

**Prepared by and Return to:**

Leland W. Wilson, Esq.  
Association Legal Services  
12600 World Plaza Ln # 63  
Fort Myers, FL 33907

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**CERTIFICATE OF AMENDMENT AND RESTATEMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND BYLAWS FOR  
MARSH LANDING COMMUNITY ASSOCIATION AT ESTERO, INC.**

**WHEREAS**, this Amendment is made on the 18th day of March, 2025 to the Declaration of Covenants, Conditions, and Restrictions and Bylaws of MARSH LANDING COMMUNITY ASSOCIATION AT ESTERO, INC., (the "Governing Documents"). The original Declaration and Bylaws were recorded at O.R. Book 2725, Page 0664, *et seq.*, of the Public Records of Charlotte County, Florida.

**WHEREAS**, the Restatements of the Amended Declaration of Covenants, Conditions, and Restrictions and Bylaws, are recorded as an exhibit hereto: and

**WHEREAS**, at a duly called special meeting of MARSH LANDING COMMUNITY ASSOCIATION AT ESTERO, INC., on the 8 day of April, 2025 at which a quorum was present, the Members approved the Restatements to the Amended Declaration of Covenants, Conditions and Restrictions and Bylaws as required hereinafter set forth.

**NOW, THEREFORE**, the undersigned hereby certify that the following Amendments to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions and Bylaws, are a true and corrected copy of the amendments as accepted by the membership.

**SEE ATTACHED**

WITNESS my signature hereto this 8 day of April, 2025.

**MARSH LANDING COMMUNITY ASSOCIATION AT ESTERO, INC.**

By: Cornie Mansfield

Cornie Mansfield, President

1st Witness Name: Alexandra Segarra



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**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION.  
FOR PRESENT TEXT SEE EXISTING DECLARATION.**

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR**

**MARSH LANDING COMMUNITY ASSOCIATION AT ESTERO, INC.**

**KNOW ALL INDIVIDUALS BY THESE PRESENTS**, that the undersigned, Marsh Landing Community Association at Estero, Inc., a Florida corporation, is the owner of certain property (hereinafter, the “Master Association”), located in Lee County, Florida, as more particularly described in or attached to the original Declaration of Covenants, Conditions and Restrictions as recorded at O.R. Book 2725, Page 664 *et seq.*, of the Public Records of Lee County, Florida, and as Preserved on April 12, 2022 by Instrument No. 2022000121494, of the Public Records of Lee County, Florida.

The Association makes the following Declaration of Protective Covenants, Conditions and Restrictions covering above, specifying that this Declaration shall constitute a covenant running with the described land and that this Declaration shall be binding upon the undersigned and upon all persons deriving title through the undersigned. These protective covenants, during their lifetime, shall be for the benefit of and a limitation upon all present and future Owners of the real property.

1. **DEFINITIONS.** The following words and terms used in this Declaration or any of the Governing Documents (unless the context shall clearly indicate otherwise) shall have the following meanings:
  - 1.1. **“Articles” or “Articles of Incorporation”** as used herein, means the Articles of Incorporation of the Association as amended from time to time.
  - 1.2. **“Architectural Modification Committee” (“AMC”)** shall mean the committee that has the jurisdiction over modifications, additions, or alterations made on or to existing Residential Living Units or structures containing Residential Living Units and the open space, if any, throughout the Properties.
  - 1.3. **“Assessment”** means the proportionate share of the funds required for the payment of Common Expenses that is assessed against an Owner from time to time.
  - 1.4. **“Association”** shall mean and refer to the Master Association or any Neighborhood

Association as the context used herein requires.

- 1.5. **“Association Property” or “Property”** means any real property owned by the Master Association, including any Improvements located thereon, and all personal property owned by the Association.
- 1.6. **“Board of Directors” or “Board” or “Directors”** means the Board of Directors responsible for the administration of the Master Association.
- 1.7. **“Bylaws”** as used herein, means the Bylaws of the Master Association, as amended from time to time.
- 1.8. **“Chapter 720”** means Chapter 720, Florida Statute as it now exists or as it may be amended from time to time including the definitions therein contained.
- 1.9. **“Charge”** means any legal or equitable indebtedness to the Master Association incurred by, or on behalf of, an Owner, other than Assessments for Common Expenses. Said obligation may arise by oral or written contract, by law or equity, or may be created by the Master Association’s documents. Charges may include attorney fees. Said Charges may be secured by a lien against the Lot or Condominium Unit as provided herein.
- 1.10. **“Committee”** means a group of Board members, Owners, or Board members and/or Owners and/or other persons appointed by the Board to make reports or recommendations to the Board, to take action on behalf of the Board, or to take such actions as the resolution creating the Committee, or the Directors of the Board, may dictate.
- 1.11. **“Common Areas” or “Common Facilities”** means the portions of the Property not included in the Residential Living Unit and shared among Owners and Members, but shall not include Common Areas, as same may be designated in any Condominium within the development, nor such properties owned by any Neighborhood Association.
- 1.12. **“Common Expenses”** means the expenses incurred by the Master Association in the course of performing its duties under the Governing Documents and the law. Common Expenses of the Master Association include the costs of operating the Association, the costs of administration, maintenance, operation, repair, and replacement of the Properties and items required to be maintained by the Master Association, other expenses declared by the Board or the Governing Documents to be Common Expenses, and any other valid expenses or debts of the Association which are assessed against the Owners.
- 1.13. **“Common Surplus”** means the excess of all receipts of the Master Association, including but not limited to Assessments, rents, profits, and revenues over the Common Expenses.

- 1.14. **“Condominium Unit”** shall mean a condominium unit as such term is defined in Chapter 718, Florida Statute
- 1.15. **“Declaration”** means this Declaration, as amended from time to time.
- 1.16. **“Family” or “Single Family”** means any one (1) of the following:
- One (1) natural Person, his or her spouse, if any, and his, her or their parents, grandparents, grandchildren, siblings, or children (related by blood, marriage, or adoption), who do and plan to reside together indefinitely and continuously as a single financially and socially interdependent housekeeping unit, with the intention of living within the bonds of family.
- Not more than two (2) natural Persons not meeting the requirement above, who do and plan to reside together indefinitely and continuously as a single financially and socially interdependent housekeeping unit, with the intention of living within the bonds of family and their respective parents, grandparents, grandchildren, siblings, or children (related by blood, marriage, or adoption).
- The reference to "natural" is intended to distinguish between an individual and a corporation, partnership, limited liability partnership, limited liability company, trust, estate, or other artificial entity. A "Family Member" is a natural Person who resides in a Residential Living Unit as part of the Owner's Family or as part of the Family of a Tenant or a Guest, but, in each case, is not a title holder.
- 1.17. **“Governing Documents”** means and includes this Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations of the Association and all recorded exhibits to them, all as amended from time to time. If there is an irreconcilable conflict between the provisions of any two of these documents, the first document to appear in the foregoing list shall prevail.
- 1.18. **“Guest”** means any natural person who is not the Owner or a Tenant or a Family Member of such Owner or such Tenant, who is physically present on or Occupies the Association Property on a temporary basis at the expressed or implied invitation of the Owner or other legally permitted Occupant, without the payment or existence of consideration.
- 1.19. **“Hurricane Protection”** means hurricane shutters, impact glass, code-compliant windows or doors, and other code compliant hurricane protection products used to preserve and protect the Association Property.
- 1.20. **“Improvements”** means all Structures and artificial changes to the natural environment (exclusive of landscaping) located on the Association Property.
- 1.21. **“Institutional Mortgagee”** means the mortgagee (or its assignee) of a mortgage against a Lot or Condominium Unit, which mortgagee is a bank, savings and loan

association, mortgage company, insurance 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 also refers to any holder of a mortgage against a Lot or Condominium Unit which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

