

This instrument Prepared by:
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(954) 486-7774

**CERTIFICATE OF RECORDING
AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS FOR
ESPLANADA AT BOCA POINTE HOMEOWNERS ASSOCIATION, INC.**

WE HEREBY CERTIFY THAT the attached Amended and Restated Declaration of Covenants and Restrictions for **ESPLANADA AT BOCA POINTE HOMEOWNERS ASSOCIATION, INC.**, as originally recorded at OR Book 4341, Page 0334, as amended at OR Book 14767, Page 1354, all within the Public Records of Palm Beach County, Florida, were adopted in the manner provided in the documents.

The Board of Directors hereby certifies that all requisite action was taken in accordance with the Governing Documents to adopt the attached **ESPLANADA AT BOCA POINTE HOMEOWNERS ASSOCIATION, INC., AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS**, and does hereby attach and submit same for recording.

IN WITNESS WHEREOF, we have affixed our hands this 16 day of FEB, 2017.

WITNESSES

ESPLANADA AT BOCA POINTE HOMEOWNERS ASSOCIATION, INC.

Sign: [Signature]
Print Name: Kristine Blum

Sign: [Signature]
Print Name: _____

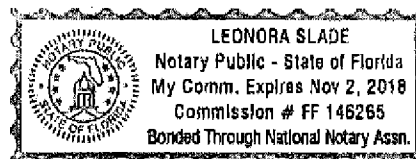
By: [Signature]
Print Name: R.A. GOLDEN
Title: President

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 16th day of FEBRUARY, 2017 by R. GOLDEN as PRESIDENT of ESPLANADA AT BOCA POINTE HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation who is personally known to me or who has produced _____ as identification.

NOTARY PUBLIC - STATE OF FLORIDA

By: Leonora Slade
Print Name: LEONORA SLADE
My Commission Expires: 11/2/2018



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BOCA POINTE
COMMUNITY ASSOCIATION

January 19, 2017

Delivered via Email

Board of Directors
Esplanada at Boca Pointe Homeowners' Association, Inc.
c/o Preston Augenbaum (sandyaugy@aol.com)

Subject: Approval of Proposed Amendments to Esplanada HOA Documents

To Whom It May Concern:

As General Manager of Boca Pointe Community Association, I have completed a review of your Second Amended and Restated Declaration pursuant to the BPCA Declaration of Covenants, Article VII Village Associations Section 2. Approval of Village Association Documents, which states:

The Association shall have the right to review legal documents and changes thereto associated with governing documents of Village Associations, included, but not limited to, Articles of Incorporation, Bylaws, Declarations of Covenants, Conditions and Restrictions, Declarations of Condominium and Cooperative governing documents, prior to adoption, to insure they conform with Association governing documents. The Association, at its sole discretion shall have the right to veto, within sixty (60) days from receipt, those documents that do not conform with the Association's documents provided the Association states, with reasonable particularity, its written objections to the Village Association's governing documents. Failure to veto shall be considered approval. All other documents and revisions shall be at the prerogative of the Village Association.

I found no apparent conflict with the Community Association documents within your proposed amendment. If you desire, we will provide you with a formal Resolution of the BPCA Board of Directors approving same following receipt of a copy of the recorded amendments.

If you have any questions regarding this matter, please do not hesitate to let me know.

Sincerely,


Kathryn C. Danella, LSM, PCAM
General Manager

cc: c/o Bob Golden, Esplanada HOA President (rabobfl@ymail.com)
Mary Ann Chandler, Esquire (mchandler@likeyourlawyer.com)

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS FOR
ESPLANADA AT BOCA POINTE**

**SUBSTANTIAL REWORDING OF DECLARATION OF COVENANTS AND
RESTRICTIONS - SEE CURRENT DECLARATION FOR CURRENT TEXT**

RECITALS

In a Declaration of Covenants and Restrictions ("Declaration") recorded at O.R. Book 4340, Page 334 et seq. of the Palm Beach County Public Records on September 5, 1984, the Developer declared that the real property described in Article II (hereinafter referred to as "Esplanada at Boca Pointe") is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes herein referred to as "covenants and restrictions") set forth therein.

Said Declaration was subsequently Amended and Restated, and such document was recorded at O.R. Book 14767, Page 1354 et seq. of the Palm Beach County Public Records on February 6, 2003.

The submission of the land by the Original Declaration as amended from time to time, is and will remain effective. By adoption of this Second Amended and Restated Declaration of Covenants and Restrictions, the Association members hereby adopt certain amendments to the Declaration and hereby restate the Declaration of Covenants and Restrictions and its Exhibits in its entirety. By adoption of this Second Amended and Restated Declaration of Covenants and Restrictions, the members of the Association ratify governance of the property described in Exhibit "A" pursuant to the provisions of this Declaration and the provisions Florida Statutes Chapter 720, governing Homeowners' Associations, as same may be amended and/or renumbered from time to time. Any and all exhibits to the original Declaration of Covenants and Restrictions, Amended and Restated Declaration and any amendments to those documents are incorporated herein by reference as if attached as an exhibit hereto.

**ARTICLE I
DEFINITIONS**

The following words when used in this Second Amended and Restated Declaration of Covenants and Restrictions, and all its exhibits (unless the context otherwise requires) shall have the following meanings:

(a) "Association" – shall mean "Esplanada at Boca Pointe Homeowners' Association, Inc.," a Florida corporation not for profit, its successors and assigns. Notwithstanding any provision of the Association's governing documents to the contrary, including, but not limited to, this Declaration, the Articles of Incorporation, By-Laws and Rules and Regulations; the Association hereby adopts by reference all current provisions of Florida Statutes including, but not limited to, Chapter 720, governing Homeowners Associations, as they exist as of the date of the recording of this amendment, as well as, all future amendments to Florida Statutes – it being the intent of the Association to be governed by all current provisions of Florida Statutes, as amended or renumbered from time to time.

(b) "Common Areas" – The property described in Exhibit "B" attached hereto and made a part hereof, together with any and all improvements from time to time erected on such property, including without limitation walkways, parking facilities, lakes, ponds, canals and other watercourses, the surface water management system, open spaces, private streets, sidewalks, driveways, street lighting, entrance features and landscaping, but excluding any public or private utility installation thereon. If additional real property is brought under the provisions hereof by a recorded Supplemental Declaration pursuant to Article II, then the Common Areas shall include the portion or portions of the additional real property that may be designated to be Common Areas in such Supplemental Declaration.

