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This Instrument Prepared By:  
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Fort Myers, Florida 33919

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE COTTAGES AT GATEWAY GREENS

( GATEWAY PHASE 20 )

(AND LOT 34, BLOCK A, GATEWAY PHASE 8)

THIS DECLARATION is made this 14<sup>th</sup> day of JULY,  
1995, by ROTTLUND HOMES OF FLORIDA, INC., a Florida corporation,  
(the "Declarant" or "Developer"), for itself and its successors,  
grantees and assigns.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property located  
in Lee County, Florida, which is legally described in Exhibit "A"  
to this Declaration (the "Property"), and desires to create  
thereon a residential neighborhood of single family cottages; and

WHEREAS, Declarant desires to provide for the preservation  
of the values and amenities in said neighborhood, and to create a  
corporate entity to which will be delegated and assigned the  
powers and functions of administering and enforcing this Declara-  
tion of Covenants, Conditions and Restrictions, maintaining the  
Property and collecting and disbursing the assessments and  
charges hereinafter created; and

WHEREAS, Declarant has created, under the laws of the State  
of Florida, a not for profit corporation known as THE COTTAGES AT  
GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC., for the purpose of  
exercising the aforementioned functions.

NOW, THEREFORE, Declarant declares that the real property  
described in Exhibit "A" to this Declaration shall be held,  
transferred, sold, conveyed and occupied subject to the Master  
Declaration, as defined herein, and to the covenants, conditions,  
restrictions, easements, charges and liens set forth in this  
Declaration. All covenants, conditions and restrictions of this

• RECORD VERIFIED - CHARLIE GREEN, CLERK •  
• BY: SUSAN THOMPSON •

Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of Lots and Living Units in THE COTTAGES AT GATEWAY GREENS. The acquisition of fee simple title to a Lot, or any ownership interest in the Property, or the lease, occupancy or use of a Living Unit, or any portion thereof, shall constitute an acceptance and ratification of all provisions of this Declaration, as it may be amended from time to time, and an agreement to be bound by its terms.

1. DEFINITIONS. The terms used in this Declaration and its recorded exhibits shall have the definitions, if any, specified in the Master Declaration, as defined herein and as amended from time to time, and the meanings stated below, unless the context clearly requires otherwise.

1.1 "Assessment" shall mean and refer to a share of the funds required for the payment of common expenses of the Association which from time to time is levied against the Lots.

1.2 "Association" shall mean and refer to THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit.

1.3 "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

1.4 "Common Areas" shall mean and refer to all portions of the Property, exclusive of the numbered Lots, and any and all improvements situated thereon, which the Association now or hereafter owns for the common use and enjoyment of its members.

1.5 "Common Expenses" shall mean and refer to the actual and estimated expenses incurred by the Association for which owners are liable to the Association, including without limitation, expenses relating to maintenance, repair, replacement, insurance of and utility service to the common areas and the costs of administration of the Association in the performance of its functions and duties under the Governing Documents.

1.6 "Declarant" or "Developer" shall mean and refer to ROTTLUND HOMES OF FLORIDA, INC., a Florida corporation. Wherever either term is used in the THE COTTAGES AT GATEWAY GREENS Documents, it shall always be deemed to include any successor in interest to the Declarant's development rights and obligations.

1.7 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for THE COTTAGES AT GATEWAY GREENS, as it may be amended from time to time.

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1.8 "Family" or "Single Family" shall mean and refer to one natural person; or to a group of two or more natural persons residing together, each of whom is related to each of the others by blood, marriage or adoption; or to not more than two natural persons not so related, who reside together as a single house-keeping unit.

1.9 "Governing Documents" shall mean and refer collectively to the Master Documents and the **THE COTTAGES AT GATEWAY GREENS** Documents.

1.10 "Guest" shall mean and refer to any person who is not the Owner of a Lot or a lessee or a member of the Owner's or lessee's family, who is physically present in, or occupies a Living Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

1.11 "Institutional Mortgagee" shall mean and refer to the mortgagee or its assignee, of a mortgage against a Lot or Living Unit; which mortgagee or assignee is a bank, savings and loan association, mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term shall also mean and refer to any holder of a mortgage against a Lot or Living Unit; which mortgage is guaranteed or insured (as evidenced by a recorded instrument) by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation or agency engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns. "Institutional Mortgage" shall mean and refer to a mortgage held by an Institutional Mortgagee which encumbers a Lot or Living Unit.

1.12 "Lease" shall mean and refer to the grant by an Owner of a temporary right of use of the Owner's Living Unit for valuable consideration.

1.13 "Living Unit" shall mean and refer to any and all of the Cottages constructed on the Lots, each designed for use and occupancy as a single family residence.

1.14 "THE COTTAGES AT GATEWAY GREENS" shall mean and refer to and shall be the name of the Property.

1.15 "THE COTTAGES AT GATEWAY GREENS Documents" shall mean and refer to this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations and any resolutions of the

Association, as may be amended from time to time. In the event of a conflict in the interpretation of the **THE COTTAGES AT GATEWAY GREENS** Documents, they shall be applied in the order of priority stated in this paragraph.

1.16 "Lot" shall mean and refer to one or more of the twenty-one (21) numbered parcels of land graphically depicted on the plat of **THE COTTAGES AT GATEWAY GREENS** attached as Exhibit "B" to this Declaration, into which the Property has been subdivided, upon each of which a Living Unit has been or is intended to be constructed. Wherever the term "Lot" is used in the **THE COTTAGES AT GATEWAY GREENS** Documents, it shall be deemed to be followed by the words "and Living Unit constructed thereon", except where the context clearly requires otherwise.

1.17 "Master Association" shall mean and refer to **GATEWAY GREENS COMMUNITY ASSOCIATION, INC.**, a Florida corporation not for profit, its successors and assigns.

1.18 "Master Declaration" shall mean and refer to the Declaration of Protective Covenants and Restrictions for Parcel 20, Unit 4, Area One, as recorded in O.R. Book 2107, Page 1119, Public Records of Lee County, Florida, as may be amended from time to time.

1.19 "Master Documents" shall mean and refer to the Master Declaration, and the Articles of Incorporation, Bylaws, Rules and Regulations and any resolutions of the Master Association, as may be amended from time to time.

1.20 "Master Declarant" shall mean and refer to **BAY COLONY - GATEWAY, INC.**, a Delaware corporation, its successors and assigns (formerly **GATEWAY COMMUNITIES, INC.**, a Florida corporation). Any right, review, approval, exercise of discretion or judgment, enforcement, remedy, or other authority, interest, or reference, reserved, created or made, in these Covenants to the Declarant shall be read and understood to refer both to the Declarant and the Master Declarant; action independently, and in addition one to the other, so that both parties shall be required to give any approval or authorization, and either party shall be entitled to enforce any restriction or covenant. In all such instances, Master Declarant's role shall be primary and superior to that of Declarant. No exercise or failure to exercise any right or other provision shall be an obligation of Master Declarant or be a waiver hereunder. These provisions shall be in addition to, and not in lieu of, any rights or interests of Master Declarant under the Master Declaration.

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1.21 "Member" shall mean and refer to all persons who are entitled to membership in the Association as provided in the THE COTTAGES AT GATEWAY GREENS Documents.

1.22 "Occupant" or "Occupy", when used in connection with a Living Unit, shall mean and refer to any person or the act of any person who is physically present in the Living Unit on two or more consecutive days, including staying overnight.

1.23 "Owner" shall mean, refer to and include any person(s) or entity(ies) who is (are) the record owner(s) of the fee simple title to any Lot in the Property. If a Lot is subject to an agreement for deed, the purchaser in possession shall be considered the Owner for all voting and use rights purposes.

1.24 "GATEWAY GREENS" shall mean and refer to that certain planned unit development located in Lee County, Florida, which is the subject of the Master Declaration, and wherein the Property is located.

1.25 "Primary Occupant" shall mean and refer to the natural person approved for occupancy when title to a Lot is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

1.26 "Property" or "Neighborhood" shall mean and refer to all real property which is described in Exhibit "A" to this Declaration and made subject to this Declaration, and such real property as may hereafter be made subject to this Declaration, and includes both the Common Areas and Lots.

1.27 "Rules and Regulations" shall mean and refer to the administrative rules and regulations governing the use of the Common Areas and procedures for administration of the Association and the Property, as adopted, amended and rescinded from time to time by resolution of the Board of Directors.

1.28 "Single Family Residence" shall mean and refer to a Living Unit which is restricted to occupancy only by the Owner or Primary Occupant and his family, guests and lessees, as further provided herein.

1.29 "Voting Interests" shall mean and refer to the arrangement established in the Declaration and the Bylaws by which the owners of each Lot collectively are entitled to one vote in Association matters. There are twenty-one (21) Lots, so the total number of voting interests is twenty-one (21).

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2. CONTINUING DEVELOPMENT. The Property is being developed by or on behalf of Developer into Lots intended for the construction of single family cottages and is located within the GATEWAY GREENS development. The Owners recognize that other areas of GATEWAY GREENS may contain other types of residential developments and may be developed in other forms of residential housing and may be under development and construction for an extended period of time. Incident to that development, the Owners acknowledge that the quiet enjoyment of the Property may be unavoidably interfered with to some extent and degree by construction and sales operations. From time to time, Declarant and others may have presented to the public certain renderings, plans and models showing possible future development of GATEWAY GREENS. Declarant does not warrant in any way the schemes in these renderings, plans or models. They are primarily schematic and in no way represent a final development plan of GATEWAY GREENS.

3. ASSOCIATION; MEMBERSHIP; VOTING RIGHTS. The administration and management of the Neighborhood shall be by the Association, which shall exercise its powers and perform its duties and functions pursuant to the following:

3.1 Articles of Incorporation. The Articles of Incorporation of the Association, a copy of which is attached as Exhibit "C" to this Declaration.

3.2 Bylaws. The Bylaws of the Association, a copy of which is attached as Exhibit "D" to this Declaration.

3.3 Delegation of Management. The Association may contract for the management and maintenance of the Property and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and the maintenance, repair and replacement of the Common Areas, with funds made available by the Association for such purposes. However, the Association and its officers shall retain at all times, the powers and duties provided in the THE COTTAGES AT GATEWAY GREENS Documents.

3.4 Membership. Every Owner of a Lot in THE COTTAGES AT GATEWAY GREENS shall be a Member of the Association, provided however, that no person or entity who holds such interest merely as security for the performance of an obligation shall be deemed the Owner for purposes of determining membership and use rights. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

The Association shall have two (2) classes of membership; which classes shall be designated as Class A and Class B, as follows:

A. Class A. Class A Members shall be all Owners, with the exception of the Class B Member. Class A Membership shall become effective upon the occurrence of the latest of the following events:

1. Recording in the Public Records of Lee County of a deed or other instrument evidencing legal title to the Lot in the Member.

2. Approval of the Association as provided for in Section 13 of this Declaration.

3. Delivery to the Association of a copy of the recorded deed or other instrument evidencing legal title to the Lot in the Member.

4. If required elsewhere in this Declaration, delivery to the Association of a written designation of a Primary Occupant.

B. Class B. The Class B Member shall be the Declarant, or any assignee of the Declarant's development rights.

3.5 Voting Rights and Interests. The Class A Members of the Association are entitled to one (1) vote for each Lot owned by said Members. The total number of Class A votes shall not exceed the total number of Lots in the Neighborhood. The vote of a Lot is not divisible. In no event may more than one vote be cast with respect to any Lot. The right of any member to vote may not be denied because said Member is delinquent in the payment of assessments. If a Lot is owned by one natural person, the right to vote shall be established by the record title to the Lot. If a Lot is owned jointly by two or more natural persons who are not acting as trustees, that Lot's vote may be cast by any one of the record owners. If two or more owners of a Lot do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a Lot is not a natural person or is a trustee, the vote of that Lot shall be cast by the Primary Occupant designated as prescribed in Section 13 of this Declaration.