- 1.22. **“Invitee” or “Licensee”** means a Person expressly or impliedly allowed entry onto the Association Property for the purpose of conducting business with or providing services to a Lot, Condominium Unit or Occupant, or otherwise entering the Property on a temporary basis at the expressed or implied consent of the Owner or Occupant, including, but not limited to, contractors, workmen, delivery persons, domestic assistants, and health care assistants. A Guest and a Licensee are each an Invitee.
- 1.23. **“Lien for Charges”** means a lien which is recorded to secure a Charge.
- 1.24. **“Lot”** shall mean a portion of the property, other than the Common Area, intended for any independent residential use or ownership. Lots may be shown on the original plat filed for individual residential subdivisions within the property, plats or maps filed with the original Declaration or amendments to the original Declaration, or as attachments in any other Declaration which may be affecting all or any portion of the property.
- 1.25. **“Maintenance” or “Maintain”** means, unless the context of a provision in the Governing Documents requires otherwise, landscaping, day-to-day cleaning, heavy cleaning, painting where applicable, routine maintenance, ongoing maintenance, preventative maintenance, as well as repair or replacement. The term "Maintenance" does not include repair after casualty, unless the context of a provision in the Governing Documents requires otherwise. Whenever an Owner is obligated by the Governing Documents or law to maintain, repair, or replace portions of the Association Property, the Board has the authority to establish reasonable standards for such maintenance, repair, or replacement, including mandating maintenance, repair, or replacement of said items, when the Board deems same are reasonably necessary, and the Board may likewise adopt specifications for replacement components, without need for Owner approval, notwithstanding any provision in this Declaration to the contrary.
- 1.26. **“Master Association”** means the Marsh Landing Community Association at Estero, Inc., a Florida corporation not-for-profit, which is the corporate entity responsible for the operation of Marsh Landing.
- 1.27. **“Member”** means and refers to those persons who are entitled to membership in the Master Association as provided in its Articles of Incorporation and Bylaws. An Owner shall automatically become a Member of the Master Association, by virtue of

acceptance of the deed or conveyance to their Lot or Condominium Unit. As a Member of such Association, said Owner shall be governed by the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, and Common Facilities Agreements.

- 1.28. **“Neighborhood Association”** shall mean and refer to any home owners, property owners, or Condominium Association within the development having responsibility for a Neighborhood. **“Neighborhood”** shall mean and refer to any group or similar product within the development governed by its own Association. Current Neighborhoods consist of Marsh Landing Townhouse Condominium I, II, III, V, VI, VII, VIII, and IX, Marsh Landing Villas (1) and II.
- 1.29. **“Occupy” or “Occupying”** when used in connection with a Residential Living Unit, means the act of staying overnight in a Residential Living Unit. **“Occupant”** is a person who Occupies a Residential Living Unit.
- 1.30. **“Officer”** means the executive Officers and Assistant Officers (if any) appointed by the Board as provided in the Bylaws.
- 1.31. **“Owner”** means the record owner, whether one or more persons or entities (including trusts), of any Lot or Condominium Unit which is part of the properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. The term "Owner" is deemed to include, unless the context specifically suggests otherwise, the Owner's Family, Tenants, Residents, Guests, Invitees, and as may be applicable, the Family Members of such persons, as well as employees or agents of such persons.
- 1.32. **“Resident”** means any natural Person who is Occupying a Residential Living Unit for thirty (30) days or more, whether or not consecutive, in any calendar year and includes, as applicable, Owners, Tenants, Guests, and their respective Family members who reside in the Residential Living Unit for such period.
- 1.33. **“Residential Living Unit” or “Unit”** means and refers to the structures or improvements on the Lot, Villa building, or Condominium building that is for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household. Whenever the term is used, it shall be interpreted as though it were followed by the words “and the Lot or Parcel on which it is constructed,” unless the context clearly requires another meaning.
- 1.34. **“Rules and Regulations”** means the rules, regulations, guidelines and reasonable approval procedures and policies governing the personal conduct of Owners and Occupants and the Use, Occupancy, alteration, Maintenance, Leasing, transfer and appearance of the Residential Living Unit, community, Association Property, and Common Areas, that may be promulgated by the Board from time to time by

resolution.

- 1.35. **“Structure”** means that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof". The term includes, without limitation swimming pools, walls, flagpoles, antennas, and playground equipment.
- 1.36. **“Surface Water Management System”** means a collection of devices, Improvements or natural systems whereby surface waters are controlled, impounded, or obstructed as required or described in any permits issued by the South Florida Water Management District and any other applicable governmental agency for the Association Property. The term includes lakes, canals, ditches, dikes, weirs, culverts, drainage maintenance easements and those works defined by statute in Section 373.403(1)-(5), Florida Statutes.
- 1.37. **“Voting Certificate”** if required by the Board of Directors, means the written document naming the Owner of the Lot or Condominium Unit authorized to cast the vote of the Lot or Condominium Unit. The Voting Certificate must be signed by all Owners or in the case of a Lot or Condominium Unit owned by a partnership, corporation or trust by the general partner, an officer or the trustee as the case may be. The last Voting Certificate on file with the Association shall be considered valid unless and until a new Voting Certificate is filed. It is the responsibility of the Owner to update the Voting Certificate.
- 1.38. **“Voting Interests”** means the voting rights distributed to the Association Members pursuant to the Bylaws.

## 2. MEMBERSHIP; VOTING

- 2.1. **Membership.** Every Owner of a Lot or Condominium Unit shall be a Member of the Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each Owner accepts their membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles and Bylaws, and the Rules and Regulations of the Association, as amended from time to time.
- 2.2. **Voting Rights.** Each Lot or Condominium Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the Bylaws.
- 2.3. **The Master Association.** By taking title to a Lot or Condominium Unit, an Owner also becomes a Member of Marsh Landing Community Association at Estero, Inc. (the “Master Association”) and is subject to the terms and conditions of this Declaration of Covenants, Conditions, and Restrictions for the Master Association.