(c) "Developer" – Homeco Developments, a Florida partnership, its successors and assigns, if such successor or assignee acquires the undeveloped portion of Esplanada at Boca Pointe from the Developer for the purpose of development and is designed as such by Developer.

(d) "Lot" – Any lot or other parcel with any and all improvements thereon, in Esplanada at Boca Pointe platted in the Public Records of Palm Beach County, Florida, on which a residential structure could be constructed whether or not one has been constructed.

(e) "Owner" – The record owner, whether one or more persons or entities, of the fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

(f) "Member" – An Owner who is a member of the Association as provided in Article III, Section 1 hereof.

(g) "The Properties" – All of such properties and additions thereto (which additional properties may or may not be contiguous to the real property described in Article II herein), as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

(h) "Common Expenses" include, but shall not be limited to, all expenses detailed in Article V, Section 2, and any and all expenses of administration, operation, maintenance, repair, alteration, improvement or replacement of the Common Areas as determined by the Board from

time to time. Common Expenses shall further include expenses relating to social activities as determined by the Board from time to time.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Legal Description. The real property which is and shall be held, transferred, sold, conveyed, demised and occupied subject to this Declaration is located in Palm Beach County, Florida and is more particularly described as follows:

See Exhibit "A" attached hereto and made a part hereof.

Section 2. Merger or Consolidation; Dissolution. Upon a merger or consolidation of the Association with any other association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association or another association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other property as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants and restrictions established by this Declaration within The Properties. In the event the Association is dissolved, terminated or shall no longer continue to exist for any reason whatsoever, other than merger or consolidation, Boca Pointe Community Association, Inc. will maintain all Common Areas and is hereby authorized to assess all Owners for the costs of such maintenance. In the event Boca Pointe Community Association, Inc. is unable to assume responsibility for the maintenance of the Common Areas, any Owner may petition the Circuit Court of the Fifteenth Judicial Circuit of the State of Florida for the appointment of a Receiver to manage the affairs of the Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association, the Property, and Common Areas. Any disposition of assets shall be conditioned upon the Common Areas being used for the purposes for which they were utilized by the Owners and Association and shall be subject to the rights and interested of the Owner set forth in this Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record fee simple Owner of a Lot shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the

Association. Membership shall be appurtenant to, and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. Members shall be all of the Owners, as defined in Section 1. Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised by one such Member as specified in the Articles of Incorporation of the Association but in no event shall more than one vote be cast with respect to any such Lot.

Section 3. Suspension of Voting Rights. Notwithstanding the provisions hereof, the Association shall have the right to suspend any Member's voting rights, if such Member is more than ninety days (90) delinquent in paying any fee, fine, or other monetary obligation due to the Association.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Ownership. The Association shall be responsible for the maintenance and administration of the Common Areas in a continuous and satisfactory manner and for the payment of taxes assessed against the Common Areas and any improvements and personal property thereon.

Section 2. Members' Easements. Each Member of the Association and each tenant, guest and invitee of such Member shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the walkways, private streets, sidewalks and driveways from time to time laid out on the Common Areas for use in common with all other Members, their tenants, guests and invitees. The portion of the Common Areas not used, from time to time, for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the Members of the Association and each Members shall have a permanent and perpetual easement for the use of such portion of such lands as common open space in such manner as may be regulated by the Association. The foregoing easements are subject to the following:

- (a) The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas in compliance with the provisions of this Declaration and with any restrictions on the plat or plats of The Properties from time to time recorded.
- (b) The right of the Association to suspend the voting rights of an Owner and right of an Owner to use the Common Areas (except the private streets, sidewalks and driveways from time to time located on the Common Areas) for any period during which any fee, fine or other monetary obligation against his Lot remains unpaid

for more than ninety (90) days after the due date for the payment thereof, and for a reasonable period as determine by the Board for any infraction of its lawfully adopted and published Rules and Regulations.

(c) The right of the Association to adopt and enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon.

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and upon such conditions as may be agreed to by the Members provided, however, that no such dedication or transfer by the Association shall be effective unless approved by seventy-five percent (75%) of the Members present and voting at a regular or special meeting of Members duly called and regularly conducted in accordance with the By-Laws.

The right of an Owner to the use and enjoyment of the Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him, subject to the regulations from time to time adopted by the Association in its lawfully adopted and published rules and regulations. The easements provided in this Section 2 shall be appurtenant to and shall pass with the title to each Lot.

Section 3. Utility Easements. Public utilities may be installed underground in the Common Areas when necessary for the service of The Properties but all use of utility easements shall be in accordance with the applicable provisions of this Declaration.

Section 4. Public Easements. Fire, police, health, sanitation and other public service personnel and vehicles shall have a perpetual, non-exclusive easement for ingress and egress over and across the Common Areas.

Section 5. Easement for Unintentional and Non-Negligent Encroachments. If any other building or improvement shall encroach upon any portion of a Lot, the Common Areas, an easement, or any combination thereof, by reason of original constructions or by the non-purposeful or non-negligent act of any other owner of such building or improvement, then an easement for such encroachment shall exist so long as the encroachment exists.

Section 6. Additional Easements. The Association shall have the right to grant such additional electric, telephone, gas, sprinkler, irrigation, cable television or other utility easements, and to relocate any existing utility easement in any portion of The Properties and to grant access easements and to relocate any existing access easements in any portion of The Properties as the Association shall deem necessary or desirable, for the proper operation and maintenance of The Properties, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such

easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Los for dwelling purposes.

If a residence is constructed within one (1) foot of the side lot line of any Lot, in order to allow the owner of any such residence to maintain the wall facing the adjoining Lot, each owner of such residence shall have an easement over the adjoining Lot, with the right of ingress and egress during reasonable times of day, for the purpose of maintaining and repairing the wall facing the adjoining Lot. The easement created in this section shall be permanent, perpetual and exclusive to the Owners involved.

