONNECT WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN.

10.5 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.

11. EXHIBITS

Exhibit "A" – Legal Description, as attached to the original Declaration, recorded at Official Record Book 1224, at Page 336, *et seq.*, of the Public Records of Collier County, Florida, as amended. Incorporated herein by reference only, but not attached.

Exhibit "B" – Amended and Restated Articles of Incorporation.

Exhibit "C" - Amended and Restated Bylaws.

NOTE: SUBSTANTIAL REWORDING OF ENTIRE DECLARATION. FOR PRESENT TEXT SEE EXISTING DECLARATION AND AMENDMENTS THERETO.

**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
EAGLE CREEK VILLA HOMES NO. 1 NEIGHBORHOOD ASSOCIATION, INC.**

Pursuant to Section 617.1007, Florida Statutes, these Articles of Incorporation of Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on March 28, 1986, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1002, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments, adopted pursuant to Section 617.1002, Florida Statutes, and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., shall henceforth be as follows.

ARTICLE I

NAME: The name of the corporation is Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., sometimes hereinafter referred to as the "Association".

ARTICLE II

PRINCIPAL OFFICE: The principal office of the corporation shall be as listed with the Florida Department of State Division of Corporations.

ARTICLE III

PURPOSE AND POWERS: This Association will not permit pecuniary gain or profit nor distribution of its income to its Members, officers, or Directors. It is a nonprofit corporation formed for the purpose of establishing a corporate residential community homeowners association which, subject to the Declaration of Neighborhood Covenants for Eagle Creek Villa Homes, originally recorded in the Public Records of Collier County, Florida, at O.R. Book 1224 at Page 336, *et seq.*, and as amended, has the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not for profit consistent with these Articles, the Bylaws of the corporation, and with said Declaration and shall have all of the powers and authority reasonably necessary or appropriate for the operation and regulation of a residential community, subject to said recorded Declaration, as it may from time to time be amended, including, but not limited to, the power:

(A) to fix, levy, collect, and enforce payment by any lawful means all charges, assessments, or liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes, or governmental charges levied or imposed against the property or the corporation;

(B) to make, amend, and enforce reasonable rules and regulations governing the use of the Association Property and the operation of the Association;

(C) to sue and be sued, and to enforce the provisions of the Declaration, the Articles, the Bylaws, and the reasonable rules of the Association;

(D) to contract for the management and maintenance of the Association Property and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;

(E) to employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the properties;

(F) to dedicate, sell, or transfer all or any part of the Association Property 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 dedication, sale, or transfer shall be effective unless first approved by two-thirds (2/3rds) of the Voting Interests, present and voting, in person or by proxy at a duly called meeting of the membership;

(G) to borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred if first approved by the Board;

(H) to maintain, repair, replace, and provide insurance for the Association Property;

(I) to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the corporation;

(J) to grant, rescind, modify, or move easements;

(K) to exercise any and all powers, rights and privileges which a corporation organized under Chapters 617 and 720 of Florida Statutes may now or hereafter have or exercise, subject always to the Declaration as amended from time to time.

All funds and the title to all property acquired by the Association shall be held for the benefit of the Members in accordance with the provisions of the Declaration, these Articles of Incorporation, and the Bylaws.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS: Membership and voting rights shall be as set forth in the Bylaws of the Association.

ARTICLE V

TERM; DISSOLUTION: The term of the Association shall be perpetual. The Association may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3rds) of the total Voting Interests of the Association. Upon dissolution of the Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was formed. In the event there is a refusal to accept such dedication, then such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization which is devoted to purposes similar to those of this Association.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Board of Directors or upon a petition of twenty-five percent (25%) of the Voting Interests at any regular or specially called meeting of the Members and shall be submitted to a vote of the Members not later than the next annual meeting.

(B) Vote Required. Except as otherwise required by Florida law or as provided elsewhere in these Articles, these Articles of Incorporation may be amended if the proposed amendment is approved by the affirmative vote of at least two thirds (2/3rds) of the Voting Interests who are present and voting, in person or by proxy, at a duly called meeting of the Members of the Association.

(C) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida with the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE VIII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors. Directors are required to be Members of the Association, except that if a Lot is owned by an entity, such entity may only appoint a partner, shareholder, member, manager, director, or officer of such entity on its behalf to be eligible to serve on the Board.