The Class B member shall be entitled to a number of votes equal to nine (9) times the total number of lots owned by the Class B member at the time the determination is made and until the termination of Class B membership as provided hereafter.

Class B membership shall cease to exist on the date of sale of the last lot in the Neighborhood owned by Declarant.

**3.6 Approval or Disapproval of Matters.** Whenever the decision or approval of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision or approval shall be expressed by the person authorized to cast the vote of such Lot at an Association meeting, unless the joinder of all record Owners is specifically required.

**3.7 Change of Membership.** Following written approval of the Association, as elsewhere required herein, a change of membership in the Association shall be established by the new Owner's membership becoming effective as provided in Section 3.4(A) above, and at that time, the membership of the prior Owner shall automatically terminate.

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

**3.9 Association as Owners of Lots.** The Association has the power to purchase Lots and Living Units, and to acquire and hold, lease, mortgage and convey Lots, upon approval of a majority of the Board of Directors.

**3.10 Membership Roster.** The Association shall maintain a current membership roster of the names and mailing addresses of all Owners and Primary Occupants, based upon information supplied by the owners. A copy of the current membership roster shall be made available to any member upon request.

**3.11 Limitation on Liability.** Notwithstanding its duty to maintain, repair and replace the Common Areas, the Association shall not be liable to Owners for property damage, other than for the cost of repair or replacement of the damaged property, caused by any latent condition of the Common Areas or said portions of the Living Units, or caused by the elements or Owners or other persons.

**3.12 Board of Directors.** Except as otherwise provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The Directors and officers of the Association have a fiduciary relationship with and duty to the

Owners. An Owner does not have the authority to act for the Association by virtue of being an Owner.

3.13 Powers and Duties. The powers and duties of the Association include those set forth in Chapter 617, Florida Statutes (Florida Not for Profit Corporation Act) and the Governing Documents. The Association may contract, sue or be sued with respect to the exercise or non-exercise of its powers and duties. If the Association has the authority to maintain a class action, the Association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual Owner or class of Owners to bring any action which might otherwise be available.

#### 4. COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

4.1 Creation of Lien and Personal Obligation for Assessments. Each Owner of a 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 to the Association:

A. the Lot's prorata share of annual assessments based on the annual budget adopted by the Association, and assessments payable to the Master Association through the Association.

B. the Lot's prorata share of special assessments for capital improvements or other Association expenditures not provided for by annual assessments; and

C. any charges against less than all of the Lots specifically authorized in this Declaration or the Bylaws of the Association.

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

**4.2 Master Association Assessments.** The Owner of a Lot, by acceptance of a deed therefor, is deemed to agree to pay its prorata share of Master Association assessments and other charges, as set forth in the Master Declaration. The Association shall, as agent for the Master Association, collect and remit to the Master Association, any and all assessments and other charges levied by the Master Association, as further provided in Article 6 of the Master Declaration.

**4.3 Share of Assessments.** Except as otherwise provided as to Developer and certain mortgagees, each Lot and Owner thereof shall be liable for an equal one twenty-first (1/21st) share of all annual and special assessments.

**4.4 Developer's Guarantee of Assessments and Share for Lots Owned by Developer.** Developer guarantees that assessments against each Lot for all Association purposes (not including Master Association assessments) will not exceed \$270.00 per quarter (\$90.00 per month) for the period of time that the Developer controls the Association (See Section 15 of this Declaration). If turnover has not occurred by December 31, 1996, Developer further guarantees that from January 1, 1997, until turnover of control of the Association to the Owners other than Developer, assessments against each Lot will not exceed \$300.00 per quarter (\$100.00 per month) for the period of time Developer controls the Association. During this period (the "Guarantee Period"), Developer shall be excused from the payment of assessments for Lots owned by Developer, and instead shall pay that portion of all Association expenses actually incurred which exceeds the amounts assessed against other Lot Owners. For purposes of this Section 4.4, Association expenses shall not include any funding of reserves for replacements, operating reserves, depreciation reserves, capital reserves or special assessments. Developer may use all contributions to working capital made by Owners at the closing on their Lots to offset start up expenses of the Association. After this Guarantee Period, Developer shall bear responsibility for payment of assessments as to Living Units for which a certificate of occupancy has been issued in the same manner as any other Owner; provided however, that under no circumstances shall the Developer ever have any obligation for payment of assessments for any Lot held by Developer for sale in the ordinary course of business as long as the Lot shall be unimproved.

**4.5 Establishment of Liens.** Any and all assessments levied by the Association in accordance with the provisions of this Declaration or any of the governing documents, together with interest at the highest rate allowed by law, and costs of

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collection, including but not limited to attorney fees, are hereby declared to be a charge and continuing lien upon the Lot and Living Unit against which each such assessment is made, and shall also be the personal obligation of the owner of each Lot and Living Unit assessed. This lien is superior to any homestead rights the owner may acquire in the Lots and Living Units. No owner may exempt himself from personal liability for assessments, or release the Living Unit owned by him from the liens and charges hereof by waiver of the use and enjoyment of the Common Areas, or by abandonment of his Living Unit. Said lien shall be perfected by the Association from and after the recording of a Claim of Lien in the Public Records of Lee County, Florida, setting forth the amount and due date of each unpaid assessment as of the date the claim of lien is recorded. The claim of lien shall secure payment of all assessments due at the time of recording (including interest, costs and attorneys fees as provided above), as well as all assessments coming due subsequent to such filing until the claim is satisfied or a final judgment of foreclosure is obtained. Upon full payment of all sums secured by the claim of lien, the party making payment is entitled to a satisfaction of the lien in recordable form. The Developer shall be exempt from an Association's lien rights, interest and any late fees as to any assessments or guaranteed amounts owed by the Developer.

**4.6 Priority of Lien.** The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded first mortgage, but only to the extent required by law. The Association's lien shall be superior to, and take priority over, any other mortgage or lien, regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by law. Any lease of a Living Unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee shall hold title subject to the liability and lien of any assessment coming due after foreclosure or conveyance by deed in lieu of foreclosure. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be treated as a special assessment and divided equally among, payable by, and assessed against all Lots, including the Lot as to which the foreclosure or conveyance by deed in lieu of foreclosure occurred.

**4.7 Collection of Assessments.** If any owner fails to pay any assessment, or installment thereof within ten (10) days after the same becomes due, the Association shall have any or all of the following remedies, to the extent permitted by law; which

remedies are cumulative and are not in lieu of all other remedies available to the Association.

A. To charge interest on such assessment or installment, from the date payment is due until paid, at the highest rate allowed by law, as well as to impose one late payment penalty of up to Twenty-five Dollars (\$25.00). This penalty shall not be considered a fine as provided for in Section 11.3 of this Declaration, and the procedural requirements for levying fines set forth herein shall not apply.

B. To deny Association approval of any proposed sale or transfer of the owner's Lot or Living Unit.

C. To accelerate the due date for the entire remaining unpaid amount of the annual assessment against the defaulting Owner's Lot for the remainder of the calendar year, notwithstanding any provisions for the payment thereof in installments.

D. To file an action in equity to foreclose its lien. The lien may be foreclosed by an action in the name of the Association in the same manner as provided in the Florida Condominium Act, as amended from time to time, for the foreclosure of liens on condominium parcels for unpaid condominium assessments.

E. To bring an action at law for a money judgment against the defaulting Owner without waiving any lien foreclosure rights of the Association.

4.8 Certificate As To Assessments. The Association shall, within fifteen (15) days after receipt of a written request for same, furnish to any Owner liable for assessments, a written certificate or estoppel letter signed by an officer of the Association, stating whether said assessments and any other sums due the Association have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid, as to, and may be relied upon by, all interested persons except the Owner.

4.9 Termination of the Association. If the Association is terminated or shall cease to exist for any reason whatsoever, and no other Neighborhood Association has assumed its duties and functions, the Master Association shall have the power to maintain all Common Areas or otherwise perform all functions of the Association, and shall be authorized to assess all owners for the cost of such services.

5. ARCHITECTURAL AND AESTHETIC CONTROL. Except for the initial construction of residences and other improvements by Developer,

no building, structure, pool or other improvement shall be erected, or altered on the Property, nor shall any grading, excavating, landscaping, change of exterior color or other work which in any way materially alters the exterior appearance of any building, structure, Lot or common areas be performed without the prior written approval of the Board of Directors of the Association. In obtaining said prior written approval, the owner, or any other person applying for such approval, shall comply with all applicable requirements and procedures of the Governing Documents. Refusal of approval of plans and specifications may be based upon any reason, including purely aesthetic reasons. Nothing contained herein shall be construed to limit the right of an Owner to remodel, redecorate, paint or otherwise alter his Living Unit; provided that such modifications or alterations to any portions of a Living Unit which are visible from outside the Living Unit shall be subject to prior written approval of the Board of Directors of the Association.

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**6. PROPERTY RIGHTS AND EASEMENTS.**

**6.1 Use of Common Areas.** Every Owner shall have a perpetual, non-exclusive easement for ingress, egress and access in, to and over the sidewalks, walkways and private roads and other improvements on the Property, for use and enjoyment in common with all other Owners. The portions of the Common Areas not designated as walkways and private roads and improvements shall also be for the common use and enjoyment of the Owners, and each Owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space in such manner as may be regulated by the Association. These easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

A. The right and duty of the Association to levy assessments against each Lot for the upkeep, maintenance, insurance, repair, replacement or betterment of the Common Areas and improvements thereon.

B. The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Common Areas to any public agency, authority or utility, for such purposes and subject to such conditions as may be determined by the Board. No such easement shall materially interfere with the rights of the Owners to use the Common Areas for the purposes intended.

6.1.1 The Owner shall have a non-exclusive easement of use, access and enjoyment in and to the General Common Area(s) of

**GATEWAY GREENS**, as those areas are defined in the Master Declaration, subject to the provisions of the Master Documents.

6.1.2 The right of an Owner to the use and enjoyment of the Common Areas of and improvements of the Properties and of the General Common Area(s) of **GATEWAY GREENS** shall extend to the members of Owner's immediate family who reside with Owner, and to his tenants, guests and invitees, subject to the governing regulations from time to time imposed by the Association and the Master Association.

6.2 **Encroachments**. If any Living Unit or portion thereof shall encroach upon the Common Areas or any portion thereof, or upon any other Lot, by reason of original construction, or approved reconstruction, repair or alteration, or shifting, settlement or movement of the improvements or other similar unintentional act of the Owner, or if any improvement on the Common Areas shall encroach upon any Lot, then an easement shall exist to the extent of that encroachment for so long as the encroachment continues to exist.

6.3 **Easements**. Developer, during any period in which Developer has any ownership interest in the Properties or any portion thereof, and the Association shall each have the right to grant such electric, telephone, gas, water, sewer, irrigation, drainage, cable television or other easements, and to relocate any existing access easements on the Properties, or any portion thereof, as Developer or 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 and welfare of the Owners or for the purpose of carrying out any provisions of this Declaration. Such easements or the relocation of any existing easements may not prevent or unreasonably interfere with the use of the Lots or Common Areas.

Each Lot shall be subject to an easement in favor of all other portions of the Property for the location of utilities and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair and replacement of the party walls, structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving other portions of the Property.

6.3 **Driveway**. The owner of each lot shall have an exclusive easement over any portion of the common areas crossed by his driveway.

