

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR THE ROOKERY**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE ROOKERY (the "Amended and Restated Declaration") is made as of this 16 day of December, 2008, by THE ROOKERY COMMUNITY ASSOCIATION, INC., a Florida non-profit corporation, (the "Association").

RECITALS:

A. The Declaration of Covenants, Conditions, Restrictions and Easements for the Rookery was recorded in Official Records Book 1913, Page 2033, of the Public Records of Lee County, Florida (the "Original Declaration") by National Property Development Corporation, a Florida corporation (the "Original Declarant"), who held fee title to the property comprising the Rookery, a subdivision (the "Property" or the "Subdivision") at the time of recording of the Original Declaration. The Original Declaration submitted the Property to the covenants, conditions, restrictions and easements contained therein.

B. The Original Declaration was amended by that certain Certificate of Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for the Rookery recorded in Official Records Book 2967, Page 2687, of the Public Records of Lee County, Florida (the "Amendment").

C. The Association was formed upon recording of the Original Declaration, and has been delegated certain powers and duties of ownership, administration, management, operation, maintenance and enforcement, as set forth in the Original Declaration, as amended.

D. The members of the Association are the owners (the "Owners" or "Lot Owners") of Lots 1 through and including 66 (the "Lots") of the Rookery as well as Tract A (the "Lake") and Tract B (the "Preserve Area") all according to plat thereof recorded in Plat Book 38, pages 58 through and including 60 of the public records of Lee County, Florida (the "Plat").

E. The Property has been developed into a planned single-family residential community. The Original Declarant has sold all of the Lots within the Subdivision and has turned over control of the Association to the Owners.

F. Pursuant to Section 8.11 of the Amendment, the Owners of not less than two-thirds (2/3) of the Lots have agreed to amend and restate the Original Declaration for purposes including, but not limited to, better serving the needs of the Owner-controlled Association and deleting Sections regarding Original Declarant rights that are no longer applicable.

G. The Association desires to continue to provide a flexible and reasonable procedure for the overall regulation of the Subdivision and to maintain a method for the

administration, maintenance, preservation, use and enjoyment of the Subdivision by the Owner-controlled Association.

H. The purpose of this Amended and Restated Declaration is to provide for the maintenance and operation of the common areas of the Subdivision, to assure reasonable development and use of the Subdivision as a whole, to protect each Owner against such unreasonable development or use of the Subdivision or any part thereof, to prevent the erection on the Property of structures built of undesirable design or materials, to prevent the construction of haphazard or inharmonious improvements, to secure and maintain proper setbacks from streets and adequate free spaces between improvements, and in general to provide adequately for quality improvements on the Property in accordance with a general plan. This Amended and Restated Declaration shall supersede, amend and restate the Original Declaration.

NOW THEREFORE, the Association hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Amended and Restated Declaration and which shall be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

As used in this Amended and Restated Declaration, the terms below shall have the following meanings:

1. "Association" means the entity known as The Rookery Community Association, Inc., a Florida non-profit corporation. Unless otherwise specified herein, any actions required of the Association herein may be taken by its Board of Directors.

2. "Board" means the Board of Directors of the Association, which has been duly elected and qualified in accordance with the Articles of Incorporation and By-Laws of the Association.

3. "Articles" means the Articles of Incorporation of the Association. A copy of the original Articles are attached hereto as Exhibit "A".

4. "By-Laws" means the By-Laws of the Association. A copy of the original By-Laws are attached hereto as Exhibit "B".

5. "Architectural Review Board" means a committee appointed by the Board to exercise the functions delegated to it in connection with review and approval of architectural plans for improvements on the Lots and as herein provided.

6. **"Declaration"** means this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for The Rookery and all exhibits attached hereto, as the same may be amended from time to time.

7. **"Lot"** means a lot as shown and numbered on the Plat.

8. **"Owner"** means the record owner of a Lot.

9. **"Plat"** means the plat of The Rookery, recorded in Plat Book 38, pages 58 through and including 60, of the public records of Lee County, Florida.

10. **"Institutional Mortgagee"** means any (i) commercial bank, (ii) savings bank, (iii) savings and loan association, (iv) life insurance company, (v) real estate investment trust, (vi) mortgage banking or lending corporation, association or trust, owning or servicing at least 100 mortgages, (vii) any federal agency, corporation or association including, without limiting the generality of the foregoing, FHA, VA FNMA AND GNMA and (viii) any affiliated, subsidiary, successor or assignees of any of the foregoing, holding or insuring a mortgage on a Lot.

ARTICLE II

LAND PLAN

2.1 **The Lots.** Each of the Lots shall be developed and used solely for single-family residential use in accordance with this Amended and Restated Declaration. No business, commercial, religious, charitable or other enterprise of any kind shall be maintained upon or in connection with the use of any Lot. No residence or part thereof on any Lot shall be rented separately from the rental of the entire Lot.