(B) Directors of the Association shall be elected by the Members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the Members of the Association and shall serve at the pleasure of the Board.

ARTICLE IX

INDEMNIFICATION:

(A) Indemnity. The Association shall indemnify any officer, Director, or committee member who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is

or was a Director, officer, or committee member of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their officers, Directors, and committee members as permitted by Florida law.

(B) Defense. To the extent that a Director, officer, or committee member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section (A) above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

(C) Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding on behalf of the affected Director, officer, or committee member. The Director, officer or committee member shall repay such amount if it shall ultimately be determined that said Director, officer or committee member is not entitled to be indemnified by the Association as authorized by this Article IX.

(D) Miscellaneous. The indemnification provided by this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a Director, officer, or committee member and shall inure to the benefit of the heirs and personal representatives of such person.

(E) Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, committee member, employee, or agent of the Association, or a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

(F) Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article IX may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

NOTE: SUBSTANTIAL REWORDING OF ENTIRE DECLARATION. FOR PRESENT TEXT SEE EXISTING DECLARATION AND AMENDMENTS THERETO.

**AMENDED AND RESTATED BYLAWS
OF
EAGLE CREEK VILLA HOMES NO. 1 NEIGHBORHOOD ASSOCIATION, INC.**

1. **GENERAL.** These are the Bylaws of Eagle Creek Villa Homes No. 1 Neighborhood Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on March 28, 1986, hereinafter the "Association." The corporation is organized under the laws of Florida as a community association for the purpose of operating a residential community. All prior Bylaws, if any, are hereby revoked and superseded in their entirety.

1.1 **Principal Office.** The principal office of the Association shall be as listed with the Florida Department of State Division of Corporations, unless otherwise changed by the Board of Directors.

1.2 **Seal.** The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit". The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced, or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.3 **Definitions.** Unless the context expressly requires otherwise, the terms used herein shall have the meanings set forth in the Amended and Restated Declaration of Covenants, Restrictions and Easements for Eagle Creek Villa Homes ("Declaration").

2. **MEMBERS.** The Members of the Association are the record owners of legal title to the Lots. In the case of a Lot subject to an agreement for deed, the purchaser in possession shall be deemed the Owner of the Lot solely for purposes of determining use rights.

2.1 **Change of Membership.** A change of membership shall become effective after all the following events have occurred.

(A) Recording in the Public Records of a deed or other instrument evidencing legal title to the Lot in the Member.

(B) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

(C) Designation, in writing, of a Primary Occupant, which is required when title to a Lot is held in the name of two (2) or more persons, or by a trustee or a corporation or other entity which is not a natural person.

2.2 **Voting Interests.** The Members of the Association are entitled to one (1) vote for each residential Lot owned by them. The total number of possible votes (the "Voting Interests") of the Association is the total number of residential Lots in Eagle Creek Villa Home No. 1, which is ninety-two (92). The vote of a Lot is not divisible. The right to vote may be suspended for non-payment of any monetary amounts that are delinquent in excess of ninety (90) days. If a Lot is owned by one (1) natural person, the right to vote shall be established by the record title to the Lot. If the Owner of a Lot is other than one natural

person, the vote of that Lot shall be cast by the Lot's Primary Occupant. All votes must be cast by an Owner or Primary Occupant.

2.3 Approval or Disapproval of Matters. Whenever the decision or approval of a Lot Owner is required upon any matter, whether or not the subject of an Association meeting, the decision or other response may be expressed by any person authorized to cast the vote of the Lot at an Association meeting, as stated in Section 2.2 above, unless the joinder of all record Owners is specifically required.

2.4 Change of Membership. A change of membership in the Association shall be established by the new Member's membership becoming effective as provided for in Section 2.1 above. At that time, the membership of the prior Owner shall be terminated automatically.

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

3. MEMBERS' MEETINGS; VOTING.

3.1 Annual Meeting. There shall be an annual meeting of the Members in each calendar year. The annual meeting shall be held in Collier County, Florida, at a time and place designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the Members.