6.4 **Maintenance Easement**. An easement shall exist in favor of the Association as to the portions of each owner's lot for which the Association has the maintenance responsibility. The

Association's responsibilities are detailed in Section 7.2 of this Declaration. The easement shall be for the sole purpose of entering the lot to complete such maintenance. An easement shall exist in favor of the Master Association and/or the Gateway Services District (the "District") as to the portions of the Common Areas for which the Master Association or the District has the maintenance responsibility.

6.5 Title to Common Areas. Developer will initially retain the legal title to the Common Areas. On or before the date of turnover of control of the Association to Owners other than Developer, as further detailed in Section 14 of this Declaration, Developer shall convey the Common Areas to the Association by Special Warranty Deed, and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record. Commencing with the date of recordation of this Declaration, the Association shall be responsible for the maintenance and administration of the Common Areas and any improvements and personal property thereon accruing from and after the date of such recordation. Developer shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent properties and for the purpose of construction of any facilities on the Common Areas that Developer elects to so construct.

6.6 Partition; Separation of Interests. There shall be no judicial partition of the Common Areas, except as expressly provided in this Declaration, nor shall Developer or any Owner or other person acquiring any interest in the Properties, or any part thereof, seek judicial partition of any Lot and Living Unit owned in the form of a co-tenancy. The ownership of any Lot and the Living Unit constructed thereon may not be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Lot and Living Unit hold membership in the Association.

6.7 Limited Common Areas. Certain Common Areas are designated as Limited Common Areas reserved for the use of a particular Lot or Lots, to the exclusion of the other Lots. The Limited Common Areas and the Lots to which their exclusive use has been assigned are as described in this Declaration. The following Common Areas are hereby designated as Limited Common Areas:

A. Garages and Living Units. Each Living Unit constructed on a Lot has or shall have an attached garage. Each garage has been assigned to the exclusive use of the Lot and Living Unit to which it is attached. The exterior surfaces of the garages and Living Units will be maintained by the Association and the cost of such maintenance shall be a common expense. The interior of the garages or Living Units shall be the responsibility of the Owners.

B. Lawns, Shrubbery, Driveways and Walkways. Any lawns, shrubbery, driveways and walkways which exclusively serve particular Living Units are Limited Common Areas for the exclusive use of the Living Units which they serve. The maintenance, repair and replacement thereof shall be the responsibility of the Association and shall be a common expense.

C. Others. Any part of the Common Areas that is connected to or exclusively serves a Living Unit, and is specifically required by this Declaration to be maintained, repaired or replaced by or at the expense of the Owner shall be deemed Limited Common Areas, whether or not specifically described above. This provision shall include windows, screen and doors, including all hardware and framings therefor.

The right of exclusive use of Limited Common Areas shall pass automatically with title to the Lot to which it is assigned, and may not be separately conveyed.

## 7. MAINTENANCE AND IMPROVEMENTS.

7.1 Maintenance of Common Areas. Except as otherwise provided herein or where said maintenance is the responsibility of the Master Association or the District, the Association shall at all times maintain in good repair, and shall replace as often as necessary, any and all improvements constructed on the Common Areas by Developer, including but not limited to all landscaping, perimeter privacy walls, irrigation system, utility lines, walkways, internal streets and roadways, guest parking areas, lighting fixtures and other structures; all such work to be done as ordered by the Board of Directors or its designee. Maintenance of lighting fixtures shall mean only the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lighting fixtures. Additionally, where the Common Areas are contiguous to the road right of way, the Association shall maintain all landscaping (if any) between the Common Areas and the pavement within such right of way, unless such maintenance is the responsibility of the Master Association. The Association shall obtain written approval of the DRC of the Master Association prior to making any material alterations or substantial additions to the Common Areas, if so required by the Master Documents.

7.2 Master Association and/or District Maintenance. The Master Association and/or the District shall be responsible for, without limitation, the maintenance of the lakes within the Property, if any, and the repair and replacement of drainage and water management systems. The expenses connected with such main-

tenance, repair and replacement (including funding of reserves) shall be imposed by the Master Association. The Master Association, its successors and assigns, shall have a perpetual, non-exclusive easement for ingress and egress over, upon and across all portions of the Property to the extent necessary to inspect such systems and for the performance of such maintenance, repair and replacement.

7.3 Maintenance of Living Units. The Association shall be responsible for pressure cleaning and repainting of the exterior of the Living Units and pressure cleaning of the roofs. The cost of such maintenance shall be a common expense. The Owner of each Living Unit shall maintain, repair and replace, at his own expense, all portions of his Living Unit except those portions specifically required to be maintained, repaired and replaced by the Association. By way of illustration and not limitation, the Owner's responsibility shall include general maintenance and upkeep of the roof and building, windows, glass and screens, doors, door and window hardware and locks, replacement of light bulbs, etc. The Owner is also responsible for all wiring, plumbing and electrical or mechanical equipment or fixtures which serve only his Lot and Living Unit. The Owner's responsibility shall be to keep the appearance of the Living Unit and all related improvements in a condition comparable to that when they were new, reasonable wear and tear excepted.

7.4 Completion of Neighborhood. Developer shall undertake the work of developing all Lots and Living Units within the Neighborhood. The completion of that work, or the sale, lease or other disposition of Lots is essential to the establishment and welfare of the Neighborhood as an ongoing residential community. In order that such work may be completed and the Neighborhood established as a fully occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent Developer, or the employees, contractors or subcontractors of Developer, or of Developer's transferees, from doing whatever they may determine to be reasonable, necessary or advisable for the completion of the work and the establishment of the Neighborhood as a residential community. As used in this paragraph, the word "transferees" specifically excludes purchasers of Lots improved with completed Living Units.

7.5 Enforcement of Maintenance. If the Owner of a Living Unit fails to maintain same as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including without limitation, entering the Lot, with or without consent of the Owner. The Association may repair, replace or maintain any item which constitutes a hazard to other property or residents, or which has a material adverse effect on the appearance of the Neighborhood. Any expenses so incurred by the Association shall be assessed against the Owner,

together with reasonable attorneys fees and other expenses of enforcement.

**7.6 Negligence; Damage Caused by Condition in Living Unit.**

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

**7.7 Alterations and Additions.**

Funds necessary for material alterations or substantial additions to the Common Areas may be levied as special assessments by the Association only upon prior approval by a majority of the whole Board of Directors and approval by two-thirds (2/3rds) of the voting interests present and voting at a meeting or by ballot as provided in the Bylaws of the Association. Prior to the commencement of any such project relating to the Common Areas or to the improvements thereon, the Association shall obtain the written approval of the DRC of the Master Association, if so required. However, if changes necessary to enable the Association to perform its legal duty to protect, insure, maintain, repair or replace the Properties also happen to constitute material alterations or substantial additions, no prior approval of the Owners is necessary or required.

**8. INSURANCE OF LIVING UNITS; RECONSTRUCTION AFTER CASUALTY.**

**8.1 Duty to Insure and to Reconstruct.**

Each owner shall at all times maintain casualty insurance on his Living Unit and all other insurable improvements in an amount equal to the full replacement cost thereof. If any Living Unit or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner of such improvements shall cause repair or replacement to be commenced within ninety (90) days from the date that such damage or destruction occurred, and to complete the repair or

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replacement within nine (9) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition, shall utilize and conform with the original foundation and boundary of the original improvements unless otherwise approved by the DRC.

**8.2 Failure to Reconstruct.** If the owner of any Living Unit fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 8.1 above, then the Association shall be deemed to have been granted the right by the owner to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. In the event the Association exercises the rights afforded to it by this section, the owner of the Living Unit shall be deemed to have assigned to the Association any right the owner may have to insurance proceeds that may be available to the owner arising from the damage or destruction of the improvements. The Association shall have the right to recover any costs not paid by insurance from the owner of the Living Unit and shall have a lien on the Living Unit to secure payment.

**8.3 Association as Co-Insured.** For the purpose of this Section 8, each owner of a Lot within the Neighborhood agrees that the Association shall be named as a co-insured under any hazard and/or flood insurance policy relating to a Living Unit and improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements, taking into account local construction costs and property values as they may from time to time exist. In the event that an owner refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the owner allows the required insurance coverage to lapse, or for some other reason causes the same to become ineffective, the Association may purchase whatever coverage it deems reasonably necessary for the Association's benefit and the cost incurred by the Association, together with interest, reasonable attorney fees and costs of collection, shall become due and payable by the owner immediately upon the Association's notification to the owner in writing that it has procured such insurance.

**8.4 Association as Agent.** For the purpose of performing the duties and functions authorized by this Section 8, the Association, through its duly authorized agents and employees shall have the right, after reasonable notice to the owner, to enter upon the Lot at reasonable hours and perform such duties.

9. INSURANCE OF BUILDINGS AND IMPROVEMENTS; COMMON AREAS.

9.1 Duty and Authority to Obtain. The Board of Directors shall obtain and maintain in force and effect at all times the insurance coverage which it is required to carry, and may obtain and maintain in force and effect any or all of such other or additional insurance coverage as it is authorized to carry and deems necessary. The premiums shall be a common expense. The name of the insured shall be the Association as agent for the owners without naming them, and their mortgagees.

9.2 Required Coverage. The Association shall maintain adequate liability and casualty insurance covering all buildings and insurable improvements within or on the Common Areas, in an amount equal to the full insurable replacement value thereof, as determined annually by the Board of Directors; such insurance to afford protection against:

A. Casualty. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief and other hazards covered by what is commonly known as an "all risk" property contract.

B. Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as shall be required by the Board of Directors, with cross liability endorsement to cover liabilities of the owners as a group to any single owner.

C. Workers Compensation. In compliance with Florida law.

9.3 Optional Coverage. The Association may purchase and maintain such other insurance coverage as the Board of Directors may determine to be in the best interest of the Association and the owners.

9.4 Description of Coverage. A detailed summary of the coverages included in the master policies, and copies of said master policies shall be available for inspection by owners upon reasonable request.

9.5 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association, owners or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

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9.6 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and all proceeds shall be payable to the Association.

9.7 Distribution of Proceeds. Proceeds of insurance received by the Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the common surplus.

9.8 Association as Agent. The Association is hereby irrevocably appointed as agent for each owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Living Units.

## 10. GENERAL COVENANTS AND RESTRICTIONS

10.1 Residential Use. No Lot shall be used for other than residential purposes. No building or structure other than one single family residence with attached garage shall be erected, altered, placed or permitted to remain on any Lot. No trade, business, profession or other commercial activity may be conducted in, on or from any part of the Property. Notwithstanding the foregoing provisions, Declarant shall be permitted to maintain a construction trailer, model or models and sales office on the Property for so long as Declarant hold a Lot for sale in the ordinary course of business.

10.2 Building Setback Lines; Size of Buildings; Site Restrictions and Building Height. All buildings and structures shall conform to the requirements of the Governing Documents and shall be approved by the appropriate governmental authorities.

10.3 Leasing. An Owner may lease his Living Unit without prior Board approval, subject to the following restrictions and conditions:

A. The lease must be written, and a fully executed copy thereof must be provided to the Association not less than ten (10) days prior to the commencement of the lease term, together with such other information about the lessee(s) as the Board may reasonably require.

B. All of the provisions of the Governing Documents and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable to and enforceable against any person occupying a Living Unit as a lessee or guest of an Owner, to the same extent as an Owner, and a covenant on the part of each occupant to abide by the Rules and Regulations of the Association and the provisions of the Governing Documents,

including those designating the Association as the Owner's agent, with the authority to terminate any lease and evict the lessee(s) in the event of violations by the lessee(s) of such covenants, shall be deemed to be included in each and every lease, whether oral or written, and whether or not specifically expressed in such lease.