Section 7. Maintenance of Common Areas. The Association shall at all times maintain in good repair, and shall replace as often as necessary, any and all improvements situated on the Common Areas including, but not limited to, all recreational facilities, landscaping, sprinkler pipes and systems, paving, drainage structures, lakes, ponds, canals and other watercourses and the banks, shorelines and boundaries thereof, walkways, common parking facilities, private streets, sidewalks, driveways, street lighting fixtures and appurtenances, entrance features and other structure, except public utilities, all such work to be done as ordered by the Board of Directors. The Common Areas shall include the grass areas to the edge of the pavement of Boca Pointe Drive. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. The Association may repair, change, replace or restore the walls and fences that are on any of the Lots (should the Owner thereof fail and/or refuse to do so) or Common Areas within The Properties. All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article V hereof. Such assessments shall be against all Lots equally; provided, however, that the cost of any maintenance, repair or replacement caused by the negligent conduct of a Member or by the failure of a Member to properly maintain the Lot pursuant to this Declaration or to comply with lawfully adopted Rules and Regulations shall be levied as a special assessment against such Member. No Owner may waive or otherwise escape liability for the assessments for such maintenance by non-use of the Common Areas or abandonment of his right to use the Common Areas. The Association, its successors and assigns, shall have a perpetual, non-exclusive easement for ingress and egress over, upon and across all portions of The Properties to the extent necessary for the performance of the work to be performed pursuant to this Section; provided, however, that the party causing any such damage restores disturbed areas to the condition thereof immediately prior to such work.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for the Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association

annual assessments or charges for the maintenance of the Common Areas as provided in Article IV hereof, and the Exterior Finishing and Lawn Maintenance as provided in Sections 3 and 4 of this Article V, including such reasonable reserves as the Association may deem necessary, and special assessments as provided in Sections 3 and 4 hereof, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with late fees, such interest thereon and costs of collection thereof as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with late fees, such interest thereon and costs of collection thereof as hereinafter provided shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Except as otherwise provided in Section 7 of Article IV, and in Sections 3 and 4 of this Article V, all assessments, both regular and special, shall be equally assessed against all Lots within The Properties.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for the maintenance and operation of the Common Areas as provided in Article IV hereof, for exterior finishing as provided in Section 3 hereof, for lawn maintenance as provided in Section 4 hereof, for capital improvements as provided in Section 5 hereof and for any other Common Expense of the Association and otherwise to promote the health, safety, welfare, and recreational opportunities of the Members of the Association and their families residing with them, and their guests and tenants.

Section 3. Exterior Finishing. The paint, coating, stain and other exterior finishing colors on all buildings shall be maintained by the Association as originally installed by the Developer without prior approval of the Members, but prior approval by the Association's Board of Directors shall be necessary before any such exterior finishing color is changed. Master Association must also approve any change in the exterior finishing color from that originally installed by the Developer. The Board of Directors shall determine the need for any exterior finishing under this Section 3. The Board shall estimate the cost of any such exterior finishing for each year and shall fix the assessments for each year, but said Board shall, thereafter, make such adjustment with the Owners as is necessary, including special assessments if necessary, to reflect the actual cost of such finishing. Such assessments shall be against all Lots equally (except for maintenance specifically requested by an Owner); provided, however, that the cost of any maintenance caused by the negligent conduct of an Owner or by the failure of such Owner to comply with the lawfully adopted rules and regulations of the Association, shall be levied as a special assessment, against such Owner.

Section 4. Lawn Maintenance. So long as title to the Common Areas is held by the Association, the Association shall be responsible for maintenance, lawn care and irrigation of those areas. The Common Areas shall include the grass areas to the edge of the pavement of Boca Pointe Drive. In addition, the Association shall cut the grass in the yards of each of the

lots. The Board of Directors of the Association shall estimate the cost of any such maintenance for each year and shall fix the assessments for each year, but said Board shall, thereafter make such adjustment with the Owners as is necessary to reflect the actual cost of such maintenance. Such assessments for maintenance shall be against all Lots equally except for maintenance specifically requested by and Owner; provided, however, that the cost of any maintenance caused by the negligent conduct of an Owner or by the failure of such Owner to comply with the lawfully adopted rules and regulations of the Association, shall be levied as a special assessment against such Owner. In addition, an Owner may be especially assessed for any damage or injury caused by the negligent conduct of such Owner to any easement areas granted to provide access to perform the maintenance. It is the intention hereof that the Association shall perform only routine maintenance as described in this Section 4.

For the purpose solely of performing the maintenance authorized by Sections 3 and 4, the Association, through its duly authorized agents, employees or independent contractors, shall have the right to enter upon any Lot at reasonable hours of any day. Each Owner hereby grants to the Association, its duly authorized agents, employees or independent contractors such easements for ingress and egress, across the Lots and through improvements constructed upon the Lots, as may be reasonably necessary to affect and perform the required maintenance aforementioned. In addition, the owner of the adjoining property owner for any damage or injury to the easement areas caused by the use thereof for access to perform the exterior maintenance.

Section 5. Capital Improvements. Funds necessary for capital improvements relating to the Common Areas may be levied as special assessments by the Association, upon approval by a majority of the Board of Directors of the Association and upon approval by two-thirds (2/3) of the Members voting in person or by proxy at a duly noticed meeting of the Membership.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for in this Article V shall commence on the date or dates (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The annual assessments shall be payable in advance in quarter-annual installments, or in annual or semi-annual installments if so determined by the Board of Directors of the Association.

The amount of the annual assessment may be changed by amending the Association's budget, at any time by said Board from that originally stipulated herein or from any other assessment that is in the future adopted. The assessment shall be for the calendar year, but the amount of the annual assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months remaining in such calendar year.

The due date of any special assessment for capital improvements under Section 5 hereof, or any other special assessment, shall be fixed in the resolution of the Board of Directors authorizing such assessment.

Section 7. Duties of the Board of Directors. Except for the initial assessments specified in Section 6 above, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot at least thirty (30) days in advance of the commencement of the assessment period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which shall be kept in the office of the Association or management company and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association, through the action of its Board of Directors, shall have the power to enter into an agreement or agreements from time to time with one or more persons, firms or corporations for management services. The Association shall have all other powers as provided in its Articles of Incorporation. In addition to the foregoing, the Association, through its Board of Directors shall have all powers of a corporation not-for-profit, and all powers of a homeowners' association, as provided by Florida Statutes, as amended from time to time.

The Association shall also collect from all Owners the annual, special and individual assessments of the Boca Pointe Community Association and shall pay said Association all sums collected on a monthly basis.