3.2 Special Members' Meetings. Special Members' meetings must be held whenever called by the President, or in his absence, the Vice-President, or by a majority of the Directors, and may also be called by Members having at least twenty-five percent (25%) of the Voting Interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice Meetings; Waiver of Notice. Notices of all Members' meetings must state the date, time, and place of the meeting. Notice of special meetings must include a description of the purpose or purposes for which the meeting is called. The notice must be mailed to each Member at the Member's address as it appears on the books of the Association or may be furnished by personal delivery or electronic transmission. The Members are responsible for providing the Association with any change of address or email address. The notice must be mailed, electronically transmitted, or hand delivered at least fourteen (14) days prior to the date of the meeting. If ownership of a Lot is transferred after notice has been mailed or transmitted, no separate notice to the new Owner is required. Attendance at any meeting by a Member constitutes waiver of notice by that Member, unless the Member objects to the lack of notice at the beginning of the meeting. A Member may also waive notice of any meeting at any time by written waiver.

3.4 Quorum. A quorum at Members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least thirty percent (30%) of the votes of the total Voting Interests. After a quorum has been established at a Members' meeting, the subsequent withdrawal of any Members, so as to reduce the number of Voting Interests represented below the number required for a quorum, shall not affect the validity of any action taken at the meeting before or after such persons leave.

3.5 Vote Required. The acts approved by a majority of the votes cast by eligible voters at a meeting of the Members at which a quorum has been attained shall be binding upon all Lot Owners for all

purposes, except where a different number of votes is expressly required by law or by any provision of the Governing Documents.

3.6 Proxy Voting. Members may cast their votes at a meeting in person or by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the Lot, specify the date, time, and place of the meeting for which it is given, and the original or a copy must be delivered to the Association by the appointed time of the meeting or adjournment thereof. A photostatic, facsimile, or equivalent reproduction of a proxy is a sufficient proxy. No proxy shall be valid if it names more than one (1) person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. Holders of proxies need not be Members. A Limited Proxy shall be used for membership votes on substantive matters, including, without limitation, amendments to the Governing Documents. A General Proxy may be used only when there is no substantive business to be voted on at a Members' meeting and for purposes of establishing a quorum, correcting typographical errors with respect to matters being voted on by the Members, and voting on parliamentary matters, including, without limitation, a motion to approve minutes or to adjourn the meeting. However, no proxies shall be used to cast a vote in connection with a regular election of Directors occurring at the annual meeting. Notwithstanding the foregoing, Members may vote in person at Members' meetings.

3.7 Electronic Voting. The Association may conduct elections and other Owner votes through an internet-based online system if an Owner consents, in writing, to online voting. The Association must comply with the requirements for electronic voting as set forth in Chapter 720.317, Florida Statutes, as it may be amended, including any requirement for Board approval of electronic voting by written resolution.

3.8 Adjourned Meetings. Any duly called meeting of the Members may be adjourned to be reconvened at a later time by vote of the majority of the Voting Interests present, regardless of whether a quorum has been attained. When a meeting is so adjourned it shall not be necessary to give further notice of the time and place of its continuance if such are announced at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted when the meeting is reconvened, but only if a quorum is present.

3.9 Order of Business. The order of business at Members' meetings shall be substantially as follows:

- (A) Call of the roll or determination of quorum
- (B) Reading or disposal of minutes of last Members' meeting
- (C) Reports of Officers
- (D) Reports of Committees
- (E) Election of Directors (annual meeting only)
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

3.10 Minutes. Minutes of all meetings of the Members and of the Board of Directors shall be kept in a businesslike manner, available for inspection by Members or their authorized representatives at all reasonable times. Minutes must be reduced to written form within a reasonable time after the meeting. A vote or abstention from voting on each matter voted upon for each Director present at a Board meeting must be recorded in the minutes.

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall guide the conduct of the Association meetings when not in conflict with the law, the Declaration, the Articles, or the Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.12 Action by Members Without Meeting. Except for the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by Members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the Voting Interests were present and voting. If the requisite number of written consents are received by the Association within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the Members at a meeting of the Members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all Members who have not consented in writing. Nothing in this paragraph affects the rights of Members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law. If the vote is taken by the method described in this Section 3.12, the list of Owners on record with the Association at the time of mailing the voting material shall be the list of qualified voters. The written consents used to authorize an action without a meeting shall become part of the Association's records.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles, and Bylaws, shall be exercised by the Board, subject to approval or consent of the Owners only when such is specifically required.