2.2 **The Preserve Area.** The Preserve Area shall be owned by the Association and maintained in a natural or semi-natural state for beautification and green belt purposes, all consistent with and in accordance with all laws, ordinances and regulations.

2.3 **Certain Easements.** The Plat depicts, and the Association hereby reserves for the use and benefit of the Association, an access easement (the "Access Easement") along the easterly 20 feet of Lot 66 and a 20 foot maintenance easement (the "Maintenance Easement") along the rear of each of the Lots abutting the Lake. The Access Easement is for the purpose of permitting the Association, its agents, employees and contractors ingress and egress between Kestrel Circle and the Maintenance Easement. The Maintenance Easement is for the purpose of permitting the Association, its agents, employees and contractors ingress and egress to the Lake and for the purpose of maintaining the Lake and the bank thereof.

2.4 **No-Access and Fence Easements.**

(a) There is hereby created and reserved a perpetual no access easement (the "No Access Easement") (which No Access Easement is more particularly described in Section B of this section) and all deeds by the Association and its members will be subject to such No Access Easement.

(b) The No Access Easement shall cover the westerly 5 feet of the Lots abutting Plantation Road. There shall be no means of access, ingress or egress across the No Access Easement between (i) such Lots abutting Plantation Road and (ii) Plantation Road.

2.5 Landscaping the Median. The Association shall have the right to plant trees, hedges, grass and landscape on (i) the median strip dividing the entrance roadway into the Rookery and (ii) the non-paved portion of the rights of way at the entrance into the Rookery and (iii) the non-paved portion of the rights of way at the end of cul-de-sac roads (collectively, the "Entrance Landscaping Easements") in any manner, the Association, in its sole discretion, with the approval of the Architectural Review Board, deems necessary and proper in order to beautify such median strip and rights of way.

2.6 Maintenance of the Entrance and Medians. The Association shall maintain and preserve all plants, trees, hedges, grass and landscaping in the Entrance Landscaping Easements and medians as referenced and described in Sections 2.5. Further, the Association shall have the right to illuminate and irrigate such portions of such areas as the Association may determine.

2.7 Maintenance of the Lake, Drainage Easements, Drainage Systems etc. The Lake shall be owned by the Association and maintained, improved, operated and used only for beautification and retention of water purposes, and each of the following is a prohibited use of the Lake: utilization of objects designed for use on or below water such as boats, canoes, floats and tubes, bathing and swimming. Fishing in the Lake is permitted on a Catch and Release basis only, and with permission of the adjoining Lot Owner. No structure or dock of any kind shall be built or placed on the bank of the Lake, or protrude neither into nor over the Lake. Further, no Owner shall or shall permit anyone claiming by, through or under such Owner to pollute the Lake or dump garbage, refuse, or foreign objects therein or pump or remove water therefrom. The Association shall also maintain, improve and operate drainage easements, surface and subsurface drainage systems and any drainage retention basins or ponds serving the Property except to the extent the same are maintained, improved and operated by the public authority.

2.8 Insurance. The Association shall carry and maintain insurance as provided in the By-Laws of the association.

ARTICLE III

THE ASSOCIATION

3.1 General. The Association has been organized, among other things, to the extent set forth in this Amended and Restated Declaration, to preserve the beauty and value of all of the Property. The Association shall act in accordance with the terms and provisions of this Amended and Restated Declaration, the Articles of Incorporation, the By-Laws and rules and regulations, if any are adopted by the Board ("Rules and Regulations").

3.2 Membership and Voting Rights. Each and every person or entity that is a record owner of a fee or undivided fee interest in any Lot shall be a member of the Association, and shall be governed by and controlled by the Articles of Incorporation and By-Laws thereof.

Voting rights of members shall be appurtenant to and may not be separated from ownership of a Lot. Where more than one person holds an interest in any Lot, all such persons shall be members. The vote of such Lot shall be exercised as they determine, but in no event shall the vote cast with respect to any Lot exceed one vote per Lot. In the event two (2) or more votes are cast for a single Lot, and all such votes are in agreement, one (1) vote shall be counted for that Lot. In the event two (2) or more votes are cast for a single Lot, and there is disagreement between the votes, all votes cast for such Lot shall be thrown out and shall not be counted.

ARTICLE IV

ARCHITECTURAL REVIEW BOARD

4.1 Architectural Review Board. The Board shall appoint the Architectural Review Board (the "ARB") consisting of not less than 3 nor more than 5 persons who need not be members of the Association. Members of the ARB shall serve at the pleasure and direction of the Board. Members of the Board may serve on the ARB. A majority of the ARB shall constitute a quorum to transact any business of the ARB, and the action of a majority present at a meeting at which a quorum is present shall determine the action taken by the ARB. The Board shall have the right to remove any member of the ARB. Any vacancy occurring on the ARB for any reason whatsoever shall be filled by the Board. The ARB may designate a representative to act on behalf of the ARB, subject to the approval of the Board. No member of the ARB or any representative of the ARB shall be entitled to any compensation by the Association for services performed hereunder.