Section 8. Collection of Assessment: Effect of Non-Payment of Assessment: The Personal Obligation of the Owner: The Lien Remedies of the Association. If the assessments are not paid on the date when due (being the date specified in Section 6 hereof), then such assessments shall become delinquent and shall, together with such interest thereon in the highest amount permitted by law as amended from time to time, and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives, successors and assigns. Any Owner who acquires title to a Lot upon the death of an Owner or by operation of law, in addition to such lien, shall be personally liable for unpaid assessments with respect to such Lot. In any conveyance, the Grantee shall be jointly and severally liable with the Grantor for all unpaid assessments made prior to the time of such conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor.

If the assessment is not paid within fifteen (15) days after the due date, in addition to interest on the delinquent assessment, the Association shall have the right to impose a late fee equal to the greater of five (5%) percent of the installment amount or \$25.00 per installment, or the highest amount permitted by law, as amended from time to time. The Association may bring an action at law against the Owner personally obligated to pay the same or may record a claim of lien against the property on which the assessment is unpaid, in like manner as a foreclosure of a mortgage on

real property, or pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment, attorney's fees and costs of preparing and filing the claim of lien and the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to attorney's fees and costs incurred in connection with any appeal of such action.

It shall be the legal duty and responsibility of the Association to enforce payment of the assessments hereunder.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessment provided for in this Article V shall be subordinate to the lien of any institutional first mortgage recorded prior to the recordation of a claim of lien for unpaid assessments. The obligation of an institutional first mortgagee who obtains title to a Lot through foreclosure of its mortgage or by deed in lieu of foreclosure for delinquent amounts owed to the Association shall be determined in accordance with the provisions of Florida Statutes Ch. 720, as same may be amended or renumbered from time to time.

Section 10. Exempt Property. The Board of Directors shall have the right to exempt property subject to this Declaration from assessments, charges and liens created herein if such property is used and as long as it is used for any of the following purposes:

- A. Any easement or other interest therein dedicated and accepted by a public authority and devoted to public use or to Boca Pointe Community Association, Inc.
- B. All Common Areas as defined in Article I hereof.
- C. All properties exempt from ad valorem taxation by the laws of the State of Florida, to the extent agreed to by the Association.

Notwithstanding any provisions herein, no land, devoted to dwelling use shall be exempted from said assessments, charges or liens.

Section 11. Annual Budget. By a majority vote of the Board of Directors, the Board shall adopt an annual budget for the subsequent fiscal year which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration must be met. The Association shall utilize pooled reserves for any of its designated reserve items. Any line item reserve funds accumulated prior to the recordation of this Second Amended and Restated Declaration, upon such recording, shall be transferred to pooled reserve accounts.

Section 12. Trust Funds. The portion of all regular assessment collected by the Association as reserves for future expenses, and the entire amount of all special assessments, shall be held by the Association in trust for the Owners of all Lots, as their interest may appear.

Article VI GENERAL RESTRICTIVE COVENANTS

Section 1. Applicability. The provisions of this Article VI shall be applicable to all Lots situated within The Properties.

Section 2. Land Use. No Lot shall be used except for residential purposes. No business, service repair or maintenance for the general public or owners shall be allowed on any Lot or on the Common Areas at any time. Lots may not be used for commercial or business purposes. Owners may use their Lots for "home office" or "telecommuting" purposes, provided that such uses do not involve customers or clients coming onto the Property, the postage of any signage upon the Lot or Property, increased traffic in the community, the storage of business or commercial equipment, products, or materials on the Lot, nor more than two (2) regular deliveries per day of correspondence or similar items from customary express delivery services.

Section 3. Change in Buildings. No Owner shall make or permit any new construction, structural modification, addition or alteration of any building except with the prior written consent of the Architectural Control Board (hereinafter identified) or its successor obtained in the manner determined by the Board or Architectural Control Board from time to time, and the Architectural Control Committee of the Boca Pointe community Association, Inc., and such consent may be withheld if in the sole discretion of the party denying the same, it appears that such structural modification, addition or alteration would affect or in any manner endanger other dwelling units or would otherwise not be harmonious with the aesthetics or common scheme of the community. No building shall be demolished or removed without the prior written consent of the Architectural Control Board, the Architectural Control Committee of Boca Pointe Community association, Inc. The reconstruction shall be in the same location of the property and shall not exceed the size of the original construction.

Section 4. Building Location. Buildings shall be located in conformance with the Zoning Code of the County of Palm Beach, Florida and a specific zoning approvals thereunder, or as originally constructed on a Lot by Developer. Whenever a variance or special exception as to building location or other item has been granted by the authority designated to do so under the zoning code, said variance or special exception is hereby adopted as an amendment to this Section and any future variance or special exception as to building location or other item shall constitute an amendment of this Section.

Section 5. Easements. Easements for drainage, installation and maintenance of utilities and for ingress and egress are reserved as shown on the recorded plats of the properties. Within these easements no structure, planting or other material may be placed or permitted to remain that will interfere with vehicular traffic or prevent maintenance of utilities. Public utility companies servicing the Properties and the Association, and their successors and assigns, shall have a perpetual easement for the installation and maintenance of water lines, sprinkler lines, sanitary

sewers, storm drains, gas lines, electric and telephone lines, cables and conduits, including television cables and conduits and such other installations as may be required or necessary to provide maintenance and utility services to the Lots or the Common Areas, under and through the utility easements as the Common Areas, under and through the utility easements as shown on the plats and under and through such portions of the rear of each Lot beyond the buildings, as such buildings may from time to time be located. All utilities within the subdivisions, whether in streets, rights-of-way or utility easements, shall be installed and maintained underground, provided however, that water and sewer treatment facilities and control panels for utilities may be installed and maintained above ground.

Section 6. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or any other Lot Owner. In the event of any question as to what may be or become a nuisance, such question shall be submitted to the Association for a decision in writing and whose decision shall be final.

No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the Owner shall fail or refuse to keep the demised premises free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Association may enter upon said premises and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. All garbage or trash containers must be underground or placed in walled-in areas so that they shall not be visible from the adjoining properties. Planting by owners shall not be allowed to encroach on sidewalks or common areas except that foliage from trees may overlap sidewalks at a height of no less than 20 feet.

Section 7. Temporary Structures. No structures or a temporary character, or trailer, tent, mobile home or recreational vehicle shall be permitted on any Lot either temporarily or permanently. No gas tank, gas container, or gas cylinder (other than a small propane tank for use with a barbecue grill) shall be permitted to be placed on or about the outside of any house or any ancillary building and all gas tanks, gas container and gas cylinders shall be installed underground in every instance where gas is used. . Dumpsters used for construction projects and temporary storage containers used for moving purposes may be stored on the Lot temporarily only with the prior written approval of the Architectural Review Board, in accordance with the rules and regulations established by same from time to time.