4.1 Number and Terms of Office. The number of Directors which shall constitute the whole Board of Directors shall be seven (7), however, the Board may, by unanimous vote prior to the annual election, create additional seats. Additional seats created by the Board may subsequently be removed by the Board by unanimous vote prior to the annual election. In order to create a system of staggered terms at the first annual meeting following the recording of these Bylaws in the public records, the four (4) Directors receiving the greatest number of votes at the election shall serve terms of two (2) years each, and the remaining three (3) Directors shall serve a term of one (1) year each. If the election is uncontested or there is a tie, the Directors shall decide who will serve the longer terms and who will serve the shorter terms by unanimous consent. If the decision is not unanimous, then the terms shall be decided by the drawing of straws or the equivalent. Thereafter, all Directors shall be elected for a term of two (2) years each. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns or is recalled as provided for in Section 4.5 below. Directors shall be elected by the Members as described in Section 4.3 below, or in the case of a vacancy, as provided for in Section 4.4 below. Directors may not serve more than six (6) consecutive years unless approved by an affirmative vote of Lot Owners representing at least two-thirds (2/3rds) of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.

4.2 Qualifications. Each Director must be a Lot Owner or Primary Occupant or the spouse of a Lot Owner or Primary Occupant. In the case of a Lot owned by a corporation, any officer is eligible for election to the Board of Directors. If a Lot is owned by a partnership, any partner is eligible to be a Director. If a Lot is held in trust, the trustee, grantor, or settlor of the trust, or any one of the beneficial Owners

residing in the Lot is eligible to be elected to the Board of Directors. No two individuals from the same Lot shall be eligible to serve on the Board at the same time. Any Director who misses three (3) consecutive regular monthly meetings of the Board of Directors may be removed from his position on the Board if so determined and approved by a majority vote of the remaining Directors. Any vacancy shall be filled in accordance with Section 4.4. below.

4.3 Nominations and Elections. Nominations for election to the Board of Directors shall be made in writing at least twenty (20) days in advance of the day of election. Election to the Board of Directors shall be by secret ballot. At such election, the Members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these Bylaws. The persons receiving the largest number of votes shall be elected, except that a run-off shall be held to break a tie vote. Cumulative voting and proxy voting in elections is not permitted. The Board of Directors may not appoint a committee for the purpose of nominating candidates for the election of Directors. However, the Board of Directors may appoint a search committee to encourage qualified persons to become candidates.

4.3.1 First and Second Notice. The First Notice of each annual election shall be mailed, hand-delivered, or electronically transmitted to all Owners at least forty-five (45) days in advance. Any person eligible to serve as a Director who wishes to qualify as a candidate shall notify the Association in writing of his or her desire to be a candidate at least twenty (20) days prior to the annual election, and must be eligible to serve on the Board of Directors at the time of such notification deadline in order to have his or her name listed as a proper candidate on the election ballot or to serve on the Board of Directors. Notice shall be deemed effective when received by the Association. Any person indicating his or her desire to qualify as a candidate may also return a separate information sheet, no larger than 8 1/2 inches by 11 inches, which describes the candidate's background, education, and qualifications for office, and any other information deemed relevant by the candidate, which information sheet must be furnished by the candidate at least fifteen (15) days prior to the election. The Association has no liability for the contents of the information sheets prepared by the candidates.

4.3.2 Second Notice. The Association shall mail, hand-deliver, or electronically transmit a Second Notice of the election, together with the candidate information sheets, a ballot which shall list all candidates in alphabetical order by surname, and (unless the Second Notice is electronically transmitted), "inner" and "outer envelopes", at least fourteen (14) days in advance of the election; provided, however, that if the number of candidates does not exceed the number of vacancies, then no election shall be required, and the candidates become members of the Board of Directors effective upon the adjournment of the annual meeting. Any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted Board even if the Directors constitute less than a quorum or there is only one (1) Director.

4.3.3 Balloting. If the number of candidates exceeds the number of seats to be filled, an election shall be required. Directors may be elected by secret ballot (using a double envelope system) in accordance with the Act and these Bylaws, or by Proxy, in the sole discretion of the Board. In the election of Directors, there shall be appurtenant to each Lot as many votes for Directors as there are Directors to be elected, but no Lot may cast more than one (1) vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. The Association may conduct elections through an Internet-based online voting system in accordance with the requirements set forth in Section 720.317, Florida Statutes.