4.2 Powers and Duties of the ARB.

(a) Without the prior written approval of the ARB: (i) no improvement or structure of any kind, including, without limitation, any building, paved area, wall, fence, swimming pool or screen enclosure, shall be erected, placed or modified on any Lot; (ii) no landscaping or planting shall be commenced or modified upon any Lot; and (iii) no addition, alteration, modification or change to any such improvement, structure, landscaping or planting shall be made on any Lot.

(b) Two (2) complete sets of plans and specifications for proposed construction and landscaping shall be submitted to the ARB for its review, and no foundation shall be poured or construction or landscaping commenced without the prior approval of the ARB. Each such submission must be accompanied by a fee to the ARB for the processing of such application as hereinafter described. Such plans and specifications shall include, as appropriate, the proposed location, grade elevations, shape, dimensions, exterior color plans, and nature, type and color of materials to be used. The ARB may also require the submission of additional information and samples of materials as may be reasonable necessary for the ARB to evaluate the proposed construction, landscaping or alteration.

(c) The Board shall have the right to refuse to approve any proposed plans or specifications which, in its sole discretion, are not suitable or desirable. The ARB shall evaluate all plans and specifications utilizing standards of the highest level as to the aesthetics, materials and workmanship and as to suitability and harmony of location, structures and external design in

relation to surrounding topography, structures and landscaping, and be consistent with the provisions of this Amended and Restated Declaration. Any and all approvals or disapprovals of the ARB shall be in writing and shall be delivered to the Board and the respective Lot Owner.

(d) In the event the ARB fails to approve or to disapprove in writing any proposed plans and specifications one (1) month after submission to the ARB of such plans and specifications and any and all other reasonably requested information and samples of materials related thereto, then said plans and specifications shall be deemed to have been approved by the ARB.

(e) If any landscaping or the construction of any improvement or structure or any alteration thereof is commenced and completed without being presented for approval to the ARB or in variance with approved plans and specifications, then such construction or landscaping must be changed to comply with the plans and specifications for such construction or landscaping as approved by the ARB or the Owner of the affected Lot shall, within fifteen (15) days of receipt of notice of disapproval, apply to the ARB for approval by the ARB or for a modification of the approved plans and specifications, as the case may be. If an Owner so applies to the ARB, the ARB shall consider such request and shall either approve, approve with conditions or disapprove such request within one (1) month following receipt of such application.

(f) The ARB shall promulgate such further rules and regulations as it deems necessary and may adopt a schedule of reasonable fees for the processing of applications to the ARB. The foregoing rules and regulations and fees shall be subject to approval by the Board. Without limiting the foregoing, no improvement or structures shall be constructed and no landscaping or planting shall be undertaken which is in violation of any covenant or restriction set forth in this Amended and Restated Declaration. Neither the ARB nor any member of the ARB shall have any liability to anyone by reason of any acts or action taken in good faith pursuant to this article.

ARTICLE V

ARCHITECTURAL CRITERIA AND BUILDING RESTRICTIONS

5.1 Residential Building. No building shall be erected, placed or permitted to remain on any Lot other than one (1) detached single-family dwelling and attached garage. Notwithstanding the foregoing buildings and structures accessory to the use of the family occupying the dwelling may be erected on the Lot upon approval by the ARB provide that any such accessory building do not furnish residential accommodations for an additional family.

5.2 Building Restriction Lines. No dwelling shall be located nearer to the front lot line, the side lot line or the rear lot line than as permitted by the then rules and regulations of Lee County, Florida.

5.3 Minimum Floor Space. Each single-story dwelling located on a Lot shall contain not less the 1,500 square feet of livable, enclosed floor area (exclusive of garages, and open or screened porches, terraces or patios); and each multi-story dwelling located on a Lot shall contain not less than 1,800 square feet of livable, enclosed floor area (exclusive of garages, and

open or screened porches, terraces or patios) of which not less than 1,200 square feet shall be on the first floor thereof.

5.4 Garages. Unless otherwise specifically approved by the ARB, no garage, tool shed or storage room may be constructed separate and apart from the dwelling. Each dwelling shall have an enclosed garage for not less than two (2) and not more than three (3) cars. Garage doors shall be operated by an electric door opener. No garage shall be permanently enclosed or converted to other use without the substitution of another garage on the Lot meeting the requirements of this Amended and Restated Declaration.

5.5 Driveways. All dwellings shall have a paved driveway of stable and permanent construction of at least twelve (12) feet in width. All driveways shall be constructed with concrete or asphalt unless otherwise specifically approved by the ARB. All additions to or of driveways, parking slabs, or any other paved surface on a Lot must be approved by the ARB.

5.6 Recreation Facilities.

(a) All recreation facilities constructed or erected on a Lot, including, without limitation by specification, swimming pools and any other play or recreation structures, including basketball backboards, platforms, playhouses, dog houses or other structures of a similar kind or nature (collectively referred to herein as "Recreation Facilities") shall be adequately walled, fenced or landscaped in a manner specifically approved by the ARB.