Section 8. Signs. No "for rent", "for sale" or other sign of any kind shall be displayed to the public view on The Properties, except one sign of not more than one square foot use to indicate the name of the resident, without the prior written consent of the Board of Directors of the Association, and thereafter the Boca Pointe Community Association, Inc., or Architectural Control Committee thereof.

Section 9. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in The Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in The Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions. Water wells are permitted for irrigation purposes only, and require the prior written approval of the Association.

Section 10. Pets, Livestock and Poultry. No animals, livestock, reptiles, insects, exotic animals, non-domestic animals or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs weighing less than fifty (50lbs.) pounds, cats, or other household/domestic pets may be kept, subject to rule and regulations of the Association, provided that they are not kept, bred or maintained for any commercial purpose and further provided that they do not become a nuisance or source of annoyance to any resident or neighbor. Notwithstanding the foregoing, any Owner of record on the date of recording of this amendment in the public records of Palm Beach County, (the "effective date"), who currently maintains a pet or animal in excess of the aforementioned weight limit shall be permitted to keep that pet or animal provided that the pet or animal is registered with the Association within thirty (30) days after the effective date of this amendment in a manner determined by the Board, which shall include a current photograph of the pet or animal. Once any such "grandfathered" pet or animal dies or is otherwise removed from the property, any future pet or animal of the Owner must be in compliance with the foregoing provisions. Owners are responsible to clean up after their animals. Owners must remove all solid animal waste/excrement from their Lots and the Properties. Owners are responsible for the actions of their animals and shall indemnify and hold the Association harmless for any damage to persons or property resulting therefrom. In no event shall an owner or any other person allow a dog anywhere on The Properties unless carried or held on a leash not to exceed six (6) feet. **NOTWITHSTANDING ANYTHING PROVIDED ABOVE, NO PIT BULL DOGS OR OTHER DOGS REASONABLY DETERMINED BY THE ASSOCIATION TO BE DANGEROUS SHALL BE RAISED, BRED OR KEPT ON ANY PORTION OF THE PROPERTIES. THE TERM "PIT BULL DOG" AS USED WITHIN THIS PARAGRAPH SHALL REFER TO ANY DOG WHICH EXHIBITS THOSE DISTINGUISHING CHARACTERISTICS WHICH: (A) SUBSTANTIALLY CONFORM TO THE STANDARDS ESTABLISHED BY THE AMERICAN KENNEL CLUB FOR AMERICAN STAFFORDSHIRE TERRIERS OR STAFFORDSHIRE BULL TERRIERS; OR (B) SUBSTANTIALLY CONFORM TO THE STANDARDS ESTABLISHED BY THE UNITED KENNEL CLUB FOR AMERICAN PIT BULL TERRIERS OR ANY SUBSTITUTE FOR THE FOREGOING STANDARDS.**

Section 11. Visibility at Intersections. No obstructions to visibility at street intersections shall be permitted.

Section 12. Architectural Control. No building, wall, fence, or other structure or improvement of any nature shall be erected placed or altered on any Lot until the construction plan and specifications and a plan showing the location of the structure and landscaping as may be required by the Architectural Control Board have been approved in writing by the Architectural Control Board named below, and by the Architectural Control Committee of the Boca Pointe Community Association, Inc. Each building, wall, fence, or other structure or improvement of any nature, together with the landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and pot plan or any of them, may be based on any ground, including purely aesthetic grounds. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Control Board, shall consist of the number of members determined by the Board of Directors from time to time, and such members, shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. The initial rules and regulations of the Architectural Control Board are set forth on Exhibit "C" attached hereto and made a part hereof. A majority of the Architectural Control Board may take any action the Board is empowered to take. In the event of death, disability or resignation of any member of the Board, the remaining members shall have the full authority to designate a successor. The members of the Board shall not be entitled to any compensation for services performed pursuant to this Section. The members of the Architectural Control Board shall be designated by the directors of the Association. Board shall have the authority to order removal of unapproved additions .

Section 13. Landscaping. The landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained in accordance with this Declaration, as originally installed by Developer, unless the prior approval for any substantial change is obtained from the Architectural Control Board. NO tree or shrub, the trunk of which exceeds two (2) inches in diameter, shall be cut down, destroyed or removed from a Lot without the prior express written consent of the Architectural Control Board. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless first approved in writing by the Architectural Control Board. Any and all Landscaping installations, removals, changes, modifications or alterations must be approved in writing by the Architectural Control Board prior to commencement and Board has authority to order removal of any and all unauthorized plantings, installations, changes, modifications or alterations of landscaping on the Lots. No lawn ornaments are permitted. For purposes of this Declaration, lawn ornaments shall include, but shall not be limited to any statue, figure, sign, decorative fence, fountain, or other decorative object placed in, on or about the Lot.

Section 14. Commercial Trucks, Trailers, Campers and Boats. No trucks or commercial vehicles, campers, mobile homes, motor-homes, boards, house trailers, boat trailers or trailers of

every other description shall be permitted to be parked or to be stored at any place on any Lot, except only during the periods of approved construction on said Lot, and except that they may be stored within garages or behind patio walls if not visible from the streets. The term "commercial vehicle" shall include all automobiles, trucks and vehicular equipment including station wagons, which display commercial license plates, emblems, signs, logos, lettering or other writing on the exterior of the vehicle, or vehicles of more than six (6) feet in height, or any vehicle that contains visible equipment or tools. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services. Pickup trucks must have covered beds, and must be parked in a garage with the door closed. Parking is prohibited on any Lot, except in the driveway and garage. The Association shall have the authority to regulate parking on all streets and driveways, including the time and manner of street parking. No parking is permitted on the grass of any Lot or the Common Areas. Vehicles may not be parked on any street in a manner that blocks the sidewalk or access to any driveway.

Section 15. Fences and Walls. No fence, wall or other structure shall be erected in the front yard, backyard, or side yard set-back areas, except as originally installed by Developer, and except as any approved by the Architectural Control Board and the Architectural Control Committee of the Boca Pointe Community Association, Inc., as above provided. No fence, wall, or structure shall be erected over twenty (20) foot drainage easement located in the rear of Lots 9, 10, and 11. With regard to any fence or wall located within a Lot, the Owner of such Lot shall be responsible for the maintenance, repair and/or replacement of such fence or wall, and shall be responsible for any and all costs incurred incident to same.