4.3.4 Certification. Within ninety (90) days after being elected or appointed, each newly elected or appointed Director shall certify in writing to the Secretary of the Association that he or she has read the Declaration of Covenants, Articles of Incorporation, Bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Members. In lieu of this written

certification, within ninety (90) days after being elected or appointed, the newly elected or appointed Director may submit a certificate of having satisfactorily completed the educational curriculum administered by an education provider approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes in the Department of Business and Professional Regulation within one (1) year before or ninety (90) days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the Director serves on the Board of Directors without interruption. A Director who fails to timely file the written certification or educational certificate is suspended from service on the Board of Directors until he or she complies with the requirements set forth above. The Board of Directors may temporarily fill the vacancy during the period of suspension. The Secretary shall cause the Association to retain a Director's written certification or educational certificate for inspection by the Members for five (5) years after a Director's election. Failure to have such written certification or educational certification on file does not affect the validity of any Board action.

4.3.4 Challenge. Any challenge to the election process must be commenced within sixty (60) days after the election results are announced.

4.4 Resignation; Vacancies on the Board. Any Director may resign at any time by giving written notice to the Association, and unless otherwise specified therein, the resignation shall become effective upon receipt. If the office of any Director becomes vacant for any reason, a successor shall be appointed by the Board at a special meeting of the Board of Directors of the Association. The successor so appointed shall fill the term of the Director being replaced. If for any reason there shall arise circumstances in which no Directors are serving and the entire Board is vacant, the Members shall elect successors at a special meeting or any Member may apply to the Circuit Court for the appointment of a receiver to manage the Association's affairs, in the manner provided by the Act.

4.5 Removal of Directors. Any Director may be removed, with or without cause, by a majority vote of the total Voting Interests, either by a written agreement or at a meeting called for that purpose. An Officer may also be removed at any time by a majority vote of the Board of Directors. If a special meeting is called by ten percent (10%) of the Voting Interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that notice of the meeting is given. If removal is effected by written agreement, the vacancy or vacancies shall be filled as provided by law. If removal is effected at a meeting, any vacancies created thereby shall be filled by the Members at the same meeting. Any Director who is removed from office is not eligible to stand again for election to the Board until the next annual election and must turn over to the Association within seventy-two (72) hours any and all records and other property of the corporation in his possession. If a Director who is removed does not relinquish his office or turn over records as required, the circuit court in the county where the Association has its principal office may summarily order the Director to relinquish his office and turn over corporate records upon application of any Member. In any such action, the prevailing party shall be entitled to recover its attorney fees and costs.

4.6 Organizational Meeting. The organizational meeting is for the purpose of electing officers. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors, at such place and time as may be fixed and announced by the Directors at the annual meeting at which they were elected. The organizational meeting may be held immediately after the adjournment of the annual Association meeting.

4.7 Other Meetings. Meetings of the Board may be held at such time and place as shall be determined from time to time by the President, or in his or her absence, a Vice-President, or by a majority of the Directors at any time. It shall be the duty of the Directors, the President, or a Vice-President, to call

such a meeting whenever so requested by the Association Members constituting at least twenty percent (20%) or more of the total Voting Interests. Notice of meetings shall be given to each Director by the Secretary at least forty-eight (48) hours prior to the time fixed for the meeting.

4.8 Notice to Owners. Meetings of the Board of Directors shall be open to Members except for meetings in regards to personnel discussions and meetings between the Board and its attorney with respect to proposed or pending litigation where the discussion would otherwise be governed by the attorney-client privilege, and notices of all Board meetings, together, shall be posted conspicuously in the community at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting at which rules affecting the use of a Lot or Special Assessments are to be considered shall specifically contain a statement that rules or Special Assessments will be considered and the nature of the rule or Assessments and shall be mailed, delivered or electronically transmitted and posted at least fourteen (14) days in advance.

Members have the right to speak, for at least three (3) minutes, on any matter that is placed on the Board meeting agenda by petition of the membership pursuant to Section 720.303(2)(d), Florida Statutes. The Association may adopt reasonable, written Rules and Regulations expanding the rights of Members to speak and governing the frequency, duration, and other manner of Member statements, (including a sign-up sheet requirement), which Rules and Regulations must be consistent with the minimum requirements of Section 720.303(2)(b), Florida Statutes. Tape recording and videotaping of Board of Directors meetings shall be governed by the Rules and Regulations.