C. No unit may be leased for a term of less than thirty (30) consecutive days. No lease may begin sooner than thirty (30) days after the beginning of the last lease, and no unit shall be leased more than three (3) times per year. No subleasing or assignment of lease rights by the lessee is allowed. It is the intent of this provision that these living units not qualify as "public lodging establishments" as defined in Chapter 509 Florida Statutes as amended from time to time. In the event a longer minimum rental period shall be necessary to effectuate this intent, this section shall be deemed automatically amended to provide for such minimum rental period.

10.4 Nuisances. No noxious or offensive activity, and no activity which is inconsistent with the maintenance of the highest standards for a first class residential neighborhood, shall be carried on upon the Property, nor shall any activity that is or may reasonably become a source of annoyance or nuisance to other residents in the Neighborhood or surrounding areas be engaged in, condoned or permitted. The use of the Property shall be consistent with existing laws and the Governing Documents, and residents, guests and invitees shall at all times conduct themselves in a peaceful and orderly manner.

10.5 Temporary Structures. No tent, shed, shack, trailer or other structure of a temporary nature shall be placed on any Lot or the Common Areas without the prior written approval of the Board of Directors of the Association and the DRC of the Master Declarant.

10.6 Signs. No sign of any kind shall be exhibited or displayed to public view on or from any part of the Properties (except signs that identify the Properties and street and traffic control signs) without prior written approval of the Board of Directors of the Association and the DRC of the Master Declarant. This section shall not apply to any signs used or displayed by Declarant or his agents to promote and market the sale of Lots owned by Declarant, for so long as Declarant holds a Lot for sale in the ordinary course of business.

10.7 Refuse and Waste; Storage and Disposal. Lots shall be kept free and clear of trash and debris and Owners shall reasonably maintain the general appearance of the Lots and Living Units. Rubbish, trash, garbage and other waste shall not be kept except in sanitary containers suitably stored or screened from

the streets and adjacent Lots. All equipment used or kept for the storage or disposal of such material shall be kept in a clean and sanitary condition. No refuse, trash or other waste or containers for the storage thereof shall be placed in the yard or driveway of a Lot except for a reasonable period of time in order to comply with refuse pickup schedules. No garbage incinerators or burning of trash or waste of any kind or type shall be permitted on the Property.

10.8 Maintenance. Declarant shall care for vacant or unimproved Lots within the Property, shall remove and destroy tall grass, undergrowth, weeds and rubbish therefrom and shall do any other things and perform any labor necessary or desirable in the judgment of Declarant to keep said Lots in acceptable order and appearance. The Association shall have the right to repair any structure or improvement on any Lot which constitutes a danger or nuisance or is in unsightly disrepair, provided that the Owner of the Lot is given not less than ten (10) days notice of the Association's intent to do so. Such notice shall reasonably specify the proposed action. The Association shall charge the expense of same against the Owner of said Lot; which charge shall be a lien on the Lot which may be foreclosed and shall include Declarant's or the Association's attorneys fees and costs in connection with such foreclosure.

10.9 Exterior Window Coverings. Awnings, storm or other shutters, solar film and other exterior window coverings shall be subject to the prior approval and control of the Board of Directors of the Association and the Design Review Committee of the Master Declarant.

10.10 Fences, Walls and Similar Structures. Other than those constructed by Developer during initial construction of the Neighborhood, no fence, wall or other similar structure shall be erected, installed or constructed on any Lot or Common Areas without prior approval of the Board of Directors of the Association and the Design Review Committee of the Master Declarant.

10.11 Landscaping. No landscaping shall be installed, removed, cut down, destroyed or altered by an Owner without the prior express written approval of the Board of Directors of the Association and the DRC of the Master Declarant. No artificial grass, turf, plants or other vegetation shall be placed or maintained upon any Lot, without prior written approval of the Board of Directors.

10.12 Outside Lighting and Mailboxes. Except as may be initially installed by Declarant, no spotlights, floodlights or similar type of high intensity lighting shall be placed or utilized upon any Lot without prior approval of the Board of Directors and the DRC of the Master Declarant. Other types of

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low intensity lighting which do not unreasonably disturb the Owners or other occupants of the Property shall be permitted. If Declarant installs a lamp or light in the front yard of the Lot, the Owner shall maintain and keep said lamp or light illuminated and in operable condition during all hours of darkness and shall replace the light bulb and take any other action necessary to comply with this requirement. If Developer installs a mailbox on the Lot, the Owner thereof shall maintain said mailbox in good condition and acceptable appearance. If the Owner fails to replace any stolen or damaged mailbox, the Association may do so at the Owner's expense.

10.13 Animals and Pets. Not more than two (2) commonly accepted and domesticated household pets such as dogs or cats (except those breeds which are expressly prohibited by the Master Declarant), and a reasonable number of animals such as fish or birds, may be kept by an Owner, subject to reasonable regulation by the Association or the Master Declarant. All animals shall be contained and kept within the Living Unit at all times. No pets shall be left unattended in or on lanais or garages or other screened or similar enclosed areas. No reptiles, amphibians, poultry or livestock shall be raised, bred or kept on the Property. No pet or animal shall be kept, bred or maintained for any commercial purposes. No pet or animal shall cause or be the source of annoyance, nuisance or disturbance to any other Owner or occupant. Pets must be carried under the Owner's arm or leashed at all times while outside of the Living Unit. No pets are permitted under any circumstances in or on those portions of the Common Areas designated for recreational use. Each pet Owner shall be responsible for the removal and disposal of the pet's feces or waste. The ability to have and keep an animal or pet is a privilege, not a right, and the Board of Directors of the Association and the DRC of the Master Declarant are empowered to order and enforce the removal of any animal or pet which becomes a reasonable source of annoyance to other residents of the Neighborhood or in any way causes any damage to the Property. Tenants shall not be permitted to keep or have pets of any kind.

10.14 Parking, Storage and Repair of Vehicles. Parking on the grass or along the roadways and streets in the Neighborhood is prohibited. Parking of the following commercial vehicles, other than those temporarily present on business, is prohibited unless completely enclosed in garages and completely concealed from public view: trucks, boats, trailers, semi-trailers, recreation vehicles, motorcycles, mobile homes, motor homes, busses, tractors or other such vehicles. The following vehicles will not be considered commercial vehicles: Jeeps, Scouts, Broncos, Blazers, Pathfinders, Toyota Forerunners and Land Cruisers and all vehicles of a similar size and configuration to any of these, which are for "private use" as defined in Section

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320.01(14), Florida Statutes, have not been materially modified for off-road use, and are without commercial lettering or advertising. Also permitted are pickup trucks which have a load limit of less than three-quarter (3/4) ton and are for "private use" as defined in Section 320.01(14), Florida Statutes; and are without commercial lettering or advertising. Any vehicle which is not licensed or is wrecked, junked, in a state of disrepair, on blocks, partially dismantled, inoperative or abandoned condition, whether attended or not, is not permitted to be kept on the Property. For the purpose of the foregoing provision, the term "kept" shall mean present for either a period of four (4) consecutive hours or overnight, whichever is less. The repair of motor vehicles on the Property, except in the case of an emergency, is prohibited.

10.15 Television and Other Outdoor Antennae. No outdoor television, radio or other antenna or antenna system, satellite dish or similar system may be erected or installed on any Lot or Living Unit or on the Common Areas.

10.16 Radio Equipment. No ham radios, CB base stations or other similar radio transmissions equipment shall be operated or permitted to be operated in GATEWAY GREENS without the prior written consent of the DRC of the Master Declarant.

10.17 Cable Television Services. In order to provide for the common welfare of Owners of cottages within THE COTTAGES AT GATEWAY GREENS, the THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC. may enter into a contract ("Cable Agreement") with GATEWAY/JONES COMMUNICATIONS, LTD., a cable television provider, for the purposes of providing quality cable television services to the residents of THE COTTAGES AT GATEWAY GREENS at a reasonable cost. The Master Declarant has given notice that one of the Master Declarant's affiliated companies may become the sole supplier of cable services in THE COTTAGES AT GATEWAY GREENS.

10.17.1 Cable television services are deemed to be of common benefit to Owners of cottages in THE COTTAGES AT GATEWAY GREENS. THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC. shall have the power to impose upon all Owners of cottages the affirmative covenant and obligation to pay the THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC. an equal share of the basic subscriber service charge (in effect from time to time) for cable television service supplied by an operating entity in the business of supplying cable services ("Operator") pursuant to a contract between the THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC. and the Operator, which obligation shall be imposed whether the Owner of the cottage utilized such services or not. All other fees imposed by Operator for cable television services including without limitation, installation charges,

additional outlet charges, remote control rental charges, converter rental charges, and premium television channel charges shall be contracted directly between Operator and Owner of any cottage. Said additional charges shall not be a part of the assessment imposed under this Section.

10.17.2 The obligation to pay the assessment for cable television service shall be effective against all cottages (not to include any model home so long as it is used as a model home) upon date of issuance of a Certificate of Occupancy or like permit from the applicable governmental authority.

10.17.3 The assessment established by this Section, with interest thereon at the highest rate allowed by law, and costs of collection, including, but not limited to, reasonable attorneys' fees, are hereby declared to be a charge and continuing lien upon each cottage, against which such assessment is made. The obligation and liability of said assessment and the collection of said assessment shall be in the same manner as set forth in Section 4 of the Declaration of Covenants, Conditions and Restrictions for THE COTTAGES AT GATEWAY GREENS.

10.17.4 In the event the Cable Agreement is properly terminated for any reason, the THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC. is expressly authorized to enter into commercially reasonable agreements for cable service to be provided by any cable service provider. The THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC. may contract for a single operator to have the exclusive right to provide cable television service in THE COTTAGES AT GATEWAY GREENS for so long as the Operator is in compliance with the Cable Agreement. The THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC. shall have the power to make any reasonable arrangement for payment for bulk cable service including without limitation, a requirement that each cottage be assessed for cable service in the same manner as described in this Section.

10.18 Garages. No garage shall be permanently enclosed or converted to any use other than for parking of vehicles and storage of other personal property typically stored therein. Garage doors shall be and remain closed at all times except when vehicles are entering or exiting the garage.

10.19 Solar Devices. Solar devices shall only be permitted at locations and on structures as are first approved in writing by the DRC of the Master Declarant.

10.20 Outdoor Clothes Drying. No outdoor clothes drying area, facility or mechanism shall be permitted.

11. **ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS.** Every Owner shall at all times comply with all the covenants, conditions and restrictions of the THE COTTAGES AT GATEWAY GREENS Documents. All violations of the THE COTTAGES AT GATEWAY GREENS Documents shall be reported immediately to a member of the Board of Directors. Prior to undertaking any remedial, disciplinary or enforcement action against the person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in the case of emergencies. Disputes or disagreements concerning violations, including without limitation, disagreements regarding the proper interpretation and effect of the THE COTTAGES AT GATEWAY GREENS Documents, shall be presented to and determined by the Board of Directors, whose interpretation of the THE COTTAGES AT GATEWAY GREENS Documents and/or whose remedial action shall control. If any person, firm or entity subject to the THE COTTAGES AT GATEWAY GREENS Documents fails to abide by said documents, as they are interpreted by the Board of Directors, that person shall be liable to be fined by the Association for each such failure to comply or other violation.

11.1 **Legal Action.** Judicial enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain the violation or to recover damages, and against the lots to enforce any lien created by these covenants. Failure by the Association or any owner to enforce any covenant or restriction herein contained, shall in no event be deemed to have waived the right to do so thereafter. If such action is instituted, the Association shall, in addition, be entitled to recover its costs and reasonable attorneys fees incurred in enforcing the THE COTTAGES AT GATEWAY GREENS Documents.