Section 16. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Lot. All garbage shall be deposited in appropriate receptacles as required from time to time by the County of Palm Beach for disposal or collection. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and garbage receptacles shall be permitted to be placed outside for pick up only on the evening prior to garbage collection, and all such receptacles must be removed no later than sundown on the specified pick up days.

Section 17. Drying Areas. No clothing, laundry or wash shall be aired or dried on any portion of any Lot in an area exposed to view from any other Lot. When permitted by law, drying areas will be permitted only in locations approved by the Architectural Control Board and only when protected from view by screening or fencing approved by the Architectural Control Board.

Section 18. Drainage. No changes in elevations of Property subject to these Restrictions, including gutters, downspouts and roof drainage, shall be made which will cause undue hardship to adjoining property with respect to natural runoff of rainwater.

Section 19. Burial of Pipe and Tanks. No water pipe, gas pipe, sewer pipe, drainage pipe or storage tank shall be installed or maintained on the Lots or the Common Areas above the surface

of the ground, except sprinkler heads, hoses and movable pipes used for irrigation purposed. No Owner may place any water pipes, gas pipes, sewer lines, pipes, drainage pipes or storage tanks on the Common Areas.

Section 20. **Underground Wires.** No lines or wires for communication or the transmission of current shall be constructed placed or permitted to be placed within the Common Areas unless the same shall be protected cables; of any of said lines or wires which are not located in building shall be constructed or placed and maintained underground. No Owner may place any electrical lines or wires for communications on the Common Areas, without the express prior written approval of the Architectural Control Board.

Section 21. **Certain Restrictions, Rules and Regulations.** The following restrictions, rules and regulations shall be adhered to by each Owner, lessee, their guests and visitors:

- (a) No Owner, lessee, their guests or visitors shall make or permit any disturbance that will interfere with the rights, comforts or convenience of others.
- (b) All Owners and lessees of Lots in The Properties shall abide by this Declaration, the Articles of Incorporation, the By-Laws and all Rules and Regulation as they are adopted from time to time by the Board of Directors. The Owners shall, at all times, obey the Rules and Regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, invitees, servants lessees and persons over whom they exercise control and supervision. In order to change or amend any Rule or Regulations or adopt new Rules and Regulations, the same must be approved by a majority of the Board of Directors. No vote of the membership shall be required. A change, amendment or adoption of a Rule or Regulation shall not require an amendment to the Declaration or the By-Laws.

Section 22. **Leases.** No portion of a Home (other than an entire Home) may be rented or leased without, and all leases and lease renewals are subject to the prior written approval of the Association, obtained in the manner set forth herein. All leases shall provide for a minimum lease term of 3 months. No lease or lease renewal shall provide for an early termination which would reduce a lease term to a period of less than 3 months, except in the event of a default of the lessee. In no event shall any Lot/Home be subject to more than two (2) leases during any twenty-four (24) month period. Notwithstanding the foregoing, after the date of recording of this Amended and Restated Declaration (the "effective date") no Lot/Home shall be leased during the six (6) calendar month period immediately following the recording of a deed or other instrument evidencing record title to the Lot in the public records of Palm Beach County, Florida. In the event that a Lot/Home is subject to an existing lease or rental at the time of such recordation, the leasehold interest and any extensions or renewals thereof to the same lessees, shall be permitted to continue, and the aforementioned 6 month prohibition shall commence upon the termination of such leasehold interest. The aforementioned six (6) month waiting period shall not apply to

the following: [A] existing Owners as of the effective date this amendment is recorded [B] the Association if it takes record title to a Lot pursuant to its own foreclosure action or deed in lieu of foreclosure.

All leases shall provide, and if they do not so provide then the leases shall be deemed to provide, that the Association shall have the right to terminate the lease upon default by the lessee in observing any of the provisions of this Declaration, the Articles, the Bylaws, applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Homes. The Owner of a leased home shall be jointly and severally liable with such Owner's lessee for compliance with the Esplanada at Boca Pointe Documents and to the Association to pay any claim for injury or damage to property caused by the negligence of the lessee. Every lease shall be subordinate to any lien filed by the Association whether before or after such lease was entered into. Any Owner desiring to lease or renew a lease of his or her Lot or Home shall submit to the Board an application for approval which shall be accompanied by such information as the Board may reasonably require. A guest occupying a Lot or Home when the Owner is not present shall be subject to the prior written approval of the Board regardless of whether rent or other consideration is exchanged. Any guest occupying a Lot or Home when the Owner is present, regardless of whether rent or other consideration is exchanged, shall require Board approval when/if his or her occupancy exceeds sixty (60) days. Where required, approval of guest occupancy shall follow the same procedure outlined herein for leasing. The Board shall have the right to disapprove an application for lease or lease renewal (and guest occupancy where required) for good cause, without any obligation to provide a substitute lessee. The Board shall consider the following factors as constituting good cause for such disapproval:

- (i) The proposed lessee or occupant has been convicted of a felony involving violence to persons or property, sale, distribution, or use of controlled substances, or a felony demonstrating dishonesty or moral turpitude or has been charged with any such felonies and the person was not acquitted or the charges were not dropped;
- (ii) The proposed lessee or occupant has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures, bad debts, or a FICO credit score below 650; or the person does not appear to have adequate financial resources available to meet his/her financial obligations;
- (iii) The application for approval on its face indicates that the proposed lessee or occupant intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Association;
- (iv) The proposed lessee or occupant has a history of disruptive behavior or disregard for the rights and property of others as evidenced by their conduct in other social organizations or

associations, or by their conduct in this Association as a tenant, Owner or occupant of a Lot or Home;

(v) The proposed lessee or occupant failed to provide the information required to process the application in a timely manner, failed to fully complete the application or included inaccurate or false information in the application;

(vi) The requesting Owner has had fines assessed against him or her which have not been paid; or

(vii) All assessments and other charges against the Lot or Home have not been paid in full.

No one except a previously approved lessee or occupant shall be allowed to occupy a Lot or Home, either as a guest or otherwise while an application for approval is pending before the Board. Anyone so occupying a Lot or Home contrary to this provision shall be deemed to have withdrawn their application for approval.