### 3. EASEMENTS.

- 3.1. Appurtenant Easements.** Subject to the restrictions found elsewhere in this Section, the Owner of each Lot or Condominium Unit , their Guests, Lessees, and Invitees, shall have as an appurtenance to their Lot or Condominium Unit a perpetual nonexclusive easement for ingress and egress over, across and through the Common Areas, for the use and enjoyment of all recreational facilities, such use and enjoyment to be shared in common with the other Owners, their Guests, Lessees, and Invitees, subject to the provisions of this Declaration.
- 3.2. Association's Access Easement.** The Association's duly authorized representatives or agents shall, at all reasonable times, have and possess a reasonable right of entry and inspection upon the Property for the purpose of fully and faithfully discharging the duties of the Association. Non-exclusive easements are hereby granted in favor of the Association throughout the Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder, so long as none shall unreasonably interfere with the use of any Lot or Condominium Unit.
- 3.3. Utility Easements.** A perpetual easement shall exist upon, over, under and across the Properties for the purpose of Maintaining, installing, repairing, altering and operating master television antenna or cable systems, security, and similar systems, walkways, and all utilities, including but not limited to, water, sewers, telephones, gas, cable television, and electricity and apparatus appurtenant thereto as may be necessary for the installation and Maintenance of utilities servicing all Owners of all such easements to be of a size, width and location so as to minimize and not unreasonably interfere with the use of any improvements which are now, or will be, located upon said Property. The Association, through its Board of Directors, has the authority to grant additional such easements, and to modify, move or vacate such existing easements as may be necessary to provide utility and other services efficiently and effectively to the Lots, Condominium Units, Common Areas, and items to be Maintained by the Association.
- 3.4. Drainage.** A perpetual, non-exclusive easement shall exist in favor of the Association and their employees or other designees for the use of drainage areas established throughout the Association, and an easement for ingress, egress, and access to enter any portion of the Properties in order to construct, Maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Property by utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. No Structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or Maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

- 3.5. Ingress and Egress.** Non-exclusive easements shall exist for pedestrian and vehicular traffic over, through, and across sidewalks, paths, walks, roads, driveways, stairways, streets and other portions of the Common Areas as may be from time to time intended and designated for such purposes and uses and such easements shall be for the use and benefit of the Owners within this Association, including their Guests, Licensees or Invitees; provided, however, nothing herein shall be construed to give or create in any person the right to park any vehicle upon any portion of the Association Property except an area specifically designated and assigned for such purposes.
- 3.6. Additional Easements.** The Board has the authority, without the joinder of any Residential Living Unit Owner, to grant, modify, vacate, or move any easement if the easement constitutes part of or crosses the Common Areas or Association Property.
- 3.7. Encroachments.** If for any reason other than the intentional act of the Owner or the Association, any Residential Living Unit encroaches upon any of the Common Areas, or upon any Lot or Condominium Unit, or any Common Area encroaches upon any Lot or Condominium Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- 3.8. No Partition.** Except as is permitted in this Declaration, there shall be no partition of the Common Area or any part thereof, nor shall any person acquiring such interest in any of the Properties or any part thereof seek any such partition, judicial or otherwise, unless the affected area has been removed from the provisions of this Declaration. This section does not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.
- 3.9. Extent of Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:
- 3.9.1.** The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of Improving and/or Maintaining the Properties and providing the services herein, and, to aid thereof, to mortgage said Properties; and
  - 3.9.2.** The right of the Association to dedicate or transfer all or any part of the Common Area to public agency, authority, or utility as provided by its Articles;
  - 3.9.3.** The right of the Association to impose Rules and Regulations governing the use of the Lots, Condominium Units, and Association Property as further provided herein; and
  - 3.9.4.** The right of the Association to a non-exclusive easement over, across and through each Lot as necessary to meet the Association's Maintenance responsibilities.

#### **4. MAINTENANCE AND ALTERATIONS.**

- 4.1. **Association Maintenance.** The Association is responsible for the protection, Maintenance, repair, and replacement of all Common Areas and Association Property. The cost is a Common Expense. The Association's responsibilities also include the following:
- 4.1.1. **Common Areas.** Except as otherwise provided by the Neighborhood Associations, the Master Association shall Maintain and keep in good repair the Common Area, such Maintenance to be funded as hereinafter provided. This Maintenance shall include, but not be limited to, Maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and Improvements situated upon the Common Area. These areas include, but are not limited to, the Clubhouse, pool, tennis/pickleball courts, entry gates, road, Common Area lighting, and signs.
  - 4.1.2. **Roads.** Maintenance and repair of streets and roads within the Marsh Landing Community are the responsibility of the Marsh Landing Community Association at Estero. This includes the following: Forest Ridge Drive, Grassy Pine Drive, Lone Oak Drive, Marsh Landing Boulevard, Shady Oak Lane, and White Oak Lane.
- 4.2. **Alterations, Improvements, Additions to Common Areas.** The protection, Maintenance, repair, and replacement of the Common Areas and Association Property is the responsibility of the Association and the cost is a Common Expense. Beyond this function, the Association shall make no material alteration for nor substantial additions to, the Common Areas or the real property Owned by the Association costing more than \$50,000.00 without prior approval of at least two-thirds (2/3) of the Voting Interests who are present and voting, in person or by proxy, at an annual or special meeting called for the purpose. Alterations or additions costing less than this amount may be made with Board approval.
- 4.3. **Owner Maintenance.** All Maintenance, repairs, and replacements of, in or to any Lot or Condominium Unit, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, Improvements, Residential Living Units, and landscaping shall be performed by the Owner of such Lot or Condominium Unit at the Owners' sole cost and expense, except as otherwise expressly provided to the contrary herein. All residences within Marsh Landing must be maintained in accordance with the standards of the Marsh Landing Community. This includes driveways, walkways, roofs, and yards.
- 4.4. **Owner Alterations and Improvements; Architectural Control.** No Residential or Condominium Unit, building, Structure, enclosure, or other Improvement shall be erected or altered, nor shall any grading, excavation, change of exterior color, or other work which in any way alters the exterior appearance of any Structure or Residential Living Unit shall occur unless and until the plans, specifications, and location of same shall have been submitted to, and approved in writing by, the AMC. All changes, alterations, or modifications to an approved plan must also be approved pursuant to these same requirements. If any Master Association action is deemed necessary to enforce an architectural violation, the Master Association shall be entitled to collect

reasonable attorney fees, costs, and other expenses against the Owner, whether or not litigation is instituted, and the Board may assess such amounts in the form of a Special Assessment for noncompliance.

- 4.5. Neighborhood Association; Failure to Enforce.** In the event the Board of Directors determines that any Neighborhood Association has failed or refused to discharge properly its obligation with regard to the Maintenance, repair, or replacement of items for which it is responsible, or in the event any Owner or Owner of any Unit has failed to discharge their responsibility or that the need for Maintenance, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, their family, Guests, Lessees, or Invitees, the Association, except in the event of an emergency situation, shall give the Owner or Neighborhood Association as appropriate, written notice of the Master Associations intent to provide such necessary Maintenance, repair or replacement, at their sole cost and expense. The notice shall set forth with reasonable particularity the Maintenance, repair, or replacement deemed necessary and the cost thereof. The noticed party shall have fifteen (15) days within which to pay such amount claimed; or, complete said Maintenance, repair or replacements; or in the event that such Maintenance, repair, or replacement is not capable of completion within said fifteen (15) days period to commence such work which shall be completed within a reasonable time. If any Owner or Neighborhood Association does not comply with the provisions hereof, the Association may provide any such Maintenance, repair, or replacement at such a person's sole cost and expense, and the cost shall be added to and become a part of the Assessment to which such party is subject and shall become a lien against a Lot or Condominium Unit of such party.
- 4.6. Existing Additions, Alterations, or Improvements by Owners.** Owners are financially responsible for any modifications, alteration, installation, or addition to the Lot or Condominium Unit made by the Owner or their predecessors in title. The Owner shall be responsible for insurance, Maintenance, repair, and replacement of such modifications, installations or additions and the cost of removing and replacing or reinstalling such modifications if their removal by the Master Association becomes necessary due to violations of the Guidelines set forth by the AMC.
- 4.7. Negligence.** Each Owner shall be liable for the expenses of any Maintenance, repair, or replacement of their Lot or Condominium Unit, other Lots or Condominium Units, or personal property made necessary by their act or negligence or by that of any Member of their Family or their Guests, employees, agents, or Lessees.