4.9 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver is deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

4.10 Quorum of Directors. A quorum at a Board meeting shall be attained by the presence in person of a majority of all Directors. Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting.

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Governing Documents or by applicable statutes. Directors may not vote by proxy or secret ballot at Board meetings, except that secret ballots may be used in the election or removal of officers.

4.12 Adjourned Meetings. A majority of the Directors present at any meeting of the Board of Directors, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specified later time. When the meeting is reconvened, provided a quorum is present, any business that might have been transacted at the meeting originally called may be transacted.

4.13 The Presiding Officer. The President of the Association, or in his absence, the Vice-President, is the presiding officer at all meetings of the Board. If neither officer is present, the presiding officer shall be selected by majority vote of the Directors present.

4.14 Directors' Fees and Reimbursement of Expenses. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses related to the proper discharge of their respective duties.

4.15 Committees. The Board of Directors may appoint from time to time such standing or temporary committees, including a search committee, as the Board may deem necessary and convenient for the efficient and effective operation of the Association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. In accordance with the Act, committee meetings are not required to be open and noticed unless the committee is vested with power to approve or disprove architectural decisions with respect to a specified parcel of residential property owned by a Member or a final decision will be made regarding the expenditure of Association funds. Committees vested with the power to approve or disapprove architectural decisions with respect to a specified parcel of residential property owned by a Member of the community may not vote by proxy or secret ballot.

4.16 Emergency Powers. The Board of Directors may exercise the emergency powers authorized by Sections 617.0207, 617.0303, and 720.316, Florida Statutes, as amended from time to time hereafter. Corporate action taken in good faith during an emergency under this Section 4.16 to further the ordinary affairs of the Association shall bind the Association and have the rebuttable presumption of being reasonable and necessary.

5. OFFICERS.

5.1 Officers and Elections. The executive officers of the Association shall be a President and a Vice-President, who must be Directors, a Treasurer, and a Secretary, all of whom shall be elected annually by a majority vote of the Board of Directors. Any officer may be removed with or without cause at any meeting by vote of a majority of the Directors. Any officer so removed shall return all books, records, and property of the Association to the Association within seventy-two (72) hours of their removal. Any person except the President may hold two (2) or more offices. The Board may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one (1) Vice-President, assistant secretaries, or assistant treasurers and such other officers and agents as may be deemed necessary.

5.2 President. The President shall be the chief executive officer of the Association; shall preside at all meetings of the Members and Directors; shall be *ex-officio* a member of all standing committees; shall have general and active management of the business of the Association; and shall see that all orders and resolutions of the Board are carried into effect. The President shall execute bonds, mortgages, and other contracts and documents requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association. The President and the Treasurer each have individual authority to sign checks on behalf of the Association, with or without the co-signature of the other.

5.3 Vice-Presidents. The Vice-Presidents, in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.

5.4 Secretary. The Secretary shall attend meetings of the Board of Directors and all meetings of the Members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for standing committees when required. The Secretary shall give, or cause to be given, proper notice of all meetings of the Members, and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. The Secretary shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all

duly adopted amendments to the Governing Documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated.

5.5 Treasurer. The Treasurer shall have the custody of Association funds and securities and be responsible for the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. The Treasurer is responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as are selected by the Board of Directors. The Treasurer shall oversee the disbursement of Association funds, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at meetings of the Board, or whenever they may require it, a full accounting of all transactions and of the financial condition of the Association. The Treasurer shall prepare an annual budget of estimated revenues and expenses to present to the Board of Directors for approval. Any of the foregoing duties may be performed by an Assistant Treasurer, if one is elected. The President and the Treasurer each have individual authority to sign checks on behalf of the Association, with or without the co-signature of the other.

5.6 Compensation of Officers. No compensation shall be paid to any officer for services as an officer of the Association. This provision does not preclude the Board of Directors from employing officers as employees of the Association but only in compliance with all conflict of interest laws.

6. FISCAL MATTERS. The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions.

6.1 Depository. The Association shall maintain its funds in such federally insured accounts at financial institutions in the State of Florida as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The foregoing notwithstanding, the Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities and other similar investment vehicles.