The Association shall have the right to conduct a personal interview of any proposed lessee or occupant prior to the approval/denial of any application.

The Association shall have the right to impose a reasonable fee in connection with any requested approval of any lease in the highest amount permitted by law as amended from time to time.

The Board has the right to require a uniform lease form as approved by the Board from time to time. Notwithstanding the foregoing, any lease shall provide, and if it does not, shall be deemed to provide that the Association shall have the right to terminate the lease, evict the tenants/occupants and/or make demand for rental payments should the tenants/occupants violate the Association's governing documents or should the Owner become delinquent in the payment of any assessment.

The Board has the right to require a common area damage deposit in the highest amount permitted by law, as amended from time to time. Such sums shall be utilized to reimburse the Association for any damage to the common area caused by any tenant, their guests, occupants, or invitees.

The Board of Directors must approve or disapprove an application for lease within thirty (30) days of receipt of a complete and accurate application for approval. If the Board fails to give written notice of its approval or disapproval within this time period, the application shall be deemed accepted by the Association. Except as otherwise provided herein, no lease shall be valid without the prior written approval of the Association as set forth herein.

Section 23. Sale or Other Transfer. In order to maintain a community of congenial Owners who are financially and otherwise responsible, including but not limited to, law abiding, and thus protect the value of the Lots within the community, the sale or other transfer of Lots shall be subject to the following provisions. No Owner may sell or otherwise transfer a Lot or any interest therein, without the prior written approval of the Association obtained in the manner set forth herein. No approval is required to list a Home or Lot for sale.

Notice to Association. An owner intending to sell or otherwise transfer his/her Lot shall provide the Association with written notice of such intent at least thirty (30) days prior to the closing of the sale, including the name of the purchaser and such other information and documentation regarding the purchaser and transaction as the Association may reasonably require. A new owner acquiring title shall provide to the Association a copy of the recorded deed, or other instrument evidencing title.

(A) Board Approval. The Board of Directors shall have the right, but not the obligation to conduct a personal interview of any proposed owner and their proposed occupants prior to the approval/denial of any application or to have the review conducted by the management company or another designee. The Association shall have the right to impose a reasonable fee in the amount of \$100.00 (or the highest rate allowed by law) in connection with any requested approval of any transfer. Any owner wishing to transfer a Lot must submit his or her application using a form approved by the Board. The Board of Directors must approve or disapprove an application for approval within twenty (20) business days after submission of a complete and accurate application for approval. If the Board fails to provide written notice of its approval or disapproval within this time period, the application shall be deemed approved by the Association. No one except a previously approved owner and their approved occupants shall be allowed to occupy a Lot, either as a guest or otherwise, while an application for approval is pending before the Board of Directors. Anyone occupying a Lot contrary to this provision (except the current Owners and their occupants) shall be deemed to have withdrawn their application for approval. All remedies set forth herein are in addition to (and not in lieu of) any and all remedies available to the Association as a matter of law. The Board shall have the right to disapprove an application for a transfer for good cause, as determined in the sole and absolute discretion of the Board without the obligation to provide a substitute purchaser. The Board shall consider the following factors as constituting good cause for such disapproval:

(i) The proposed owner or their proposed occupant(s), has been convicted of a felony involving violence to persons, the destruction or theft of property, or the sale, distribution, or use of controlled substances, or a felony demonstrating dishonesty or moral turpitude or has been charged with any such felonies and was not acquitted or the charges were not dropped;

- (ii) The proposed owner has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts, or a FICO credit score below 650 or the proposed owner does not appear to have adequate financial resources available to meet the proposed owner's future obligations to the Association.
- (iii) The application for approval on its face indicates that the proposed owner or their proposed occupant(s) intends to conduct himself/herself/themselves in a manner inconsistent with the covenants and restrictions applicable to the Association;
- (iv) The proposed owner or their proposed occupant(s) have a history of disruptive behavior or disregard for the rights and property of others as evidenced by such person's conduct in other social organizations or associations, or by such person's conduct in this Association as an owner or occupant of a Lot;
- (v) The proposed owner failed to provide the information required by the Board to process the application in a timely manner or included inaccurate or false information in the application;
- (vi) The requesting owner has had fines or other charges assessed against him/her by the Association which have not been paid, will not be paid at closing or are not being actively contested in good faith; or
- (vii) Association assessments or other charges assessed against the Lot have not been paid or are not being actively contested in good faith.

Any sale or other transfer of ownership or possession of a Lot not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

ARTICLE VII OWNERSHIP IN BOCA POINTE

Section 1. Ownership in Boca Pointe. By taking title to a Lot, each Owner becomes subject to the terms and conditions of the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Boca Pointe recorded in Official Records Book 13764, Page 0793 of the Public Records of Palm Beach County, Florida. Among other things, this document provided that an Owner shall become a member of the Boca Pointe Community Association, Inc.; shall acquire certain property rights to the common areas within Boca Pointe; shall become subject to the terms and conditions of the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Boca Pointe recorded in Official Records Book 13764, Page 0793 of the Public Records of Palm Beach County, Florida. Among other things, this document provided that an Owner shall become a member of the Boca Pointe Community Association, Inc.; shall acquire certain property rights to the common areas within Boca Pointe; shall be bound by any exclusive

service contract for a televisions and security system; shall become subject to the assessments of the Boca Pointe Community Association, Inc. and assessments for television and security system, which assessments, except special assessments to a particular unit, shall be collected by the Association; and shall be subject to the guidelines of the Boca Pointe Architectural Control Design Review Manual.

Section 2. Membership in Boca Pointe Community Association, Inc. In accordance with the provisions of the Articles of Incorporation of Boca Pointe Community Association, Inc., all Owners shall be members in that association. Notwithstanding such membership, the voting rights allocated to any Owner shall be exercised by the Voting Member as defined in the Bylaws of Boca Pointe Community Association, Inc., except in those instances where a specific vote of the Members is required.

Section 3. Notice to Boca Pointe Community Association, Inc. Copies of all amendments to this Declaration the Articles of Incorporation and the By-Laws of the Association any easements to conveyances affecting the Common Areas, shall be promptly forwarded to Boca Pointe Community Association. The Association shall also provide a current list of the names and mailing addresses of all Owners within 15 days after receiving a written notice from the Boca Pointe Community Association.