11.2 **Entry by Association.** Violations of any conditions or restrictions or breach of any covenant herein contained or in any of the THE COTTAGES AT GATEWAY GREENS Documents shall also give the Declarant, its successors and assigns, and/or the Association and its authorized agents or representatives, in addition to all other remedies, the right to enter upon the lot where such violation or breach exists or is occurring, and summarily abate and remove, at the expense of the owner of said lot, any construction or other violation that may exist thereon. The Declarant, its successors and assigns, and/or the Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

11.3 **Fines.** The Board may impose a fine or fines upon an owner for failure of the owner, his family, guests, invitees, tenants or employees to comply with any covenant, restriction, rule or regulation contained herein or promulgated pursuant to the THE COTTAGES AT GATEWAY GREENS Documents.

A. Notice. The Association shall notify the owner in writing of the nature of the alleged infraction or infractions. Included in the notice shall be the date and time of the next Board meeting, at which time the owner shall have the right to be heard and present reasons why penalty(ies) should not be imposed by the Board.

B. Hearing. The facts of the alleged infraction(s) shall be presented to the Board, after which the owner shall have a reasonable opportunity to present his defense and reasons why penalties should not be imposed. A written decision of the Board shall be submitted to the owner not later than ten (10) days after the Board meeting.

C. Appeal. Any person aggrieved by the decision of the Board may, within seven (7) days of the Board's decision, file an appeal of the decision. An appeals committee will be appointed by the Board within seven (7) days of the request and shall consist of three (3) members of the Association who are not Directors or officers. The appeals committee will meet promptly, prepare a written determination of the matter, and serve copies of such determination on both the Board and the aggrieved person. In no event shall the appeals committee's findings be binding upon either party; however, the Board may elect to review and reconsider its decision in light of the finding of the appeals committee.

D. Amount of Fine. The Board may impose fines in amounts reasonably related to the severity of the offense and deemed adequate to deter future offenses, subject to the following limitations:

1. For the first noncompliance or violation, the fine shall not exceed One Hundred Dollars (\$100.00).
2. For the second noncompliance or violation, the fine shall not exceed Five Hundred Dollars (\$500.00).
3. For the third and subsequent noncompliances or violations, or for violations that are of a continuing nature, the fine shall not exceed One Thousand Dollars (\$1,000.00).

E. Collection of Fines. Fines shall be treated as an assessment due to the Association not later than ten (10) days after written notice to the owner of the imposition of the fine, as provided in Section 11.3 of this Declaration. The proper filing of an appeal of the Board's decision to impose the

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fine shall postpone the due date of the fine until seven (7) days after the written decision of the appeals committee is served on the owner.

F. Application. All monies received by the Association from the imposition of fines shall become part of the common surplus of the Association.

G. Non-exclusive Remedy. The remedy of imposing fines shall not be construed to be an exclusive remedy of the Board for violations, and such remedy shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such owner connected with the same offense.

## 12. MASTER ASSOCIATION

12.1 Membership in Master Association and Voting Rights. By taking title to a Lot, an Owner becomes a member of the Master Association and subject to the terms and conditions of the Master Declaration, as it may be amended from time to time. In accordance with the relevant provisions of the Master Documents, all owners are automatically and irrevocably members of the Master Association. The provisions of Article 5 of the Master Declaration contain the procedures for voting in Master Association matters.

12.2 Master Association Assessments. Pursuant to the Master Declaration, the Master Association has the right to assess members for all expenses which may be incurred by the Master Association in the performance of its duties. These assessments will be collected by the Association as agent for the Master Association at the discretion of the Master Association and remitted to the Master Association on a timely basis. The Master Association may in its discretion collect assessments directly from each owner. Pursuant to Article 6, Section 6.2 of the Master Declaration, the Master Association shall have a continuing lien on each Lot in **THE COTTAGES AT GATEWAY GREENS** for payment of assessments due the Master Association and the responsibility for payment of said assessments is the personal obligation of each Owner, even though the Association is responsible for collecting and remitting said assessments.

12.3 Notice to Master Association. Copies of all amendments to any of the **THE COTTAGES AT GATEWAY GREENS** Documents and any easements or conveyances affecting the Common Areas shall be forwarded to the Master Association not later than fifteen (15) days after recording of said amendments in the public

records. The Association shall provide a current list of the names and mailing addresses of all Owners within fifteen (15) days after receipt of a written request for same from the Master Association.

13. TRANSFER OF OWNERSHIP OF LIVING UNITS. In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Lots and Living Units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Lot and Living Unit by an Owner shall be subject to the following restrictions:

13.1 Forms of Ownership.

A. One Person. A Lot and Living Unit may be owned by one natural person who has qualified and been approved by the Association as elsewhere provided herein.

B. Co-Ownership. Co-ownership of Lots and Living Units is permitted. If the proposed co-owners are other than husband and wife, the Board shall condition its approval upon the designation of one of the approved natural person co-owners as Primary Occupant and the use of the Living Unit by other persons shall be as if the Primary Occupant were the only actual Owner. Any change in the Primary Occupant shall be treated as a transfer of ownership by sale or gift, subject to the provisions of this Section 13. No more than one such change will be approved in any twelve (12) month period.

C. Ownership by Corporations, Partnerships or Trusts. A Lot and Living Unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided for other transfers of title. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Living Unit may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or corporation, partnership or other entity as an Owner shall be conditioned upon designation by the Owner of one natural person to be the Primary Occupant and the use of the Living Unit by other persons shall be as if the Primary Occupant were the only actual owner. Any change in the Primary Occupant shall be treated as a transfer of ownership by sale or gift, subject to the provisions of this Section 13. No more than one such change will be approved in any twelve (12) month period.

D. Life Estate. A Lot and Living Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under 13.2 below. In that event,

the life tenant shall be the only member from such Lot, and occupancy of the Living Unit shall be as if the life tenant were the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the Lot. Any consent or approval required of members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. The life tenant may, by signed agreement, transfer the right to vote in all Association matters, to any one holder of a remainder interest, subject to prior written approval of the Association. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 13.1(B) above.

### 13.2 Transfers.

A. Sale or Gift. No Owner may dispose of a Lot or Living Unit or any ownership interest therein by sale or gift (including by agreement for deed) without the prior written approval of the Association.

B. Devise or Inheritance. If any Owner acquires his title by devise or inheritance, his right to occupy or use the Living Unit shall be subject to the approval of the Association under Section 13.3(A)(2) below. The approval shall not be denied to any devisee or heir who was the prior Owner's lawful spouse or was related to the owner by blood or adoption within the first degree at the time of said prior Owner's death.

C. Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the Living Unit without prior approval of the Association under the procedures outlined in Section 13.3 below.

D. To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members. The Chairman of the committee shall be deemed a Vice President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

### 13.3 Procedures.

#### A. Notice to Association.

1. Sale or Gift. An Owner intending to make a sale or gift of his Lot and Living Unit or any interest therein shall give the Association written notice of

such intention at least twenty (20) days before the date of the proposed transfer, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board of Directors may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a condition of approval.

2. Devise, Inheritance or Other Transfers. The transferee must notify the Association of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Association, but may sell or lease the living unit by following the procedures in this Declaration.

3. Demand. With the notice required in Subsection (A)(1) above, the Owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the Lot at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the Lot and Living Unit determined as provided below.

4. Failure to Give Notice. If no notice is given, the Association, at the Board's election, may approve or disapprove the transfer at the time it learns of same. If any Owner fails to obtain the Association's approval prior to selling an interest in a Lot, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

B. Board Action. Within twenty (20) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received by the Association, whichever occurs first, the Association shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits set forth above for same, such failure to act shall be deemed the equivalent of approval

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and on demand, the Association shall issue a Certificate of Approval to the transferee.

C. Disapproval.

1. With Good Cause. Approval of a proposed transfer by the Association may be withheld for good cause only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause for disapproval exists. Only the following shall be deemed to constitute good cause for disapproval.

- a. The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- b. The person seeking approval has a record of financial irresponsibility, including without limitation, prior bankruptcies, foreclosures or bad debts;
- c. The person seeking approval gives the Board reasonable cause to believe, or the application for approval on its face indicates that person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Property;
- d. The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others, as evidenced by, among other things, his conduct at other social organizations or associations, or by his conduct as a tenant, Owner or occupant of a Living Unit;
- e. The person seeking approval has evidenced an attitude of disregard for Association rules by his conduct on the Properties as a tenant, Owner or occupant of a Living Unit;
- f. The transfer to the person seeking approval would result in that person owning more than three (3) Lots in the Neighborhood;
- g. The person seeking approval has failed to provide the information, fees or interviews

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required to process the application in a timely manner, or provided false information during the application process; or

- h. The transaction, if a sale or gift, was concluded by the parties without having sought and obtained prior approval of the Association as required herein.

2. Without Good Cause. The Association's approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 13.3(A)(3), then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the Owner (hereafter "the seller") the name of an approved purchaser who will purchase the Lot and Living Unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

3. If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed approved, despite the Board's former disapproval, and upon demand, a Certificate of Approval shall be issued.

13.4 Exception. The provisions of Sections 12.2 and 12.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

13.5 Unapproved Transfers. Any sale or transfer which is not approved pursuant to the terms of this Section 13, or which

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is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

**13.6 Fees and Deposits Related to the Sale of Lots.**

Whenever herein the Association's approval is required to allow the sale or other transfer of an interest in a Lot and Living Unit, the Association may charge the Owner a preset fee for processing the application, such fee not to exceed any maximum amount allowed by law. The Association may also require any security or other deposits that are not prohibited by law.

**14. DEVELOPER'S RIGHTS AND DUTIES.** So long as Developer holds any Lots in the Neighborhood for sale in the ordinary course of business, the following shall apply, notwithstanding any other provision in this Declaration to the contrary:

**14.1 Developer's Use.** Until Developer has completed all of the contemplated improvements and has sold all of the Lots and Living Units in the Neighborhood, neither the Owners nor the Association, nor their use of the Lots, Living Units and Common Areas shall unreasonably interfere with the completion of the contemplated improvements or sales of Lots or any other property in **THE COTTAGES AT GATEWAY GREENS**. Developer may make any use of the unsold Lots, Living Units and Common Areas as may reasonably be expected to facilitate completion and sales, including without limitation, maintenance of construction and sales offices, promotions, display of signs, leasing of Living Units and showing of the Lots, Living Units and the Properties to prospective purchasers. Developer also reserves the right to lease back one or more Living Units for use as "hospitality suites", providing short term guest accommodations for prospective purchasers or other guests of Developer.

**14.2 Assignment of Development Rights.** All or any of the rights, privileges, powers, duties and immunities of Developer set forth in the Governing Documents may be assigned by Developer to any person or entity, without the consent of any other owner or any holder of a mortgage secured by any Lot or Living Unit. Upon the acceptance of such assignment by the assignee, the Developer assignor shall be relieved of all liabilities and responsibilities to the extent of the assignment. In the event of the foreclosure of any mortgage owned by Developer, or deed in lieu of foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of such foreclosure, shall succeed to all rights, powers, privileges and immunities of Developer in and to such interest.

**14.3 Amendment of Documents.** In addition to any other right of amendment or modification provided for in this Declaration and its recorded exhibits, Declarant, with the prior written consent of Master Declarant, or any person or entity

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which succeeds to its position as Developer of the Properties may, in its sole discretion, by an instrument filed of record, unilaterally modify, enlarge, amend, waive or add to the provisions of this Declaration or any of its recorded exhibits. This right specifically includes the right to amend this Declaration and its recorded exhibits to bring additional property and lots within the Neighborhood, to withdraw property previously submitted to this Declaration and to change the size or dimension of any Lot or Living Unit without the approval of any Owner or mortgagee so long as that Lot or Living Unit had not been conveyed to an Owner other than Declarant. The rights set forth in this paragraph shall expire when the Declarant no longer holds any Lots or Living Units in the Neighborhood for sale in the ordinary course of business. Any amendment made pursuant to this paragraph may be made without notice to the members or to any other persons or entity.