## **5. ASSOCIATION POWERS AND MANAGEMENT.**

- 5.1. Powers and Duties.** The powers and duties of the Association include those set forth in Chapters 720, Florida Statutes, and in the Governing Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the Maintenance, management, and operation of the Association. The Association has the power to enter into agreements to acquire leaseholds, memberships, and other ownership, possessory, easement or use interests in lands or

facilities for the use and enjoyment of the Owners.

- 5.2. Bylaws.** A copy of the Amended and Restated Bylaws of the Association is attached to this Declaration.
- 5.3. Assessments and Charges.** The power to make and collect regular Assessments, special Assessments, and other Charges against Lot or Condominium Unit Owners.
- 5.4. Regulations.** The power to adopt and amend Rules and Regulations covering the details of the operations and use of the Association Property.
- 5.5. Delegation of Management.** The Association may contract for the management and Maintenance of those portions of the Property it is required to Maintain, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing functions which may include but are not limited to the submission of proposals, collection of Assessments, keeping of records, enforcement of rules and Maintenance, repair and replacement of items to be Maintained by the Association with funds made available by the Association for such purposes.
- 5.6. Acts of the Association.** Unless the approval or affirmative vote of the Owners is specifically made necessary by some provision of the law or the Governing Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board, without a vote of the Owners. The Officers and Directors of the Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for or bind the Association by reason of being an Owner.
- 5.7. Purchase of Lots or Condominium Units.** The Association has the power to purchase Lots or Condominium Unit within the Association in connection with the foreclosure of an Association lien for Assessments, lien for Charges, or any other foreclosure of an interest that affects the Association's lien and to hold, Lease, mortgage, encumber or convey them with such power to be exercised by the Board without prior approval of the Members.
- 5.8. Interests in Real Property.** The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board. Except as otherwise provided herein, the power to acquire, encumber or convey ownership interests in real property shall be exercised by the Board only after approval by at least a majority of the Voting Interests of the Association.
- 5.9. Disposition of Personal Property.** Any personal property owned by the Association, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board, without need for authorization by the Owners.

- 5.10. Official Records.** The Association shall maintain its official records as required by law. The records shall be open to inspection by Members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies of the Declaration of Covenants, Conditions and Restrictions, the Bylaws, and Rules and Regulations at the reasonable expense of the Member seeking copies.

The Association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel Owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel Owner's right to inspect records to less than one 8-hour business day per month. As amended from time to time, the Association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed \$20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The Association may charge up to 25 cents per page for copies made on the Association's photocopier. If the Association does not have a photocopier available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the Association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The Association shall maintain an adequate number of copies of the recorded Governing Documents, to ensure their availability to Members and prospective members. This clause may be altered as amended from time to time

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

- 5.11. Roster.** The Association shall maintain a current roster of names and designated mailing addresses of Owners, based upon information supplied by the Owners, as well as Parcel identification numbers. A Member's designated mailing address is the Member's property address, unless the Member has sent written notice to the Association requesting that a different mailing address be used for all required notices. Owners are responsible for notifying the Association of any change in their mailing address. All such notices shall be in writing. A copy of the roster shall be made available to any Member upon request. Additionally, the Association may maintain the electronic or facsimile mailing addresses designated by Members for receiving notice by electronic transmission of those Members consenting in writing to receive notices and documents by electronic transmission. The electronic mailing addresses, facsimile,

and telephone numbers provided by Members to receive notices and documents by electronic transmission shall be removed from Association records and not made available to other Members when consent to receive notice by electronic transmission is revoked in writing and sent to the Association. The Association, however, is not liable for an erroneous disclosure of the electronic mailing address or the number for receiving electronic transmission of notices.

6. **ASSESSMENTS AND CHARGES.** Each Owner (by virtue of their acceptance of title to their Lot or Condominium Unit) and each other person having an interest in or lien upon, or making any use of, any portion of the Master Association Property (by virtue of accepting such interest or lien or making such uses) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Master Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this provision including regular Assessments and special Assessments. The Master Association may also levy special Charges against any individual Lot or Condominium Unit for any amounts other than Common Expenses which are properly chargeable against such Lot or Condominium Unit under this Declaration or the Bylaws. Assessments shall be levied, and payment enforced as provided in the Bylaws and as follows:

- 6.1. **Determination of Assessments.** Assessments by the Association against each Owner of a Lot or Condominium Unit, and against each Lot or Condominium Unit, shall be based upon the annual budget, adopted by the Board as herein specified. The Assessment for each Lot or Condominium Unit shall be a pro rata share in relation to Member ownership of Common Areas. Should the Board at any time and from time to time determine, in the sole discretion of the Board, that the Assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Master Association, or in the event of emergencies, the Board shall have the authority to levy such additional Assessments as it shall deem necessary. Any such change shall be adopted consistent with the provisions of the Bylaws.

6.1.1. **Annual Budget.** The Board shall, in accordance with the Bylaws of the Association, establish an annual budget in advance for each fiscal year. The annual budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications.

6.1.2. **General Operating Reserve.** The Board, when establishing each annual budget, may, when deemed necessary or desirable, include therein a sum to be collected and maintained as a general operating reserve to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of Assessments by Owners, as a result of emergencies or for other reason placing financial stress upon the Association.

- 6.2. **Liability for Assessments and Charges.** An Owner is liable for all Assessments and Charges coming due while he is the Owner. Any Person which acquires title to a Lot or

Condominium Unit is jointly and severally liable with his predecessor in title for all unpaid Assessments and Charges against the predecessor for their share of the Charges and Assessments, including interest, late fees, reasonable attorneys' fees, and other costs and expenses of collection incurred by the Master Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid on behalf of the transferor by the transferee.

- 6.3. No Waiver or Excuse from Payment.** The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Areas, by abandonment of the Lot or Condominium Unit for which the Assessments are made, or by interruption in the availability of the Residential Living Unit, Condominium Unit, or the Common Areas for any reason whatsoever. No Owner may be excused from payment of their share of the Common Expenses unless all Owners are likewise proportionately excused from payment, except as provided below as to certain mortgagees.
- 6.4. Delinquency or Default.** The payment of any Assessment or installment thereof due to the Association shall be in the default if not paid to the Association on or before the due date thereof.
- 6.5. Interest and Late Fees; Application of Payments.** Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the Owner shall become liable for said Assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent Assessments. No payment by check is deemed received until the check has cleared.
- 6.6. Recording of Priority of Lien.** The lien of the Association shall be effective from and after recording in the Public Records of the County, a claim of lien stating the description of the Lot or Condominium Unit encumbered thereby, the name of the record Owner and the amount and date when due. Such claims of lien shall include only Assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an Officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien of the Association shall be subordinate and inferior to the lien of any recorded first mortgage, unless the Association's claim of lien was recorded before the mortgage, but is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded. Any Lease of a Residential Living Unit is subordinate and inferior to any claim of lien of the Association, regardless of when the Lease was executed.