Section 4. Cooperation With Other Maintenance Association. The Association shall cooperate with any similar maintenance associations levying assessments upon the Property including but not limited to Boca Pointe Community Association, Inc., and may enter into an agreement with any such association that one of the associations shall collect the payment of all maintenance assessments levied upon the Properties and shall remit the appropriate amounts due and payable to each Association.

ARTICLE VIII

ENFORCEMENT OF RESTRICTIONS, COVENANTS, RULES AND REGULATIONS

Section 1. Compliance by Owners. Each Owner shall comply with the restrictions and covenants set forth and any and all Rules and Regulations from time to time adopted by the Board of Directors of the Association.

Sections 2. Enforcement. Failure of the Owner to comply with such restrictions, covenants, or Rules and Regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages injunctive relief or any combination thereof, including costs and attorneys' fees incurred in bringing such action, and if necessary, costs and attorneys' fee for appellate review. The Association shall have the right to suspend voting rights and use of the Common Areas (except the private streets, sidewalks and driveways from time to time locate on the Common Area) for any violation of the provisions of the Association's Governing Documents. The Association may also recover attorney's fees and costs it incurs in cases where no court action is filed including, but not limited to, pre-litigation attorney's fees incurred in the

collection of delinquent Assessments, and fees and costs reasonably incurred by the Association in obtaining compliance with its Governing Documents. Said fees and costs shall be collectible in the same manner as an Assessment, and shall be secured by a lien, as provided in this Declaration.

Section 3. Fines. The Association may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$10,000.00 in the aggregate. A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the Board who are not officers, directors or employees of the Association, or the spouse, parent, child, brother, sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

- (a) **Payment of Fines:** Fines shall be paid no later than thirty (30) days after notice of the imposition or assessment thereof.
- (b) **Collection of Fines:** Fines shall be treated as an assessment otherwise due to the Association and shall be subject to lien where permitted by Florida Statutes, as same may be amended from time to time.
- (c) **Application of Fines:** All monies received from fines shall be allocated as determined by the Board of Directors.
- (d) **Nonexclusive Remedy:** The imposition of fines pursuant hereto shall not be construed to be an exclusive right or remedy, and the right to impose such fines shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, that any fine paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner.

ARTICLE IX GENERAL PROVISIONS

Section 1. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind The Properties, and shall inure to the benefit of and be enforceable by the Association, and any Owner, their respective legal representatives, heirs, successors, and assigns, for an initial period to expire on the thirtieth (30) anniversary of the date of recordation of the Declaration of Covenants, Conditions and Restrictions of Boca Pointe. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year period. 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 (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) years renewal period, three-fourths (3/4) of the entire voting interest of the Association cast at a duly held meeting of the Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association, at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at such meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Palm Beach County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Notice. Any notice required to be send to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding provided herein or by any proceeding at law or in equity against any person or person violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the property to enforce any lien created by these covenants and restrictions. Any failure by the Association or any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one or more of the covenants, restrictions or provisions of this Declaration by judgment or court order shall in no way affect any other covenant, restriction or provision hereof and such other covenants, restrictions and provisions are hereby declared to be severable and shall remain in full force and effect.

Section 5. Captions. The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of the text of this Declaration.

Section 6. Context. Whenever the context so requires, any pronoun used herein shall be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular

form of any nouns and pronouns herein shall be deemed to mean the corresponding plural form thereof and vice versa.

Section 7. No Implied Waiver. The failure of the Association the Board of directors or any Owner to object to an owner's or other party's failure to comply with any covenant, restriction or provision contained herein shall in no event be deemed a waiver of any such covenant, restriction or provision.

Section 8. Conflict. In the event of any inconsistency between this Declaration and the Articles and By-Laws of the Association, the provisions of this Declaration shall supersede, govern and control. In the event of any inconsistency between this Declaration and the Declaration of Covenants, Conditions and Restrictions of Boca Pointe, the provisions of the latter mentioned document shall supersede, govern and control.

ARTICLE X AMENDMENTS

These Declarations of Restrictions and Covenants may be amended at any time by a vote of a majority of the Board of Directors and in addition; by a vote of two-thirds (2/3) of the voting interests of the membership represented in person or by proxy at a duly noticed meeting of the Membership, subject to the approval of the Boca Pointe Community Association. A duly called meeting stating the purpose (amendments) must be sent to all members at least fourteen (14) days in advance of the meeting at which the amendments will be considered.

EXHIBIT "A"
TO
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS
FOR ESPLANADA AT BOCA POINTE

The legal description of The Properties as submitted by this Declaration:

The Plat of Esplanada at Boca Pointe No. 1
as recorded in Plat Book 46, Pages 117 and 118,
Public Records of Palm Beach County, Florida
LESS AND EXCEPT Tracts R - 1, R - 2 and R - 3 as shown herein.

This is not a certified copy



EXHIBIT "B"
TO
DECLARATION OF RESTRICTIONS
AND
PROTECTIVE COVENANTS
FOR
ESPLANADA AT BOCA POINTE

The legal description of the Common Areas is:

Tracts L and R-4, and the drainage easements
as shown on the Plat of the Properties.

This is not a certified copy

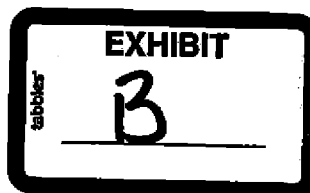


EXHIBIT "C"
TO
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS
FOR
ESPLANADA AT BOCA POINTE

Rules and Regulations
of the
Architectural Control Board
of
Esplanada at Boca Pointe

This is not a

1. Any Owner who desires to construct an improvement or structure of any kind on his Lot shall submit two complete sets of all plans and specifications and samples of proposed building materials to the Architectural control Board (the "Board").
2. All approvals by the Board shall be subject to further approval by the Architectural Control Committee of the Boca Pointe Community Association, Inc.
3. All exterior building materials shall be real and not artificial: the exteriors shall be consistent with the theme adopted by the Developer.
4. All fixed games and play structures shall be located behind the residences.
5. No metal cyclone fences are permitted. All walls shall be concrete block and stucco.
6. No window or wall air conditioning units are permitted.
7. All mailboxes or receptacles for the delivery of newspapers, magazines or mail shall be approved by the Board prior to installation on any lot.
8. Except when placed in front for pick-up, no garbage container shall be visible from the street.
9. No television or other outdoor antenna system or facility shall be erected or maintained within the boundaries of the association. Dish OK. Color and location must be approved by Architectural Control Committee.