14.4 Sales or Leases of Living Units. Developer shall have the right to sell, lease or transfer any Lot or Living Unit owned by Developer on such terms and conditions as it deems to be in its own best interest, and no approval of the Association shall be required.

## 15. TURNOVER

15.1 Time of Turnover. The turnover of control of the Association by Developer shall occur not later than ninety (90) days after conveyance of title to Owners other than Developer, of at least ninety percent (90%) of the Lots which may ultimately be located within the Property and administered by the Association. At the turnover meeting, the Class A Members shall elect a Board of Directors and the Directors appointed by the Developer shall resign.

15.2 Procedure for Calling Turnover Meeting. Not more than forty-five (45) days and not less than thirty (30) days prior to the turnover meeting, the Association shall notify all Class A Members in writing of the date, time and place of the turnover meeting.

15.3 Early Turnover. Developer may turn over control of the Association to Owners other than Developer prior to the turnover date set forth above, by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Owners other than Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days notice of Developer's decision to cause its appointees to resign is given to Owners, neither Developer, nor such appointees shall be liable in any manner in connection with such resignations, even if owners other than Developer refuse or fail to assume control.

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

**16.1 Duration of Covenants.** 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, the Declarant and any Owner, their respective legal representatives, heirs, successors and assigns, for an initial period to expire on the thirtieth (30th) anniversary of the date of recordation of this Declaration. 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 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 will be considered, shall be given at least forty-five (45) days in advance of said 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. Said certificate shall be recorded in the Public Records of Lee County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

**16.2 Amendment of Declaration.** All amendments to this Declaration shall be proposed and adopted in the following manner:

**16.2.1 Proposal.** Amendments to this Declaration may be proposed at any time by the Board of Directors, or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests of the entire membership. If the proposal is made by such written petition, the proposed amendment(s) must be submitted to a vote of the members not later than the next annual meeting.

**16.2.2 Vote Required.** Except as may otherwise be provided by law, or by specific provision of THE COTTAGES AT GATEWAY GREENS Documents, this Declaration may be amended at any time if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests present and voting, in person or by proxy, at any annual or special meeting called for that

DR2631 PG3503

purpose, provided that the full text of each proposed amendment has been given to the members with notice of the meeting. No amendment shall change an Owner's share of liability for assessments or voting rights unless the Owner consents to the amendment. Alternatively, amendments may be adopted without a meeting following the procedures set forth in Section 3.12 of the Bylaws of the Association.

16.2.3 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate stating that the amendment was duly adopted as an amendment to the Declaration; which certificate shall identify the Official Record Book and Page of the Public Records of Lee County where the Declaration is recorded, and shall be executed by officers of the Association with the formalities of a deed. The certificate must also set forth the legal description of the Properties. The amendment shall be effective when the certificate and copy of the amendment(s) are recorded in the Public Records of Lee County, Florida.

16.2.4 Exceptions. Wherever in this Declaration, the consent, approval or affirmative vote of more than two-thirds (2/3rds) of the total voting interest is required in order to authorize or take a particular action, the language requiring the particular number of consents, approvals or votes may not be amended except by the same vote required to authorize or take the action.

16.2.5 Amendment of Provisions Relating to Developer. As long as Developer hold any Lot in the Neighborhood for sale in the ordinary course of business, no amendment shall be effective to change any provision relating specifically to Developer without Developer's written consent.

## 17. GENERAL PROVISIONS

17.1 Waiver. Any waiver by Developer of any provisions of this Declaration, or breach hereof must be in writing and shall not operate or be construed as a waiver of any other provision or subsequent breach.

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

17.3 Headings. The headings of any sections or subsections used in the THE COTTAGES AT GATEWAY GREENS Documents are for convenience and reference purposes only, and do not constitute substantive matters to be considered in construing the terms and provisions of the documents, nor do said headings affect the meanings or interpretation of the contents of said sections or subsections.

17.4 Notices. Unless elsewhere herein provided, any notice required to be sent to the owner or member under the provisions of this Declaration, or the Bylaws of the Association shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as owner on the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any change of address.

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

17.6 Governing Law. The validity, enforceability, application and construction of this Declaration and its recorded exhibits shall be governed by the Laws of the State of Florida.

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

IN WITNESS WHEREOF, Developer has executed this Declaration on the day and year first above written.

Signature of Witness

THOMAS E MOOREY  
Printed Name of Witness

Barbara M Dodson  
Signature of Witness

BARBARA M DODSON  
Printed Name of Witness

ROSSLUND HOMES OF FLORIDA, INC.,  
a Florida corporation

BY:   
ROBERT J. GLEASON, President

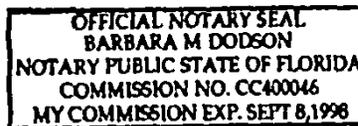
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STATE OF FLORIDA  
COUNTY OF LEE

The foregoing DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COTTAGES AT GATEWAY GREENS (GATEWAY PHASE 20) (AND LOT 34, BLOCK A, GATEWAY PHASE 8) was acknowledged before me this 14<sup>th</sup> day of July, 1995, by ROBERT J. GLEASON, as President of ROTTLUND HOMES OF FLORIDA, INC., a Florida corporation, on behalf of said corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Barbara M Dodson  
Notary Public

My Commission Expires:



DR2631 P63506

# GATEWAY PHASE 20

A REPLAT OF LOTS 35 THROUGH 53 OF BLOCK "A", TRACT "H" AND TRACT "D"  
OF THE PLAT OF GATEWAY PHASE B AS RECORDED IN PLAT BOOK 47 PAGES 93 THROUGH 98,  
LOCATED IN SECTION 7, TOWNSHIP 45 SOUTH, RANGE 26 EAST  
LEE COUNTY, FLORIDA

## DESCRIPTION OF LANDS PLATTED:

A REPLAT OF LOTS 35 THROUGH 53 OF BLOCK "A", TRACT "H" AND TRACT "D" OF GATEWAY PHASE B, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 47 AT PAGES 93 THROUGH 98 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWESTERLY CORNER OF LOT 35, BLOCK "A", GATEWAY PHASE B, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 47 AT PAGES 93 THROUGH 98 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S. 77°00'00" E., ALONG THE NORTHERLY BOUNDARY OF SAID LOT 35, FOR A DISTANCE OF 181.13 FEET TO A POINT ON THE WESTERLY BOUNDARY OF TRACT "C" OF SAID GATEWAY PHASE B; THENCE RUN S. 03°00'00" W., ALONG THE WESTERLY BOUNDARY OF SAID TRACT "C", FOR A DISTANCE OF 39.00 FEET; THENCE RUN S. 03°00'00" E., ALONG THE WESTERLY BOUNDARY OF SAID TRACT "C", FOR A DISTANCE OF 44.60 FEET; THENCE RUN S. 29°30'00" E., ALONG THE WESTERLY BOUNDARY OF SAID TRACT "C", FOR A DISTANCE OF 18.32 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF SAID TRACT "C"; THENCE RUN S. 88°00'00" E., ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT "C", FOR A DISTANCE OF 35.70 FEET; THENCE RUN N. 78°00'00" E., ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT "C", FOR A DISTANCE OF 61.86 FEET; THENCE RUN N. 89°30'00" E., ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT "C", FOR A DISTANCE OF 58.28 FEET; THENCE RUN S. 82°00'00" E., ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT "C", FOR A DISTANCE OF 58.15 FEET; THENCE RUN N. 88°00'00" E., ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT "C", FOR A DISTANCE OF 60.18 FEET TO A POINT ON THE BOUNDARY OF SAID GATEWAY PHASE B; THENCE RUN S. 00°37'28" E., ALONG THE BOUNDARY OF SAID GATEWAY PHASE B FOR A DISTANCE OF 381.00 FEET; THENCE RUN S. 88°02'34" W., ALONG THE BOUNDARY OF SAID GATEWAY PHASE B, FOR A DISTANCE OF 273.00 FEET; THENCE RUN S. 00°37'28" E., ALONG THE BOUNDARY OF SAID GATEWAY PHASE B, FOR A DISTANCE OF 94.33 FEET; THENCE RUN S. 88°02'34" W., ALONG THE BOUNDARY OF SAID GATEWAY PHASE B, FOR A DISTANCE OF 184.85 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF WESTLINKS DRIVE, A 60.00 FOOT RIGHT-OF-WAY AS SHOWN ON SAID GATEWAY PHASE B; THENCE RUN N. 00°37'28" W., ALONG THE EASTERLY RIGHT-OF-WAY LINE OF WESTLINKS DRIVE FOR A DISTANCE OF 816.23 FEET TO THE POINT OF BEGINNING, CONTAINING 4.684 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD

AND

LOT 34, BLOCK A, GATEWAY PHASE B  
PLAT BOOK 47, PAGE 93,  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

RECORDER'S MEMO  
Legibility of Writing, Typing or Printing Unsatisfactory in This Document When Received.

EXHIBIT "A"

DR2631 P63507

# GATEWAY PHASE 20

A REPLAT OF LOTS 35 THROUGH 53 OF BLOCK "A", TRACT "H" AND TRACT "D"  
OF THE PLAT OF GATEWAY PHASE 8 AS RECORDED IN PLAT BOOK 47 PAGES 93 THROUGH 98,  
LOCATED IN SECTION 7, TOWNSHIP 45 SOUTH, RANGE 26 EAST  
LEE COUNTY, FLORIDA

### DEDICATION:

That the title of this deed shall be "GATEWAY PHASE 20, A REPLAT OF LOTS 35 THROUGH 53 OF BLOCK 'A', TRACT 'H' AND TRACT 'D' OF THE PLAT OF GATEWAY PHASE 8 AS RECORDED IN PLAT BOOK 47 PAGES 93 THROUGH 98, LOCATED IN SECTION 7, TOWNSHIP 45 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA."

The above described lands are being dedicated to the public for use as a park and playground for the benefit of the people of Lee County, Florida.

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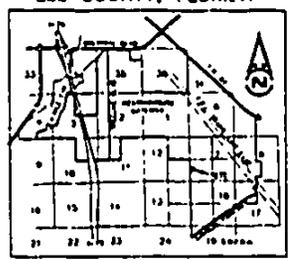
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LOCATION MAP

### NOTICE:

LANDS DESCRIBED IN THIS PLAT ARE SUBDIVIDED BY THE DEVELOPER WITHOUT THE ROADS, DRAINAGE AND SEWER FACILITIES BEING ACCEPTED FOR MAINTENANCE BY LEE COUNTY. ANY PURCHASER OF A LOT IN THIS SUBDIVISION IS ADVISED THAT HE MAY BE SUBJECT TO ASSESSMENT OR CALLED UPON TO BEAR A PORTION OF OR ALL OF THE EXPENSE OF CONSTRUCTION, MAINTENANCE OR IMPROVEMENT OF ROADS, DRAINAGE AND SEWER FACILITIES.

### NOTICE:

THIS PLAT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE DEED OF DEDICATION TO THE PUBLIC RECORDS OF THE COUNTY.

### GATEWAY SERVICES DISTRICT:

The above described lands are being dedicated to the public for use as a park and playground for the benefit of the people of Lee County, Florida.