- 6.7. Notice of Intention to Foreclose Lien.** No foreclosure judgment may be entered until at least the required timeframe as specified in Florida Statutes, specifically but not limited to, F.S. 720.3085, after the Association gives written notice to the Owner of its intention to foreclose its lien to collect the unpaid Assessments or Charges. If this notice is not given as required by law before the foreclosure action is filed, and if the unpaid Assessments or Charges, including those which have been accelerated (if applicable) and those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Owner or by certified mail, return receipt requested, addressed to the Owner at his last known address; and, upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Lot or Condominium Unit Owner or a mailing address at which the Owner will receive the notice, the court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this provision are satisfied if the Owner records a notice of contest of lien. The notice requirements do not apply if an action to foreclose a mortgage on the Lot or Condominium Unit is pending before any court; if the rights of the Association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the Owner.
- 6.8. Other Remedies.** The Board has the authority to impose such other remedies or sanctions pertaining to non-payment of monetary obligations to the Association. Without limitation, the same include suspension of use rights in Common Areas and Association Property; suspension of voting rights; suspension of the right to serve on the Board; the attachment of rental income; denial of Lease approval requests; and acceleration.
- 6.9. Suspension of Use Rights.** If an Owner is delinquent for more than ninety (90) days in paying a monetary obligation due to the Association, the Association may suspend the right of an Owner and their Residential Living Unit's Occupant, Licensee, or Invitee to use Common Areas, Common Facilities, or any other Association Property until the monetary obligation is paid.
- 6.10. Suspension of Voting Rights.** The Master Association may also suspend the voting rights of a Owner due to nonpayment of any monetary obligation of \$1,000.00 or more to the Association which is more than ninety (90) days delinquent for so long as the Owner remains delinquent.
- 6.11. Attachment of Rental Income When Lot or Condominium Unit is Delinquent.** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Master Association has the following options when payment of Assessments or Charges is in default (more than ten days in arrears). The Association may, without order of the Court, direct rental income (by written notice to any applicable Tenant with copy to the applicable Owner) from Residential Living Unit in default to be paid directly to the Association until all outstanding Assessments,

Charges, other monetary obligations, interest, late fees, costs, collection expenses, reasonable attorneys' fees, and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Residential Living Unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action, or other remedies as may be prescribed by law as the Board deems appropriate, without the same constituting a waiver or election of remedies.

- 6.12. Lien for Charges.** Except as prohibited by law, there is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Owner or expenses which the Association incurs in regard to an Owner, and which are not otherwise secured by the statutory lien for Common Expenses. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorneys' fees, costs, and expenses of collection.
- 6.13. Mortgage Foreclosure.** If the mortgagee of a first mortgage acquires title to a Lot or Condominium Unit as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer of title shall be liable for the share of Common Expenses or Assessments attributable to the Lot or Condominium Unit, or to the former Owner of the Lot or Condominium Unit, which came due prior to the mortgagee's acquisition of title as required by Chapter 718 and 720, Florida Statutes, as amended from time to time. The Association will not be considered jointly and severally liable for the payment of any monetary amounts with any subsequent buyer if the Association holds title due to its foreclosure action or by deed in lieu of foreclosure. Any unpaid share of Common Expenses for which such acquirer is exempt from liability becomes a Common Expense collectible from all Owners, including such acquirer and his successors and assigns. All other persons or entities acquiring title to a Lot or Condominium Unit as the result of a foreclosure or other Court ordered sale shall be obligated to pay all past due Charges, fines, Assessments, interest, late fees, attorney's fees and costs regardless of whether or not the Association has filed a lien and the Association will not be considered jointly and severally liable for the payment of any monetary amounts with any subsequent buyer if the Association holds title due to its foreclosure action or by deed in lieu of foreclosure. No Owner or acquirer of title to a Lot or Condominium Unit by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any Charges, fines, Assessments, interest, late Fees, attorney's fees, and costs coming due during the period of his ownership.
- 6.14. Removal of Property.** After the Association successfully performs a foreclosure on the Property, if the Owner does not remove personal property from the foreclosed premise, such property will be deemed forfeited to the Association and the Association

may authorize removal and may sell such forfeited property after ten (10) days written notice by certified mail addressed to the Owner at the last known address or at such address on record as provided to the Association by the Owner. Such remedy shall be in addition to all other remedies available to the Association under applicable laws, rules, and regulations including the right to compel removal of the property and right to impose any and all fines.

- 6.15. **Certificate as to Assessment, Mortgagee Questionnaires.** Within ten (10) days after request by an Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all Assessments and other monetary obligations owed to the Association by the Owner with respect to the Lot or Condominium Unit have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association may charge a fee, if allowed and up to the maximum by law, to issue an estoppel certificate. The Association may but is not obligated to respond to mortgagee questionnaires.

## 7. INSURANCE.

- 7.1. **Association Insurance; Duty and Authority to Obtain.** A master policy of property and casualty insurance shall be maintained through the Association. Such insurance shall insure all of the Association structures to the maximum insurable replacement value. Such coverage shall afford protection against the loss or damage by fire and other hazards covered by standard extended coverage endorsement. Each Owner shall be assessed annually for the insurance premium, as part of their annual Maintenance fee. The Association shall also purchase such insurance as may be necessary on the Common Property to protect the Association and the Owners. Such insurance shall be maintained in the same manner and method as set forth above. The insurance carried by the Association shall afford at least the following provisions:
- 7.1.1. **Property.** Loss or damage by fire or other hazards (including floods), vandalism and malicious mischief.
- 7.1.2. **Public Liability.** The Board shall also obtain a public liability policy applicable to the Common Area covering the Association, its Officers, Directors, Members and agents. The public liability policy shall have at least one million (\$1,000,000) dollar per person limit, as respects bodily injury and property damage, a one million (\$1,000,000) dollar limit per occurrence, and a fifty thousand (\$50,000) dollars minimum property damage limit, or in amounts determined by the Board. These amounts may be amended from time.
- 7.1.3. **Worker's Compensation.** Such worker's compensation coverage as may be required by law, or deemed advisable by the Board.
- 7.2. **Optional Coverage.** The Association may purchase and carry other such insurance coverage as the Board may determine to be in the best interest of the Association and

Owners.

- 7.3. Description of Coverage.** A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by Owners or their authorized representatives upon request.
- 7.4. Non-Liability for Fluctuations of Water Levels.** Neither the Association, nor any Officer, Director, employee, or agent of such entities, shall have any liability for aesthetic conditions, damage to lateral plantings or direct or consequential damages of any nature or kind caused by the fluctuation of water levels.
- 7.5. Waiver of Subrogation.** If available and where applicable, the Board shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Master 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.
- 7.6. Owner's Duty to Insure.** Each Owner is responsible for insuring the real and personal property within their own Lot and Residential Living Unit or Condominium Unit. Each Owner must recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance, including all risk, windstorm, and general liability.
- 7.7. Association's Right of Entry.** For the purpose of performing the duties authorized by this Section, the Association, through its duly authorized agents and employees, shall act have the right, after reasonable notice to the Owner, to enter upon the Lot or Condominium Unit at reasonable hours. In the event a Residential Living Unit of a Lot is damaged, through an act of God or other casualty, that Owner shall promptly cause the exterior of their Residential Living Unit to be repaired and rebuilt substantially in accordance with the original architectural plans and specifications. It shall be the duty of the Association to enforce such repair and rebuilding of the Residential Living Unit of a Lot to comply with this responsibility; however, the Association shall apply any insurance proceeds received by it on account of such act of God or other damage toward the cost of such repairs and rebuilding. Any deductible will be the responsibility of the Owner. Should the Owner refuse to honor his obligations under this paragraph, the Association may contract for such repairs and rebuilding as it deems necessary, and it shall have a lien against the damaged Lot or Condominium Unit for any such cost not fully covered by insurance. The Association shall have no liability to the Owner, whether for trespass or otherwise as a result of such entry upon the Lot or Condominium Unit.
- 7.8. Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and their mortgagees as their interests may

appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the Owners and their respective mortgagees in the following share:

- 7.8.1. **Association.** Proceeds on account of damage to items Maintained by the Association shall be held in as many undivided shares as there are Lots, the shares of each Owner being the same as his share in the Properties.
- 7.8.2. **Mortgagee.** If a mortgagee endorsement has been issued as to a Lot or Condominium Unit, the shares of the mortgagee and the Owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against Lots, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building(s). Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether Improvements will be restored after casualty.
- 7.8.3. **Surplus.** Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Owners in the following manner. The proceeds shall be paid to defray the costs of reconstruction or repair by the Association. Any proceeds remaining after defraying costs shall be retained by the Master Association as Common Surplus.
- 7.9. **Damage.** Where loss or damage occurs to the items Maintained by the Master Association, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:
  - 7.9.1. **Estimate.** The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration and shall negotiate and contract for repair and reconstruction.
  - 7.9.2. **Special Assessment.** If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the items, the Association shall promptly, upon determination of the deficiency, levy a special Assessment against all Owners for the deficiency. Such special Assessments need not be approved by the Owners. The special Assessment shall be added to the funds available for repair and restoration of the Property.
  - 7.9.3. **Decision to Not Repair or Replace.** Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. In the event that it should be

determined that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event, the property shall be restored to its natural state and maintained as an undeveloped portion of the property by its respective Owner or Owners in a neat and attractive condition.

**7.10. Fidelity Insurance.** The Association shall obtain and maintain insurance or fidelity bonding of all natural persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time.

**7.11. 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 Lots, Condominium Units,, or items Maintained by the Association.

**8. OCCUPANCY AND USE RESTRICTIONS.** In order to provide for congenial occupancy of the Association Property and for the protection of the values of the Lots, Condominium Units and Villas, the use of the Association Property shall be restricted and in accordance with the Rules and Regulations.

**8.1. Occupancy.** All Residential Living Units located within Marsh Landing, as described in Exhibit "A" of the original Declaration, shall be used, improved and devoted exclusively to single-family residential use; provided, however, nothing shall be deemed to prevent the Owner from leasing a Residential Living Unit to a single family for a minimum rental period as stated in Article 9 subject to all provisions of this Declaration. Sub-leasing is not permitted.

**8.1.1. Immediate Family.** Immediate family shall be the parents, grandparents, grandchildren, children, brothers, and sisters and their children.

**8.1.2. Occupancy When Owner Is Not Present.** Upon written notification to the Board of Directors, a Residential Living Unit may be occupied by a single family of guests or immediate family for a period not to exceed twenty-one (21) days when the Owner is not present. This written notification must include the names, addresses, and relationship to the owner of all persons to occupy the Residential Living Unit. The transfer fee is not required.

**8.1.3. Occupancy During Lease Term.** No one but the Lessee, their family members within the first degree of relationship by blood, adoption or marriage, and their spouses and temporary house Guests may occupy a Residential Living Unit.

**8.1.4. Occupancy in Absence of Lessee.** If a Lessee is absent from the Residential Living Unit for any period of time during the lease term, their family within the first degree of relationship already in residence may continue to occupy the

Residential Living Unit and may have house Guests subject to all restrictions as set forth herein.

- 8.2. Residential Business Uses.** These use restrictions shall not be construed in such a manner as to prohibit an Owner from maintaining his personal professional library, keeping his personal business or professional records or accounts or handling his personal, business or professional telephone calls or correspondence in and from his Lot or Home. Such uses are expressly declared customarily incident to the principal residential use. No other commercial or business uses are permitted whatsoever.
- 8.3. Guests; Guest Suspension.** Any person who is physically present in or occupies a Residential Living Unit on a temporary basis (21 days or less) at the invitation of the Owner without the payment of consideration shall be deemed a Guest. The Board may, at a duly noticed meeting, temporarily suspend or permanently ban a Guest from entering the Property if the Board finds that such person has engaged in a serious violation of the Governing Documents or applicable law upon the Association Property or has engaged in systematic violations of the Governing Documents or applicable law upon the Association Property. Prior to the imposition of such suspension or ban, the Owner shall be given at least fourteen (14) days' notice of a hearing before the Fining Committee to show cause why the suspension or ban should not be imposed. The decision of the Fining Committee shall be final.
- 8.4. Animals.** No horses, cows, swine, monkeys, poultry, or livestock of any kind may be kept on any Lot or Condominium Unit. Household pets such as cats, dogs, birds, fish, hamsters, ferrets, gerbils, guinea pigs, and rabbits are permitted. Neighborhood Associations shall promulgate specific rules or restrictions for their Association. The ability to keep animals is a privilege, not a right, and the Board of Directors is empowered to fine an Owner in addition to ordering and enforcing the removal after a hearing of any animal in violation of this section or that becomes a source of unreasonable annoyance or a danger to the health, safety, and welfare to other Residents in Marsh Landing. All animals kept in the Residential Living Unit must be for personal Family enjoyment as pets, no commercial breeding or boarding of animals of any type is allowed.
- 8.4.1.** Animals must be under handheld leash or carried at all times while outside the Residential Living Unit, and therefore electronic devices such as fences to control animals are not permitted. No pets are to run at-large as per Lee County ordinances.
- 8.4.2.** Excrement made by animals shall be removed by Owners or handlers immediately, placed in a sealed container, and deposited in the Owner's solid waste container.
- 8.4.3.** Animals that are, in the sole discretion of the Board of Directors, vicious, noisy, or otherwise unpleasant will not be permitted. In the event that an animal has, in the sole opinion of the Board, threatened a person or another's animal, has become a nuisance or an unreasonable disturbance, written notice will be given to the Owner or other person responsible for the animal, and the animal

shall be removed from the Association after review, hearing and determination of the compliance committee.

- 8.4.4. Owners may not leave animals unattended in backyards, screened porches or lanais, or where their noise may bother others.
- 8.4.5. Any Owner or other Resident who keeps or maintains any animal shall, in exchange for and in consideration of the privilege to keep the animal, hereby indemnify and hold the Association and each Owner free and harmless from any loss, claim or liability of any kind or character of whatever nature arising from or related to the keeping of such animal within the Association.
- 8.4.6. The Board has the authority and discretion to make exceptions to the limitations in this regulation in individual cases and to impose conditions concerning the exceptions. The granting of exceptions shall not be deemed to be a waiver of the right to enforce the restrictions in other cases.
- 8.4.7. Feeding of wildlife and other animals is expressly prohibited and subject to fining by the Association. Leaving food unattended so that wildlife or roaming animals can easily find it is considered to be feeding wildlife. The Association will not hesitate to notify the appropriate authorities if feeding wildlife occurs.
- 8.5. **Acts of Animals.** The Association shall have no liability for the actions of or damage caused by any animals within the Properties including but not limited to dogs, bear, alligators, cougar, wild boar, deer, snakes, cane toads, and snapping turtles. All Owners, and their Families, Guests, Invitees, and Lessees are hereby made aware of the presence of hazards caused by certain animals within the Properties.
- 8.6. **Vehicles; Parking.** In order to ensure the accessibility to the Property by fire, ambulance and other emergency personnel, the Board shall have the authority to establish parking policies in the Community. Said restrictions shall become enforceable upon providing each Owner with notice thereof either through written notice to the Owners or the posting of signs.
  - 8.6.1. **Parking.** No parking on areas other than the pavement shall be permitted. Parked vehicles shall not block mailboxes, driveways, speed control signs or cause roadway hazards that impede the safe passage of emergency vehicles. parking within fifteen (15) feet of a stop sign or intersection is expressly forbidden.