(b) No lighting of a Recreation Facility shall, in any event, be permitted unless otherwise specifically approved by the ARB.

(c) Lighting of a Recreation Facility shall in any event be designed so as to buffer the surrounding residences as reasonably practical from such lighting.

(d) No basketball backboards can be attached to a dwelling or any structure connected to a dwelling.

5.7 Non-Interference With Easements. No structure, planting or other material shall be placed or permitted to remain on a Lot which may damage or interfere with the installation and maintenance by the Association of any entryway, hedge, planting, tree, grass, or other improvement or landscaping located on an easement on a Lot. The easement area located on each Lot and all improvements thereon shall be maintained continuously by the Lot Owner except for those easements areas the maintenance of which is the responsibility of a public authority, utility or the Association.

5.8 Utility Connections. Connections for all utilities, including, but not limited to, water, sewage, electricity, telephone and television shall be run underground from the connecting point therefore to the building structure in such a manner as is acceptable to the respective utility authority or company and the ARB.

5.9 External Equipment.

(a) No window or wall air conditioning units shall be permitted on any Lot. Compressors and fans for central air conditioning or heat pump systems which are located outside the exterior of a building shall be adequately walled, fenced or landscaped to prevent their being viewable from any street.

(b) All equipment without limitation by specification, including pool pumps, water softeners, or propane tanks which are located outside the exterior of a building shall be adequately walled, fenced or landscaped to prevent their being viewable from any street.

5.10 Mailboxes. The ARB must approve the location, size, design and material of any mailbox, newspaper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material to a dwelling.

5.11 Antennae and Aerials.

(a) No antennae or aerial shall be placed upon any Lot or affixed to the exterior of any building, and no antennae or aerial placed or affixed within a building shall extend or protrude beyond the exterior of such building or in any way be visible from outside the building.

(b) No satellite dish which is located outside the exterior of a building shall be mounted on the front of the building which faces the roadway. Further, no satellite dish shall be more than 36" in diameter.

5.12 Clothes Drying Area. No clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on a Lot except within an area which shall be adequately walled, fenced or landscaped to prevent the same from being visible at ground level from any street or adjoining Lot.

5.13 Signs. The size and design of all signs located on a Lot shall be subject to the approval of the ARB. No sign of any kind shall be displayed to general view on any Lot except under the following circumstances:

(a) Directional or traffic signs may be installed by the appropriate governmental authority or by the Board, and entrance or other identification sign may be installed by the Board;

(b) One "For Sale" sign not more than four (4) square feet (when measured on one side thereof) may be displayed on a Lot by the Owner or the agent for the Owner thereof; and

(c) A name plate and address plate in size and design approved by the ARB.

5.14 Structures. No structure, whether a trailer, tent, shack, garage, barn or any other such building, shall be placed on any Lot; provided, however, a temporary storage or out-building for materials and supplies may be used in connection with and during the construction of a dwelling provided that it shall be removed immediately from the Lot upon the completion of such construction.

5.15 Completion of Construction and Repairs. The construction of any new building or the repair of the exterior of any building damaged by fire or otherwise shall be completed with reasonable promptness.

5.16 Flags. Any Owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veteran's Day may display, in a respectful manner, portable, removable official flags not larger than 4 ½ feet by 6 feet, which represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard.

ARTICLE VI

USE RESTRICTIONS AND COVENANTS

6.1 Residential Use. The Lots shall be used solely for single-family residential purposes and for no other purpose. No business or commercial building may be erected on any Lot and no business or commercial activity may be conducted on any Lot except for the construction and sale by builders-Owners of homes on Lots in accordance with the terms and provisions of this Amended and Restated Declaration.

6.2 Further Subdivision. No Lot shall be divided, subdivided or reduced in size unless each divided or subdivided portion thereof is consolidated with one or more contiguous Lots. In the event that a lot is increased in size pursuant to the foregoing, the provisions of the covenants and restrictions in Article V and the Article VI shall apply thereto as a single Lot.

6.3 Maintenance of Exteriors.

(a) Exteriors. Each Owner shall maintain the exteriors of all structures on a Lot and any and all fixtures attached thereto in a sightly manner. No Owner shall change the exterior color of the dwelling on his lot, including the roof thereof, without the prior written approval of the ARB.

(b) Lawns. Each Owner shall maintain the lawn in a sightly manner. "Sightly" shall require at a minimum that the lawn be regularly cut and that planting areas be kept weeded so their appearance is in harmony with the neighborhood. Each Owner having property abutting to the water retention areas, including but not limited to the Lake, shall be responsible for normal lawn maintenance and lawn mowing up to the water level in the water retention areas. In this context, the word "lawn" shall include that portion of property from the boundary of the Lot to any adjacent paved road surface within the development.