### ACKNOWLEDGEMENT:

I, the undersigned, do hereby certify that the above described lands are being dedicated to the public for use as a park and playground for the benefit of the people of Lee County, Florida.

### NOTES:

- 1. THE DISTRICTS ARE TO BE OPEN AND OFFICIAL MAPS...
- 2. THE DISTRICTS ARE TO BE OPEN AND OFFICIAL MAPS...
- 3. THE DISTRICTS ARE TO BE OPEN AND OFFICIAL MAPS...
- 4. THE DISTRICTS ARE TO BE OPEN AND OFFICIAL MAPS...
- 5. THE DISTRICTS ARE TO BE OPEN AND OFFICIAL MAPS...
- 6. THE DISTRICTS ARE TO BE OPEN AND OFFICIAL MAPS...
- 7. THE DISTRICTS ARE TO BE OPEN AND OFFICIAL MAPS...
- 8. THE DISTRICTS ARE TO BE OPEN AND OFFICIAL MAPS...
- 9. THE DISTRICTS ARE TO BE OPEN AND OFFICIAL MAPS...
- 10. THE DISTRICTS ARE TO BE OPEN AND OFFICIAL MAPS...

### APPROVAL:

Signature of Lee County Clerk: *[Signature]*  
Signature of Lee County Commissioner: *[Signature]*  
Signature of Lee County Supervisor: *[Signature]*  
Signature of Lee County Sheriff: *[Signature]*

### CERTIFICATION:

I, the undersigned, do hereby certify that the above described lands are being dedicated to the public for use as a park and playground for the benefit of the people of Lee County, Florida.

### SURVEYOR'S CERTIFICATION:

I, the undersigned, do hereby certify that the above described lands are being dedicated to the public for use as a park and playground for the benefit of the people of Lee County, Florida.

THIS INSTRUMENT WAS PREPARED BY

**HMA** HOLT, WORTLE & ASSOCIATES  
10000 W. US HWY 90, SUITE 100, TAMPA, FL 33613  
TEL: 813-973-1111 FAX: 813-973-1112

D.O. #90-07-001.000

EXHIBIT "B"



FILED  
95 JUL 24 AM 8:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION  
OF  
THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC.

Pursuant to Section 617.013, Florida Statutes, these Articles of Incorporation are created by John W. McMillin, as sole incorporator, for the purpose set forth below.

ARTICLE I

NAME: The name of the corporation is THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC., sometimes hereinafter referred to as the "Association."

ARTICLE II

PRINCIPAL OFFICE: The initial principal office of the corporation is located at 17595 S. Tamiami Trail, Suite 106, Fort Myers, Florida 33908.

ARTICLE III

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity for the operation of THE COTTAGES AT GATEWAY GREENS, a platted subdivision located in Lee County, Florida.

The Association is organized and shall exist on a non-stock basis as a not-for-profit corporation under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a not-for-profit corporation under the laws of the State of Florida, except as limited or modified by these Articles, the Declaration of Covenants, Conditions and Restrictions for THE COTTAGES AT GATEWAY GREENS (the "Declaration") and the Bylaws of the Association; and it shall have all of the powers and duties reasonably necessary to operate THE COTTAGES AT GATEWAY GREENS pursuant to said Declaration as it may hereafter be amended, including but not limited to the following:

- A. To levy and collect assessments against members of the Association to defray the costs, expenses and losses of the Association, and to use the funds in the exercise of its powers and duties.
- B. To own, lease, protect, maintain, repair, replace and operate the Common Areas.

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- C. To purchase insurance upon the Common Areas and Property for the protection of the Association and its members.
- D. To reconstruct improvements after casualty and to make further improvements to the Common Areas and the Property.
- E. To make, amend and enforce reasonable rules and regulations governing the use of the Common Areas and the operation of the Association.
- F. To approve or disapprove the transfer, leasing and occupancy of Lots and Living Units, as provided in the Declaration.
- G. To enforce the provisions of the Declaration, these Articles and the Bylaws of the Association.
- H. To contract for the management and maintenance of the Common Areas and the 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.
- I. To employ accountants, attorneys, architects and other professional personnel to perform the services required for proper operation of the Property.
- J. To own and convey real property, and to enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities such as country clubs, golf courses, marinas and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of THE COTTAGES AT GATEWAY GREENS, if they are intended to provide enjoyment, recreation or other use or benefit to the members.
- K. To borrow or raise money without limit as to amount if necessary to perform its other functions hereunder.

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:

- A. The members of the Association shall be the record owners of a fee simple interest in one or more Lots in THE COTTAGES AT GATEWAY GREENS, as further provided in the Bylaws.
- B. The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his or her fee simple interest in a Lot.
- C. The owners of each unit, collectively, shall be entitled to one vote in Association matters. The manner of exercising voting rights shall be as set forth in the Declaration or the Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual.

ARTICLE VI

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

ARTICLE VII

DIRECTORS AND OFFICERS:

- A. The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws.
- 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 each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VIII

INITIAL PRINCIPAL OFFICE AND REGISTERED OFFICE AND AGENT:

The initial principal office and registered office of the Association shall be located at:

17595 S. Tamiami Trail, Suite 106  
Fort Myers, Florida 33908

The initial registered agent of the Association at the aforementioned address shall be:

John W. McMillin

ARTICLE IX

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 or by written petition, signed by at least one-fourth (1/4) of the voting interests.
- B. Procedure. Upon any amendment to these Articles being proposed by said Board or members, such proposed amendment shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.
- C. Vote Required. Except as otherwise provided for by Florida law, these Articles of Incorporation may be amended by vote of a majority of the voting interests at any annual or special meeting, or by approval in writing of a majority of the voting interests without a meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains a copy of the proposed amendment.

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- D. Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Lee County, Florida.

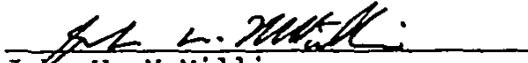
ARTICLE XI

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he or she may be a party because of his or her being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that a Director or officer's actions or omissions to act were material to the cause adjudicated and involved:

- A. Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.
- B. A violation of criminal law, unless the Director or officer had no reasonable cause to believe his or her action was unlawful or had reasonable cause to believe his or her action was lawful.
- C. A transaction from which the Director or officer derived an improper personal benefit.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

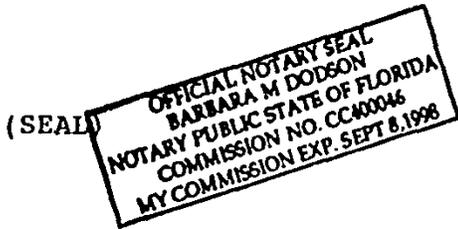
WHEREFORE, the incorporator has caused these presents to be executed on this 14<sup>th</sup> day of July, 1995.

  
\_\_\_\_\_  
John W. McMillin

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STATE OF FLORIDA  
COUNTY OF CPE

The foregoing instrument was executed before me this 14<sup>th</sup>  
day of JULY, 1995 by JOHN W. McMILLIN, who is personally  
known to me or who has produced N/A as  
identification.



Barbara M Dodson  
Notary Public

My Commission Expires:  
Commission No.:

ACCEPTANCE OF REGISTERED AGENT

Having been named to accept service of process for THE  
COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC., at the  
place designated in these Articles of Incorporation, I do hereby  
accept the appointment to act in this capacity and agree to comply  
with the laws of the State of Florida in keeping open said office.

John W. McMillin  
John W. McMillin

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FILED  
95 JUL 24 AM 8:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**BYLAWS**  
**OF**  
**THE COTTAGES AT GATEWAY GREENS**  
**HOMEOWNERS ASSOCIATION, INC.**

1. **GENERAL.** These are the Bylaws of THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC. (the "Association"), a corporation not for profit organized under the laws of the State of Florida for the purpose of serving as a residential neighborhood homeowners association as provided in the Articles of Incorporation.

1.1 **Principal Office.** The initial principal office of the Association shall be located at 17595 S. Tamiami Trail, Suite 106, Fort Myers, Florida 33908, and shall subsequently be at such other location as the Board of Directors may designate.

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 "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.** The definitions for various terms used in these Bylaws shall be as set forth in Article I of the Declaration of Covenants, Conditions and Restrictions for THE COTTAGES AT GATEWAY GREENS (the "Declaration"), to which these Bylaws are attached as Exhibit "D."

2. **MEMBERS; VOTING RIGHTS.** The members of the Association and their voting rights shall be as set forth in Section 3 of the Declaration.

3. **MEMBERS' MEETINGS.**

3.1 **Annual Meeting.** The members shall meet at least once in each calendar year and such meeting shall be the annual meeting. The annual meeting shall be held in Lee County, Florida, each year during the month of January at a day, place and time 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 Declarant, by the President or by a majority of the Board of Directors, and must be called by the Board upon the written request of members having at least ten percent (10%) of the voting interests. The business at any special meeting shall be limited to the items specified in the written request or contained in the notice of meeting.

3.3 Notice of Meetings; Waiver of Notice. Notice of all members' meetings must state the time, date and place of the meeting. The notice must be mailed to each member at the address which appears on the books of the Association, or may be furnished by personal delivery. The member is responsible for informing the Association of any change of address. The notice of all members' meetings must be mailed or 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, 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 person entitled to receive such notice may waive notice of any meeting at any time, but only by written waiver.

3.4 Special Requirements for Notice of Annual Meeting. Notice of the annual meeting together with an agenda shall be posted in a conspicuous place on the Common Areas or Association property for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda for the annual meeting shall also be sent by first class mail to each member and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of the annual meeting may, alternatively, be delivered in person if a written waiver of mailing is obtained.

3.5 Quorum. A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least one-third (1/3) of the votes of the entire membership.

No meeting of the Members at which official action of the Association or Master Association is to be discussed or voted upon shall be conducted unless a representative of the Class B Member is present or the Class B Member has waived, in writing, its presence. Any action taken in violation of this provision shall be null and void at the option of the Class B Member.

3.6 Vote Required. The acts approved by a majority of the votes cast at a duly called meeting of the members at which a

quorum has been attained shall be binding upon all Lot owners for all purposes, except where a greater number of votes is expressly required by law or by any provision of the THE COTTAGES AT GATEWAY GREENS Documents.

3.7 Proxy Voting. Any person entitled to attend and vote at a members' meeting may establish his or her presence and cast his or her vote by proxy. Proxies may not be used in electing Directors. A proxy may be given by any person entitled to vote, but 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, must specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Association at or before the appointed time of the meeting or adjournment thereof. Holders of proxies need not be members of the Association. No proxy shall be valid if it names more than one 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.

3.8 Adjourned Meetings. Any duly called meeting of the members may be adjourned and 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 adjourned, it shall not be necessary to give notice of the time and place of the reconvened meeting 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 at the reconvened meeting.

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. Proof of notice of meeting or waiver of notice.
- C. Reading or disposal of minutes of last members meeting.
- D. Reports of Officers.
- E. Reports of Committees.
- F. Election of Directors (annual meeting only).
- G. Unfinished Business.
- H. New Business.
- I. Adjournment.

3.10 Minutes. Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and made available for inspection by members or their authorized representatives and Board members at all reasonable times.

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these 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. With the exception of the annual meeting, any action required or permitted to be taken at a members' meeting may be taken by mail without a meeting if written consents or other instruments indicating approval of the action proposed to be taken are signed and returned to the Association by members having not less than the minimum number of votes that would be necessary to take such action at a members' meeting, or a majority of the total votes of the entire membership, whichever is greater, unless a lesser vote is sufficient by law. If the requisite number of written consents or other instruments indicating approval of the action proposed are received by the Association within thirty (30) days after mailing notice of the proposed action to the members, a resolution passed by the Board of Directors on the action so authorized shall be of full force and effect as if the action had been approved by the vote of the members at a members' meeting held on the date of the Board meeting. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph shall be construed in derogation of members' rights to call a special members' meeting, as provided in Section 3.2 above. If the vote is taken by the method described in this Section, the list of Lot owners on record with the Association at the time of mailing the voting material shall be the list of qualified voters. The written consents or other instruments of approval used to authorize an action without a meeting shall become a part of the Association's records.