6.2 Accounts of the Association. The Association shall maintain its accounting books and records according to generally accepted accounting principles. There shall be an account for each Lot. Such accounts shall designate the name and mailing address of each Lot, the amount and due date of each assessment or charge against the Lot, amounts paid, date of payment and the balance due.

6.3 Budget. The Board of Directors shall adopt in advance an annual budget of common expenses for each fiscal year. The proposed budget must reflect the estimated revenues and expenses for the next fiscal year, and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be considered shall be mailed or delivered to each Member not less than fourteen (14) days prior to that meeting. The copy and notice described in this subsection may be provided electronically to those Members who previously consented to receive notice electronically. The proposed budget shall be detailed and shall show the amounts budgeted by income accounts and expense classifications. The minutes of the Association shall reflect the adoption of the budget, and a copy of the proposed and adopted budgets shall be maintained as part of the financial records of the Association. If an annual budget has not been adopted at the time the first monthly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last monthly payment, and payments shall be continued at such rate until a budget is adopted and new monthly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each Lot's next due monthly installment.

6.4 Reserves. The Board of Directors may establish in the budget one (1) or more reserve accounts for capital expenditures, deferred maintenance, or contingency reserves for unanticipated operating expenses. Board adopted reserve funds are not controlled by Chapter 720, Florida Statutes, and therefore may be spent, waived, or used as approved by the Board. Membership adopted reserves are restricted by Chapter 720, Florida Statutes, and therefore membership adopted reserves may only be used, waived, or reduced on a yearly basis according to Chapter 720, Florida Statutes. The purpose of reserves is to provide financial stability and to avoid the need for Special Assessments. The annual amounts proposed to be so reserved shall be shown in the annual budget.

6.5 Assessments; Installments. The regular annual Assessment based on an adopted budget shall be paid in quarterly installments, in advance, due on the first day of the quarter of each year. Written notice of the annual Assessment shall be sent to the Owners of each Lot prior to the first quarterly installment being due, but failure to send (or receive) such notice does not excuse the obligation to pay. If an annual budget for a new fiscal year has not been adopted, or if notice of any increase has not been made at the time the payment for the first quarterly installment is due, it shall be presumed that the amount of such installment is the same as the last quarterly installment, and payments shall be continued at such rate until a budget is adopted and new annual Assessments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each Lot's next due quarterly installment. Any Assessments which are not paid when due shall be delinquent. Assessments not paid within thirty (30) days after the due date shall accrue interest from the due date at a rate determined by the Board of Directors and a late fee.

6.6 Special Assessments. Special Assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses, or for such other purposes as are authorized by the Declaration and these Bylaws. Special Assessments are due on the day specified in the resolution of the Board approving such Assessment. The notice of any Board meeting at which a Special Assessment will be considered shall be given as provided in Section 4.8 above; and the notice to the Owners that the Assessment has been levied must contain a statement of the purpose(s) of the Assessment. The total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless approved by the affirmative vote of at least two-thirds (2/3rds) of the Voting Interests present and voting, in person or by proxy, at a duly called meeting of the Members of the Association.

6.7 Fidelity Bonds. The President, Treasurer, and all other persons who are authorized to sign checks, shall be bonded in such amounts as may be acquired by law or otherwise determined by the Board of Directors. The premiums on such bonds are a Common Expense.

6.8 Financial Reports. Not later than ninety (90) days after the close of each fiscal year, the Board shall prepare and complete or contract with a third party for the preparation and completion of a financial report as prescribed in 720.303, Florida Statutes. Within twenty-one (21) days after that statement or report is completed or received from the third party, the Association shall mail, hand deliver or electronically transmit (if the Member has previously consented to electronic notices) to each Member a copy of the financial statement or report, as required by the Act, or a notice that a copy of the financial statement or report is available upon request at no charge to the Member.

6.9 Audits. A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the Voting Interests, or by a majority of the Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all Members.

6.10 Fiscal Year. The fiscal year for the Association shall begin on the first day of October of each calendar year and end on September 30 the following calendar year.

7. RULES AND REGULATIONS; USE RESTRICTIONS. The Board of Directors may, from time to time, adopt, and amend administrative Rules and Regulations governing the use, maintenance, management, and control of the Common Areas and the Lots, and the operation of the Association.