6.4 Noxious Vegetation. No Owner shall permit the growth of noxious weeds or vegetation upon a Lot or any part between the street pavement and the front lot line of a Lot. All unimproved Lot areas shall be maintained in an attractive landscaped and sightly manner.

6.5 Litter, Trash, Garbage. No garbage, trash, refuse or rubbish shall be deposited, dumped or kept on any lots except in closed sanitary containers approved by the ARB. Such containers shall be kept in a sanitary condition in (i) an enclosed area attached to the dwelling and constructed in a manner approved by the ARB; or (ii) an underground container. Such containers may be placed on the Lot for pick up at the times and in accordance with the requirements of the franchised or governmental entity providing garbage removal utility for the Property; however, such containers shall be returned to and kept in the enclosed area or underground, as the case may be, promptly after pick up.

6.6 Nuisances. No Owner shall cause on a Lot or permit to emanate from his Lot any unreasonable noises or odors. No Owner shall commit on his Lot or permit to be carried on his Lot any nuisance, any immoral or illegal activity or anything which may be an annoyance or a noxious or offensive activity to the neighborhood.

6.7 Commercial and Recreation Vehicles. No commercial vehicle, recreation vehicle, trailer or boat of any kind shall park or be parked at any time on a Lot or adjacent to a Lot for a period in excess of forty-eight (48) hours unless such a vehicle is in a garage or is a commercial vehicle in the process of being loaded or unloaded. For the purposes hereof a vehicle which is in excess of 1 ton shall be deemed a commercial vehicle.

6.8 Garage Doors. Garage doors shall be kept closed except when required to be open for entering or leaving and/or when an owner or resident is present in the immediate area.

6.9 Animals.

(a) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose and that they do not cause an unreasonable nuisance or annoyance to other Owners.

(b) No Owner owning or in custody of any animal shall allow it to stray and/or go upon another's lot or property without the consent of the owner of such lot or property. All animals shall be on leash or carried when outside the owner's lot.

(c) Any Owner owning or in custody of any animal shall remove immediately any feces left by such animal upon another's lot or property, and any public area in the development, including, but not limited to, the roadways; and to dispose of such feces in a sanitary manner.

(d) No feeding of nuisance wild animals, including but not limited to, ducks and raccoons.

6.11 Vehicle Parking and Repair.

(a) No vehicle shall be parked on or adjacent to any Lot except on a paved parking surface, driveway, or within a garage for a period in excess of forty-eight (48) hours.

(b) No more than three (3) vehicles shall be parked on or adjacent to any Lot on a paved parking surface or driveway on a regular basis except within an enclosed garage; a regular basis being in excess of forty-eight (48) hours. Homes that accommodate a higher number of licensed drivers may apply to the Board for approval to have more than the maximum of three (3) vehicles parked outside the garage.

(c) No inoperative, unlicensed, or uninsured cars, trucks, boats, trailers or other type of vehicle will be allowed to remain on or adjacent to any Lot for a period in excess of forty-eight (48) hours; however, this provision shall not apply to any such vehicle which is kept within an enclosed garage.

(d) Only routine maintenance of any boat or vehicle shall be permitted upon any Lot at any time.

(e) No major repair of any boat or vehicle shall be permitted upon any Lot at any time. No painting of any boat or vehicle shall be permitted upon any Lot at any time.

(f) Motor stands, tires, auto parts, bicycles, or similar articles must be stored out of sight.

ARTICLE VII

ASSOCIATION EXPENSES, ASSESSMENTS AND LIENS

7.1 **General.** In order for the Association to cause the covenants contained in this Amended and Restated Declaration to be fulfilled; to maintain and illuminate the median and rights of way at the entrance to the Rookery; to own and maintain the Preserve Area and the Lake; and to effectuate the provisions hereof in the manner contemplated by this Amended and Restated Declaration, the Association will incur certain expenses, which expenses are referred to herein as the "Association Expenses." Association Expenses may be incurred for the payment of, but not limited to, the following:

(a) Improvements, maintenance and repair of the Common Areas;

(b) Water, electrical lighting and other necessary utility services, if any, for the Common Areas;

(c) Fire and other hazard insurance covering the full insurable replacement value of the Common Areas with extended coverage;

(d) Taxes levied on real property constituting the Common Areas and on personal property of the Association;

(e) Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees or tenants of any Owner arising out of their occupation and/or use of the Common Areas. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association;

(f) Workman's compensation insurance to the extent necessary to comply with the Florida Statutes, and any other insurance deemed necessary by the Board of Directors of the Association;

(g) Acquisition of equipment for the Common Areas as may be determined by this Association, including without limitation, all equipment and personnel necessary or proper for use of the Common Areas;

(h) Operation, repair and maintenance of the roads and drives as shown on the Plat;

(i) Operation, repair and maintenance of drainage, utility and maintenance easements, tracts and retention areas;

(j) Operation, repair and maintenance of entranceway and signs;

(k) Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay pursuant to the terms of this Amended and Restated Declaration or By-Laws, or which shall be necessary or proper in the opinion of the Board of Directors of the Association for the operation of the Property, for the benefit of the Owners or for the enforcement of these restrictions.