3.13 Approval or Disapproval of Matters. Whenever the decision of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such Lot if at an Association meeting, unless the joinder of record owners is specifically required.

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**3.14 Voting at Meetings of Master Association; Voting Member.**

In accordance with the provisions of Article III of the Master Declaration and Article II of the By-laws of the Master Association, the President of the Association shall serve as the Voting Member for the Neighborhood for purposes of voting in Master Association matters requiring a vote of the membership. Any Vice President shall be the alternative Voting Member and may cast such votes in the absence of the Voting Member. Notice of the identity of the Voting Member and Alternative Voting Member shall be made in writing to the Master Association. The Voting Member shall attend all meetings of the members of the Master Association and shall cast all votes of the Class A members of the Association on any and all issues which may arise in the manner prescribed in the Master Declaration and the By-laws of the Master Association. Class B votes may be cast only by the Developer's representative. The Voting Member shall also perform any other duties specified in the Master Declaration of the By-laws of the Master Association.

**3.15 Polling of Members.** To the extent feasible and practical, the Association shall poll its members on questions or issues to be decided by a vote of the members of the Master Association, so that the Association's Voting Member will have guidance in casting the votes of the members at Master Association meetings. Where such poll is conducted, the Board shall instruct its Voting Member to cast all votes to which members of the Association are entitled, in a block, supporting the point of view expressed by a majority of the members responding to the poll. The Voting Member may not vote by proxy at Master Association meetings.

**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 of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the Lot owners only when such is specifically required.

**4.1 Number of Directors and Terms of Service.** While the Declarant is in control of the Association, the number of Directors which shall constitute the whole Board shall be three (3). Said Directors shall be appointed by and shall serve at the pleasure of Declarant until turnover which shall occur as described in Section 15 of the Declaration. At the turnover meeting, held as provided in Section 15 of the Declaration, the number of Directors which shall constitute the whole Board of Directors shall be increased to five (5). In order to provide for a continuity of experience by

establishing a system of staggered terms, at the turnover meeting, two (2) Directors shall be elected for a term to end at the next annual meeting and three (3) Directors shall be elected for a term ending at the annual meeting after the next annual meeting. Thereafter, all Directors shall be elected for terms of two (2) years, or in the case of a vacancy, as provided in Section 4.4 below.

4.2 Qualifications. Except for Directors appointed by the Declarant, each Director must be a member or the spouse of a member. No person shall be elected or appointed for successive terms totalling more than four (4) years, unless there occurs a hiatus of at least two (2) years between terms. Initial terms of appointment for less than one (1) year shall be excluded from consideration in determining the total number of years served.

4.3 Nominations and Elections. At each annual meeting, the members shall elect as many Directors as there are regular terms of Directors expiring or vacancies to be filled. The nominating committee, if any, may submit its recommended nominees for the office of Director in time to be included with notice of the annual meeting. Any other eligible person may also be nominated as a candidate from the floor at the annual meeting. Directors shall be elected by a plurality of the votes cast at the annual meeting. In the election of Directors, there shall be appurtenant to each Lot as many votes for Directors as there are Directors to be elected. No member may cast more than one vote for any candidate nominated as a Director, it being the intent hereof that voting for Directors shall be non-cumulative. The candidates receiving the highest number of votes shall be declared elected, except that a run-off shall be held to break a tie vote.

4.4 Vacancies on the Board. If the office of any Director or Directors becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor or successors to fill the remaining unexpired term or terms, if any.

4.5 Recall and Removal of Directors. Directors appointed by the Declarant may be removed from the Board, with or without cause, only by the Declarant. Any or all Directors, except those appointed by the Declarant, may be removed with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined separately as to each

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Director sought to be removed. 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.

**4.6 Organizational Meeting.** 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.

**4.7 Regular Meetings.** Regular meetings of the Board may be held at such time and place in Lee County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegram at least three (3) days prior to the day named for such meeting.

**4.8 Special Meetings.** Special meetings of the Board may be called by the President and must be called by the Secretary at the written request of one third (1/3rd) of the Directors. Not less than two (2) business days notice of a special meeting shall be given to each Director, personally, or by mail, telephone or telegram; which notice shall state the time, place and purpose of the meeting.

**4.9 Notice to Owners.** Meetings of the Board of Directors shall be open to members. A notice of each Board meeting shall be posted in a conspicuous place on the Association property at least forty-eight (48) hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting at which assessments against Lots are to be considered for any reason shall contain a statement that assessments shall be considered and of the nature of such assessments and shall be mailed to each owner at least fourteen (14) days before the meeting, and an affidavit of mailing shall be retained as proof of mailing. No other notice of proposed agenda need be given. Notice of any Board meeting at which a budget will be adopted or amended shall be given as stated in Section 6.3 below.

**4.10 Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. Attendance at a meeting constitutes waiver of notice by any Director, unless any Director

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objects to the lack of notice at the commencement of the meeting. If all Directors are present at a meeting, no notice to Directors shall be required.

4.11 Quorum of Directors. A quorum at a Board meeting shall be attained when at least a majority of all Directors are present in person at a duly called meeting. 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.

4.12 Vote Required. The acts approved by a majority of those Directors present and voting at a Board 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 THE COTTAGES AT GATEWAY GREENS Documents or by any applicable law. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes. Directors may not vote or participate by proxy or by secret ballot at Board meetings, except that officers may be elected by secret ballot.

4.13 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum has been attained, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting originally called.

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

4.15 Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. However, Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

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4.16 Committees. The Board of Directors may appoint from time to time such standing or temporary committees, including a nominating committee, as the Board deems 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.

5. OFFICERS.

5.1 Officers and Elections. The officers of the Association shall include a President and a Vice President (who must be Directors), a Treasurer and a Secretary (who may or may not be Directors), all of whom shall be elected annually by a majority of the Board of Directors and shall serve at the pleasure of the Board. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. Any person except the President may hold two 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 Vice President, in which event their seniority shall be established.

5.2 President. The President shall be the chief executive officer of the Association; he 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. He shall execute bonds, mortgages and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed or where the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

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

5.4 Secretary. The Secretary shall attend all 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 the standing committees when required. He shall give, or cause to be given, 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. He shall keep the seal of the Association in safe custody 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 THE COTTAGES AT GATEWAY GREENS 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 custody of and be responsible for Association funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if one has been designated.

5.6 Compensation of Officers. Officers shall receive no compensation for their services as such. Officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

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 federally insured accounts in such financial institutions authorized to do business 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 who are authorized by the Board. 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 and Accounting Procedures. The Association shall maintain a set of accounting books in which there shall be an account for each Lot. Such account shall designate the name and

mailing address of the Owner of each Lot, the amount of each assessment against the Owner of each Lot, the due date thereof, all amounts paid and the balance due. The books and records of the Association shall be kept in accordance with generally accepted accounting principles.

6.3 Budget. The Board of Directors shall adopt an annual budget for all Association expenses for each fiscal year. 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 adopted shall be mailed to or served on the owner of each Lot not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications.

6.4 General Reserves. The Board may establish one or more reserve accounts for contingencies, operating expenses, repairs, minor improvements or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amount proposed to be so reserved shall be shown in the annual budget. These funds may be spent for any purpose approved by the Board.

6.5 Assessments. Regular annual assessments based on the adopted budget shall be paid in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to the members at least ten (10) days prior to the due date. Failure to send or receive such notice shall not excuse the obligation to pay such assessments. If an annual budget for a given fiscal year has not been adopted at the time the first quarterly installment for that fiscal year is due, the amount of such installment payment shall be the same as the previous quarterly installment, and shall be continued at such rate until a budget is adopted and pro rata assessments are calculated, at which time the amount of any calculated overage or shortage shall be added to or subtracted from each Lot's next due quarterly installment.

6.6 Special Assessments. Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, emergency, unbudgeted, or non-recurring expenses or for such other purposes as are authorized by the Declaration or these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving such assessments. 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

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year, including any reserves, unless a majority of the voting interests of the entire membership first consents to said special 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 funds collected must be spent for the stated purpose(s) or returned to the members.

6.7 Fidelity Bonds. The Treasurer, and all persons who are authorized to sign checks, and all Directors and employees of the Association handling or responsible for Association funds may be bonded in such amounts as may be determined by the Board of Directors and if such insurance is available. The premiums on such bonds shall be paid by the Association.

6.8 Financial Information. Not later than ninety (90) days after the close of each fiscal year, the Board shall prepare, and shall distribute to the owners of each Lot, such financial information as shows in reasonable detail the financial condition of the Association as of the close of its fiscal year and an income and expense statement for the year, detailed by accounts.

6.9 Audits. A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the total voting interests, or by a majority of the Board of Directors, shall be prepared by a certified public accountant, and a copy of the audit report shall be available to all members.

6.10 Commingling of Funds and Application of Payments. All monies collected by the Association may be commingled in a single fund or divided into two or more funds, as determined by the Board of Directors. All payments on account by an Owner shall be applied to interest, delinquencies, costs and attorney fees, other charges, and regular and special assessments in such manner and amounts as the Board of Directors may determine.

6.11 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States of America.

7. RULES AND REGULATIONS. 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 operation of the Association. Copies of such rules and regulations shall be furnished to each Lot owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners and uniformly applied and enforced. The Board shall have the power to impose fines as further provided in Section 11.3 of the Declaration for violations of the rules and regulations.

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

8.1 Proposal. Amendments to these Bylaws may be proposed by a majority of the Board or upon written petition signed by at least one-fourth (1/4th) of the voting interests.

8.2 Procedure. Upon any amendment or amendments to these Bylaws being proposed by the Board or Owners, such proposed amendment or amendments shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can still be given.

8.3 Vote Required. Except as otherwise provided by law, or by specific provision of the THE COTTAGES AT GATEWAY GREENS Documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least a majority of the voting interests present in person or by proxy at any annual or special meeting called for that purpose, provided that the text of any proposed amendment or amendments has been given to the members with notice of the meeting. Amendments may be adopted without a meeting by following the procedures set forth in Section 3.12 of these Bylaws.

8.4 Certificate; Effective Date. A copy of each amendment shall be attached to a certificate stating that the amendment was duly adopted; which certificate shall be executed by officers 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 Lee County, Florida. The certificate must identify the book and page of the Public Records where the Bylaws were originally recorded.

9. MISCELLANEOUS.

9.1 Gender. Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the

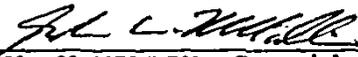
masculine, feminine or neuter; singular or plural, as the context requires.

9.2 Severability. Should any portion hereof be void or become unenforceable, the remaining provisions herein shall remain in full force and effect.

9.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration or Articles of Incorporation, the provisions of the Declaration shall prevail over the Articles of Incorporation and the Articles of Incorporation shall prevail over the provisions of these Bylaws.

The foregoing constitutes the first Bylaws of THE COTTAGES AT GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC., and were duly adopted at the first meeting of the Board of Directors held on the 1<sup>st</sup> day of AUGUST, 1995.

Date: AUGUST 1, 1995.

  
JOHN W. McMILLIN, President

ATTEST:

  
Secretary, ROBERT J. GLEASON

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GATEWAY GREENS HOMEOWNERS ASSOCIATION, INC.  
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