The Association may not prohibit an Owner or other from parking (1) a personal vehicle, including a pickup truck, in the Owner's driveway or in any other area where they have a right to park, (2) a work vehicle, which is not a commercial motor vehicle, in the property owner's driveway, or (3) assigned first responder vehicle on public roads or rights-of-way within the Association.

Automobiles owned by governmental first responders are expressly permitted.



- 8.6.2. Abandoned of Inoperable Vehicles.** Abandoned or inoperative vehicles or unregistered vehicles of any kind shall not be stored or parked on any portion of the property. "Abandoned" and/or "inoperable vehicles" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three (3) weeks or longer, provided, however, it shall not include vehicles parked or operable vehicles registered with the Association and parked in driveways by their owners. A written notice requesting the removal of an unregistered, abandoned and inoperable vehicle may be personally served upon the owner or posted on the unused vehicle; and if said vehicle has not been removed within seventy-two (72) hours thereafter, the Association shall have the right to remove same without liability to it and the expense thereof shall be charged against the owner.
- 8.6.3. Commercial Vehicles.** No commercial vehicles or campers, mobile homes, motorhomes, motorcycles, house trailers or trailer of every other description, recreational vehicles, boats with trailers, house trailers or vans both licensed and unlicensed shall be permitted to be parked on any property or street side. For the purpose of this section, "commercial vehicles" shall mean those of which are not designed and used for customary personal/family purposes and more than 10,001 pounds. The absence of commercial type letters or graphics on a vehicle shall not be dispositive as to whether or not it is a commercial vehicle. Passenger vans and other vehicles situated on a truck chassis such as Suburbans, Explorers and Jeeps shall be considered non-commercial unless used as a commercial vehicle. The prohibitions of parking contained above in this section shall not apply to temporary parking of a commercial vehicle, such as, construction use or providing pick up and delivery and other commercial services.
- 8.6.4. Other Vehicles.** Gasoline powered motorcycles, motor scooters, ATV's, go karts and similar powered vehicles must be licensed and registered with the State of Florida to be legally operated on Association roadways. Operators must be at least 16 years of age and properly licensed. Electric powered golf carts and scooters are exempted from licensing and registration requirements.
- 8.6.5. Special Parking Permits.** Owners only may apply for a special permit to temporarily park recreational vehicles, trailers, boat trailers, POD's or moving vans, and trailers on their driveways or Association roads and parking areas. Special Parking Permits are issued by, denied, or revoked at the sole discretion of the Master Association Board of Directors. Special Parking Permits are for a maximum period of three (3) days and two (2) nights and must be prominently displayed on the vehicle so as to be readily visible from the street. Any vehicle temporarily parked with a Special Parking Permit is subject to all of the Association's street parking restrictions. Special Parking Permits will not be issued, and those already issued will be null and void immediately upon the issuance of a tropical storm or hurricane watch or warning by the National Hurricane Center.

- 8.7. Towing.** Any vehicle that is parked in violation of the Master Association's restrictions may be towed or booted. No prior notice is required. All costs and expenses shall be borne by the owner of the vehicle. The Association is not liable for trespass or for any damage to a vehicle that is towed or booted by a licensed and insured company. Owners and Lessees are responsible to see that all of the Occupants of their Residential Living Unit, Guests, and Invitees, comply with the Association's parking restrictions. Owners shall indemnify, defend, and hold the Association harmless from all claims against the Association on account of towing or booting a vehicle, including claims against the Association asserted by any Occupant of the Residential Living Unit, Guests, and Invitees, excepting only if it has been judicially determined that the Association is guilty of gross negligence or a higher degree of culpability.
- 8.8. Architectural Standards.** All property which is now or may hereafter be subjected to this Declaration is subject to architectural review. This review shall be in accordance with this Article and such standards as may be promulgated by the Board, or the Architectural Modifications Committee.
- 8.9. Architectural Modifications Committee.** The Architectural Modifications Committee (AMC) shall consist of at least three (3) and no more than five (5) members, all of whom shall be appointed by the Board of Directors. The AMC shall have jurisdiction over modifications, additions, or alterations made on or to existing Residential Living Units or structures containing Residential Living Units and the open space, if any, throughout the Properties; provided, however, the AMC may delegate this authority to the appropriate board or committee of any Neighborhood Association subsequently created or subsequently subjected to this Declaration, so long as the AMC has determined that such board or committee has in force written review and enforcement practices, procedures, and appropriate written guidelines and standards at least equal to those of the AMC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice; provided. Decisions of the AMC shall be advisory in nature and reported to the Board of Directors no later than thirty (30) days prior to the time the Board's power to deny a proposed modification expires. The AMC shall promulgate detailed standards and procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the AMC for approval as to quality of workmanship and design and harmony of external design with existing structures and as to location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Residential Living Unit or to paint the interior of his or her Residential Living Unit any color desired. In the event the Board, after receiving the report of the AMC, fails to approve or to disapprove such plans or to request additional information reasonably required within sixty (60) days after submission, the plans shall be deemed approved. The AMC may charge a reasonable fee not to exceed One Hundred (\$100.00) Dollars to cover the administrative expense of its review and comment, such fee to be payable to the Association.
- 8.10. Drainage.** Drainage of streets, Lots, or roadway ditches will not be impaired by any person or persons. Driveway culverts will be of sufficient size to afford proper drainage

of ditches without backing water up into a ditch or diverting flow. In no event shall a culvert be less than eighteen (18) inches. The board may remove any culvert that obstructs the flow of water through the street ditches. The breaking of curbs for drive installations will be accomplished in a good and workmanship-like manner, and such break will be re-cemented without hindrance to drainage, and such work is subject to inspection and approval by the AMC.

- 8.11. Nuisances.** No Owner shall use their Lot, Residential Living Unit, or Association Property, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the Occupant of another Residential Living Unit, or which would not be consistent with the maintenance of the highest standards for a first-class residential community nor permit the premises to be used in a disorderly or unlawful way. The use of each Residential Living Unit shall be consistent with existing laws and the Governing Documents, and Occupants shall at all times conduct themselves in a peaceful and orderly manner. The Board's determination as to what constitutes a nuisance or annoyance shall be dispositive and shall control without regard to any legal definition of such terms. The display or shooting of firearms, fireworks, or firecrackers is expressly forbidden.
- 8.12. Oil and Mining Operations.** No oil drilling or development operation, soil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.
- 8.13. Rules and Regulations.** The Board may, from time to time, adopt and amend Rules and Regulations governing the and restricting the use and Maintenance of the Lots or Condominium Units, provided however, that copies of such Rules and Regulations are furnished to each Owner prior to the time that they become effective. The Board may establish reasonable approval procedures and guidelines pertaining to the Leasing and conveyance of Residential Leasing Units. The aforementioned rules may be promulgated by a vote of the Association's Board of Directors at a duly noticed meeting of the Board.
- 8.14. Signs.** No sign, banner, billboard, notice, or advertisement of any other kind shall be placed, erected, displayed or shown anywhere within the Property including, but not limited to, those posted in windows of buildings or motor vehicles. One (1) temporary real estate 'For Sale' sign that conforms to the standards and specifications adopted by the Board of Directors. Such signs may only be posted in locations designated by the Board of Directors. For homes with a security system, one (1) Home Security sign is allowed to be placed at the front corner of the garage.
- 8.15. Solar Heating Panels.** Solar heating panels and other passive solar devices will be located to the rear of the property and out of sight from the road that provides access to individual homes. Solar panels will be located on the roof in a fashion so that their visibility by neighboring property owners is minimized.
- 8.16. Storage and Disposal of Garbage and Refuse.** No Lot or Condominium Unit shall