7.2 Affirmative Covenant to Pay Association Expenses. Association Expenses shall be paid by the Association from funds assessed and collected from the Owners in the manner set forth in this Amended and Restated Declaration, and there is hereby imposed upon each Lot and Owner the lien and affirmative covenant and obligation to pay its respective share of the Association Expenses, which covenant shall run with the land. Each Owner, by acceptance of a deed or other instrument of conveyance, whether or not it shall be so expressed in such deed or instrument, does hereby agree and covenant to pay the share of Association Expenses allocated pursuant to this Amended and Restated Declaration to the Lot of such Owner and vests in the Association or its agents, a charge and continuing lien and the right and power to bring all actions against him or her personally for the collection of such charges as a debt or to foreclose the aforesaid lien as set forth herein. No Owner shall be relieved of liability for payment of his respective share of Association Expenses by non-use or abandonment of his Lot.

7.3 Annual Assessments. The Association shall assess each Owner for his respective share of association Expenses by Annual Assessments determined and payable in the manner provided in Sections 7.6 and 7.7 of this Amended and Restated Declaration.

7.4 Uniform Assessments. Each Lot shall share equally in all Assessments except as provided in Sections 7.6 and 7.7.

7.5 Interest of Owners. No Owner shall have during the term of the existence of the Association any interest, right or claim in or to any of the funds of the Association or funds received or held by the Association under or pursuant to any Annual Assessment or otherwise.

7.6 Annual Assessment. The Annual Assessment for Association Expenses which will be assessed upon each Lot shall be determined as set forth in Section 7.7 below, provided, however no Lot or portion thereof which has been subdivided in accordance with the provisions hereof shall be assessed but, rather, the resulting Lot, so subdivided, shall be so assessed. Such Annual Assessment shall be paid in advance in quarter-annual installments. Each Owner shall be subject to an Annual Assessment (pro-rated as of time of closing or the quarter-annual period in which closing shall occur) and each Owner shall timely pay any and all such Assessments.

7.7 Aggregate Annual Assessment. For each and every fiscal year of the Association, Annual Assessments for Association Expenses shall be determined in the manner set forth in this Section. The total anticipated expenses for the upcoming fiscal year, including reserves as reasonably estimated by the Board, shall be set forth in a proposed budget prepared for the Board at the end of the current fiscal year (the "Proposed Budget"). The Proposed Budget shall be considered by the Board and adopted in February of the year to which it applies. Once adopted, the Proposed Budget shall be known as the "Budget." The total anticipated Association Expenses set forth in the Budget shall be the aggregate Assessment for Association Expenses for all of the Lots for such fiscal year (the "Aggregate Annual Assessment"). The Aggregate Annual Assessment shall be divided equally between all the Lots provided, however no Lot or portion thereof which has been subdivided in accordance with the provisions hereof shall be assessed but, rather, the resulting Lot, so subdivided, shall be assessed. The Annual Assessment allocated to each such Lot as aforescribed shall be due and payable by the Owner thereof or, if more than one Owner, the Owners, jointly and severally, of each such Lot in four consecutive equal quarter-annual installments, in advance, commencing on the first day of the fiscal year of the Association. The Association shall mail to each and every Owner a copy of the Budget specifically indicating the total Association Expenses anticipated for the forthcoming fiscal year and the Annual Assessment for such year upon each such Lot. Notwithstanding anything to the contrary contained in this Section, the Budget shall not be increased by the Board greater than ten (10%) percent over the previous year's Budget without first obtaining approval of a majority of the Owners at a duly called meeting at which a quorum of Owners is present.

7.8 Special/Specific Assessments. In addition to the Annual Assessments, the Board may levy in any fiscal year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, or for any other purpose deemed appropriate by the Association. Special Assessments levied in any fiscal year for the foregoing purposes may not exceed \$200.00 per Unit per year in the aggregate without first obtaining approval of a majority of the Owners at a duly called meeting at which a quorum of Owners is

present. The Board may levy a Specific Assessment against any Owner to reimburse the Association for costs incurred in bringing the Owner and his or her Lot into compliance with the provisions of this Amended and Restated Declaration, the Amendments thereto, the Articles, the By-Laws and the Rules and Regulations or for services provided specifically to a particular Lot. The due date of any Assessment under this Section shall be fixed in a resolution authorizing such Assessment.

7.9 Certificate of Payment. The Association shall furnish to any Owner, upon request, a certificate in writing setting forth the remaining unpaid balance, if any, of any outstanding Annual Assessment, if any, assessed upon the Lot of such Owner and stating whether such Owner has failed to pay when due any such assessment or installment thereof. The Association may charge a reasonable fee for providing the certificate.