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in the Declaration, the following shall apply.

8.1 Fines; Suspensions. The Board of Directors may levy fines and/or suspensions against Members, or Members' tenants or guests, or both, who commit violations of Chapters 617 or 720, Florida Statutes, the provisions of the Governing Documents, or the Rules and Regulations, or who condone such violations by their family members, guests or lessees. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any single fine exceed the maximum amount allowed by law. The maximum fine for a continuing violation shall be \$5,000. As allowed by law fines shall be secured by a lien on the Owner's Lot. Suspensions of the use of Common Areas, facilities and common non-essential services (e.g. bulk cable tv and/or internet) may be imposed for a reasonable period of time to deter future violations. The procedure for imposing fines or suspending use rights shall be as follows:

(A) Notice. The party against whom the fine and/or suspension is sought to be levied or imposed shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include:

- (1) a statement of the date, time and place of the hearing;
- (2) a short and plain statement of the specific facts giving rise to the alleged violation(s); and
- (3) the possible amounts of any proposed fine and/or possible use rights of Common Areas or facilities to be suspended.

(B) Hearing. At the hearing the party against whom the fine and/or suspensions may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony presented by the Association. The hearing shall be conducted before a panel of three (3) residential Lot Owners appointed by the Board none of whom may then be serving as Directors or officers, or who are employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee. If the committee, by majority vote, does not agree with the proposed fine and/or suspension, it may not be levied or imposed. If the committee agrees with the proposed fine and/or suspensions, the Board of Directors shall levy same.

8.2 Suspensions and Fines without Hearing. The foregoing notwithstanding, as provided in 720.305(2)(b), Florida Statutes, no prior notice or opportunity for a hearing is required for the imposition of a fine or suspension upon any Member because of the failure of the Member to pay Assessments or other charges when due.

8.3 Correction of Health and Safety Hazards. Any violations of the Association rules which creates conditions of the property which are deemed by the Board of Directors to be a hazard to the public health or safety may be dealt with immediately as an emergency matter by the Association, and the cost thereof shall be charged to the Lot Owner.

8.4 Availability of Remedies. Each Member, for himself, his heirs, tenants, guests, successors, and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all Members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the majority's right to enjoy the community free from unreasonable restraint and annoyance.

9. AMENDMENT OF BYLAWS. Amendments to these Bylaws shall be proposed and adopted in the following manner.

9.1 Proposal. Amendments to these Bylaws shall be proposed by a majority of the Board of Directors or upon petition of twenty-five percent (25%) of the Voting Interests and shall be submitted to a vote of the Members not later than the next annual meeting.

9.2 Vote Required. Except as otherwise required by the Act or as provided elsewhere in these Bylaws, these Bylaws may be amended if the proposed amendment is approved by the affirmative vote of at least two-thirds (2/3rds) of the Voting Interests present and voting, in person or by proxy, at a duly called meeting of the Members of the Association.

9.3 Effective Date. An amendment shall become effective upon the recording of a copy in the Public Records of Collier County, Florida with the same formalities as are required in the Declaration for recording amendments to the Declaration.

10. MISCELLANEOUS.

10.1 Gender; Number. Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

10.2 Severability. If any portion of these Bylaws is void or become unenforceable, the remaining provisions shall remain in full force and effect.

Receipt# 008307373
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Crystal K. Kinzel
Clerk of the Circuit Court and Comptroller

Official Receipt

Customer	Deputy Clerk	Clerk Office Location
Auri Burnham SIMPLIFILE LC 5072 N 300 W PROVO, UT 84604-5652	Mary L. Luckey mary.luckey@collierclerk.com 239-252-7242	Collier County Govt. Center Building LA, 2nd Floor 3315 Tamiami Trl E Ste 102 Naples, Florida 34112-4901

1 Document Recorded

DOC TYPE	INSTRUMENT	BOOK	PAGE	AMOUNT
Restrictions	5971795	5862	3668	\$435.00
TOTAL AMOUNT DUE				\$435.00
Deposit Account#: S-41050				(\$435.00)
BALANCE DUE				\$0.00

Note:

12/17/2020 9:53:19 PM Mary L. Luckey:
Batch Name: 293277

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