7.10 Remedies. In the event any Owner fails to pay any quarter-annual installment of any Annual Assessment after the same becomes due, the Board shall have the right to elect on behalf of the Association either some or all of the following remedies, which remedies shall not be mutually exclusive, and the election of any one such remedy shall not be deemed to be a waiver of any other such remedies:

(a) Administrative Late Fee. On any installment that is not paid within ten (10) days of its due date, the Association may charge an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of the amount of each overdue installment;

(b) Acceleration. After providing not less than ten (10) days written notice, the Association may accelerate the entire amount of any Annual Assessment allocable to the Lot for the remainder of the fiscal year notwithstanding provisions for the payment thereof in installments;

(c) Lien. After providing not less than forty-five (45) days written notice, the Association may record a claim of lien among the Public Records of Lee County, Florida. The lien amount shall be comprised of the amount of any overdue Annual Assessments as of the date of execution of such claim of lien, together with interest thereon from the due date of the Assessment at the highest rate allowed by law, and the costs of collection, including court costs and reasonable attorneys' fees at trial and appellate levels. As a prerequisite to filing the claim of lien, the written notice under this Subsection 7.10(c) must:

(i) provide the Lot Owner with forty-five (45) days to make payment for all amounts due, including but not limited to attorneys' fees, the actual costs associated with the preparation and delivery of the written notice or demand; and

(ii) be sent by registered or certified mail, return receipt requested, and by first class United States mail to the Lot Owner at his or her last address as reflected in the records of the Association, if the address is within the United States, and to the Lot Owner at the address of the Lot if the Owner's address as reflected in the records of the Association is not the Lot address. If the address reflected in the Association records is outside the United States, then sending notice to that address and to the Lot address by first-class United States mail is sufficient.

The claim of lien shall be subject to the provisions of Section 7.11 below. Upon full payment of all amounts secured by such lien, the party making such payment shall be entitled to receive from the Association a satisfaction of lien in form for recording;

(d) Foreclosure. After filing a claim of lien in accordance with Section 7.9(b) above, the Association may commence an action to foreclose such lien in like manner as a foreclosure of a mortgage on real property. Such action to foreclose may be brought by the Association no sooner than forty-five (45) days after the Lot Owner has been provided written notice of the Association's intent to foreclose the lien;

(e) Action at Law. Without waiving any lien rights and rights of foreclosure, to file an action at law against the Owner to collect such unpaid assessment, plus interest thereon at the highest contract rate permitted by law, and costs of collection, including court costs and reasonable attorneys' fees at trial and appellate levels; and

(f) Suspension of Voting Rights. The Association may suspend the voting rights of a Lot Owner for the nonpayment of Annual Assessments that are delinquent in excess of ninety (90) days.

7.11 Institutional Mortgagees. The lien for Annual Assessment provided for in this Amended and Restated Declaration shall be subordinate to the lien of any mortgage on a Lot held by an Institutional Mortgagee that is recorded amongst the public records of Lee County, Florida prior to the recording of the claim of lien.

7.12 Application of Overdue Payments. Any overdue payment received by the Association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection, and then to the delinquent Assessment.

ARTICLE VIII

GENERAL PROVISIONS

8.1 Incorporation of the Land Use Documents. Any and all deeds conveying a Lot shall be conclusively presumed to have incorporated therein all of the terms and conditions of this Amended and Restated Declaration, the By-Laws and Rules and Regulations as the same may be adopted by the Association and amended from time to time.

8.2 Notices to Association. Any notice or other communication required or permitted to be given or delivered under this Amended and Restated Declaration to the Association or to the ARB shall be deemed properly given and delivered upon the delivery thereof or upon the mailing thereof by certified United States mail, postage prepaid to The Rookery Association at 1429 Colonial Boulevard, Suite 201, Fort Myers, Florida 33907-1060, or at such other address as the Board may hereafter designate by notice to Owners in the manner provided in Section 8.3.

8.3 Notices to Owners. Except as otherwise specifically set forth in this Amended and Restated Declaration, any notice or other communication required or permitted to be given or delivered under this Amended and Restated Declaration to any Owner shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to the last known address of the person whose name appears as the Owner on the records of the Association at the time of such mailing.

8.4 Enforcement.

(a) In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the right (but not the obligation) to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Amended and Restated Declaration, the By-Laws, the Rules and Regulations or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner fifteen (15) days written notice of its intent to take such actions. All costs of such abatement or removal including reasonable attorneys' fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of Assessments.

(b) Legal Action. Each Lot Owner, occupant, tenant, guest, licensee and other invitee shall comply with this Amended and Restated Declaration, the Articles, the By-Laws, the Rules and Regulations of the Association as the same may be amended from time to time, and the provisions thereof shall be deemed expressly incorporated into any lease of a Lot. The Association shall have the right to evict a tenant or remove any occupant, guest, licensee or invitee. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the Association or by a Lot Owner against:

- (i) The Association.
- (ii) Another Lot Owner.
- (iii) Any Director who willfully and knowingly fails to comply with these provisions.
- (iv) Any tenant leasing a Lot, and any other invitee occupying a Lot.

(c) Attorneys' Fees. The prevailing party in any legal action shall be entitled to recover its reasonable attorneys' fees. A Lot Owner, prevailing in an action against the Association, in addition to recovering his attorneys' fees, may recover additional amounts as determined by the Court to be necessary to reimburse the Lot Owner for his share of Assessments levied by the Association to fund its expenses of the litigation.

(d) Negligence. A Lot Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guest, employees, agents, tenants, occupants, licensees or

invitees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

(e) **Fines/Suspension.** The Association may suspend, for a reasonable period of time, the rights of a Lot Owner, its tenants, occupants, guests, licensees and invitees to use the Common Areas, and may levy reasonable fines against a Lot for the failure of the Owner of the Lot, or its tenant, occupant, guest, licensee or invitee, to comply with any provision of this Amended and Restated Declaration, the By-Laws or the Rules and Regulations of the Association. No fine will become a lien against the Lot. No fine may exceed \$100.00 per violation; provided, however, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000.00. No fine or suspension may be levied except after giving not less than fourteen (14) days written notice and an opportunity for a hearing before a committee of at least three (3) Lot Owners appointed by the Board who are not Officers, Directors or employees of the Association or the spouse, parent, child, brother or sister of same. If the committee, by majority vote, does not approve the proposed fine, it may not be imposed. Suspensions or fines authorized in this Subsection do not apply to the failure of the Lot Owner to pay Annual Assessments or other charges when due. Remedies for failure to pay Assessments are set forth in Section 7.10 of this Amended and Restated Declaration. Notwithstanding anything to the contrary contained herein, suspension of Common Area use rights shall not impair the right of a Lot Owner or its tenant to have vehicular and pedestrian access to and from the Lot, including but not limited to the right to park.

8.5 **Release from Minor Violations.** Where a building has been erected on a Lot or the construction thereof substantially advanced, in such manner that the same constitutes a violation or violations of the covenants as set forth in Sections 5.2, 5.3, 5.4, or 5.5 the Board shall have the right at any time to release such Lot from such Section or Sections as are violated, provided, however, that the Board shall not release a violation or violations of such Section or Sections except as to violations that the party releasing the same shall determine to be minor.

8.6 **Disputes.** In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Amended and Restated Declaration, such dispute shall be referred to the Board, and the determination rendered by the Board with respect to such dispute shall be final and binding on all parties thereto.

8.7 **Non-waiver.** The failure by the Association to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or of the right of the Association to thereafter enforce such covenant or restriction.

8.8 **Captions.** Captions inserted throughout this Amended and Restated Declaration are intended only as a matter of convenience and for reference only and in no way shall such captions or headings define, limit or in any way affect any of the terms or provisions of this Amended and Restated Declaration.

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

form on any noun or pronoun herein may be deemed to mean the corresponding plural form thereof and vice versa.

8.10 Severability. In the event any one of the provisions of this Amended and Restated Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants or restrictions or terms and conditions of this Amended and Restated Declaration or a reduction in the term of the same by reason of the legal rule against perpetuities shall in no way affect any other provision which shall remain in full force and effect for such period of time as may be permitted by law.


8.11 Term. This Amended and Restated Declaration (but excluding the easements herein created which are perpetual) and the terms provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein, including, without limitation, the provisions for assessment of Lots, shall run with and bind the Property and inure to the benefit of the Association, Owners and their respective legal representatives, heirs, successors and assigns for a term of ninety (90) years from the date hereof, after which time this Amended and Restated Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such ninety years time or to each such ten-year extension there is recorded in the Public Records of Lee County, Florida, an instrument agreeing to terminate this Amended and Restated Declaration signed by two-thirds (2/3) of all Owners and two-thirds (2/3) of all institutional Mortgagees, upon which event this Amended and Restated Declaration shall be terminated upon the expiration of the ninety-year term or the ten-year extension during which such instrument was recorded.

8.12 Amendment. This Amended and Restated Declaration may be amended from time to time by a written amendment consented to and approved by an affirmative vote of the Owners of not less than two-thirds (2/3) of the Lots contained within the Subdivision.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
In the presence of:

THE ROOKERY COMMUNITY
ASSOCIATION, INC., a Florida non-profit
corporation



JAMES H. FORRESTER
Print Name

By: Gary M. Palmer

Print Name: GARY M. PALMER



CHRISTOPHER PALMER
Print Name

Its: PRESIDENT

STATE OF FLORIDA
LEE COUNTY

The foregoing instrument was acknowledged before me this 16th day of Dec,
2008, by Gary Palmer, the President, of THE ROOKERY
COMMUNITY ASSOCIATION, INC., a Florida non-profit corporation, on behalf of the
corporation.

Dolores Schallian

Notary Public, State of Florida
My Commission Expires:

#1617350v4