be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste materials shall not be kept, except in sanitary containers constructed of metal, plastic, or masonry materials with sanitary covers or lids. Equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. No Lot shall be used for the open storage of any materials whatsoever, which storage is visible from the street frontage. New building materials used in the construction of improvements erected upon any site may be placed upon such Lot at the time construction is commenced and maybe maintain thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the Improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

**8.17. Temporary or Permanent Structures.** No structure of a temporary character, with a trailer, basement, tent, shack, garage, barn, or other outbuilding, with the exception of 'POD' like storage containers, shall be maintained or used on any Lot at any time as a residence or for any other purpose, either temporarily or permanently. Any structure on which construction has commenced must be completed within a reasonable length of time. 'POD like' storage containers may be placed upon a driveway for a period not to exceed three (3) days, provided prior approval for a Special Parking Permit has been obtained from the Association.

**8.18. Surface Water Management.** In addition to all other purposes and powers stated herein, one of the primary purposes for the establishment of the Marsh Landing Community Association, Inc. is to operate and maintain the Surface Water Management System within the Marsh Landing development in accordance with permits granted by the South Florida Water Management District including all lakes, retention areas, culverts and related appurtenances. The Association shall Maintain the Surface Water Management in the Association Property. Any personal property Improvements to the Surface Water Facility shall be owned by the Association. The Association shall include in its annual budget an Assessment for the anticipated costs of Maintaining the Surface Water Management. Any amendment that affects the management of the Surface Water Drainage Facility must be approved by the South Florida Management District.

**9. LEASING.** The ability of a Lot or Condominium Unit Owner to lease his or her Lot or Condominium Unit to others is a privilege, not a right. The privilege may be revoked by the Board of Directors if it is abused by the Owner.

**9.1. Regulation by Association.** The Board of Directors shall have the authority to approve or disapprove all Leases and Rentals.

**9.2. Notice by the Owner.** An Owner intending to Lease their Residential Living Unit shall give to the Board, or its designee (including a Community Association Manager "CAM") written notice of such intention at least twenty (20) days prior to the first day of Occupancy under the Lease together with the name and address of the proposed Lessee and Occupants, a fully executed copy of the proposed Lease, and such other information as the Board may reasonably require including but not limited to a credit

report, background check, and proof of lawful residency. The Board of Directors or CAM may exercise discretionary power in certain special, or emergency situation(s) to expedite the approval process. Any Owner that fails to complete the necessary paperwork and/or pay all applicable fees will be in violation, and subject to a fine.

- 9.3. Term of Lease.** Leasing during the first thirty-six (36) months of ownership is prohibited. No Residential Living Unit may be leased for a term of less than sixty (60) days. No Residential Living Unit may be leased more often than three (3) times in any calendar year. The first day of the occupancy under the Lease shall determine in which year the Lease occurs. Lease Renewals are not automatic. Sub-Leasing is not permitted. Renting of rooms is strictly prohibited.
- 9.3.1. Exceptions to Lease Restriction.** An Owner that takes title to a Lot or Condominium Unit after the effective date and has not owned the Lot or Condominium Unit for thirty-six (36) consecutive months may be allowed to lease their Residential Living Unit in the following situation:
- 9.3.1.1. Inheritance.** Ownership was attained through inheritance from the previous Owner, who owned the Residential Living Unit for thirty-six (36) consecutive months.
- 9.3.1.2. Lease-Back.** A new owner wishing to lease the Residential Living Unit back to the previous Owner, who owned the Lot or Condominium Unit for at least thirty-six (36) consecutive months, can do so for a period of not more than 180 days. The thirty-six (36) month restriction for Leasing the Residential Living Unit would begin after the 'Lease-Back' period ended.
- 9.3.1.3.** If the Ownership was procured under one of the above situations, then the Board of Directors has the right to grant an exception allowing the Owner to Lease the Residential Living Unit, provided the Board of Directors grant the exception in writing.
- 9.4. Fees and Deposits for the Lease of Residential Living Units.** Whenever herein the Board's approval is required to allow the Lease of a Residential Living Unit, the Association may charge the Owner a preset fee in addition to the costs of any background and credit checks for processing the application. Such fee shall not exceed the maximum amount allowed by law.
- 9.5. Board Action.** After the required notice and all information or interviews requested have been provided, the Board, or the Community Association Manager, shall have fifteen (15) days in which to approve or disapprove the proposed Lease. If the Board or Community Association Manager neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of an approval, and on demand the Board shall issue a written letter of approval to the Lessee.

- 9.6. **Disapproval Criteria.** A proposed Lease shall be disapproved only if a majority of the whole Board so votes, and in such case the Lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following “Disapproval Criteria”:
- 9.6.1. The Person seeking approval (which includes all proposed Occupants or Residents) has been convicted of, pled no contest to, or has been released from incarceration, probation or community control for:
- 9.6.1.1. a capital, first, or second degree felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;
  - 9.6.1.2. a felony involving damage to or theft of property;
  - 9.6.1.3. a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior;
  - 9.6.1.4. a first or second degree felony involving illegal drugs;
  - 9.6.1.5. any drug offense involving the manufacture and/or distribution of illegal drugs.
- 9.6.2. The Person seeking approval has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that label occurred;
- 9.6.3. The application for approval on its face, or the conduct of the applicant, indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Association.
- 9.6.4. The proposed Occupant makes any material misrepresentation during the application process, which shall justify retroactive disapproval of the application upon discovery of the misrepresentation.
- 9.6.5. The Person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other housing facilities or associations, or by his conduct in this Association as a Tenant, Resident, Occupant or Guest;
- 9.6.6. By way of example, but not limitation, an Owner allowing a Tenant or transferee to take possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with applicable restrictions.
- 9.6.7. The Owner or Person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner or has made material misstatements or withheld material or information during the application process;

- 9.6.8. The Owner has a history of Leasing his Living Unit without obtaining approval, or Leasing to troublesome Lessees or refusing to control or accept responsibility for the Occupancy of his Living Unit;
- 9.6.9. The Owner has a history of disregarding the Rules and Regulations of the Association, including without limitation, prior covenant violations, delinquencies or disregard of the Leasing provisions.
- 9.6.10. The real estate company or rental agent handling the Leasing transaction on behalf of the Owner has a history of screening Lessee applicants inadequately, recommending undesirable Lessees, or entering into Leases without prior Association approval;
- 9.6.11. All Assessments, fines and other Charges against the Lot have not been paid in full.
- 9.7. **Unapproved Leases.** Any Lease of a Residential Living Unit not approved pursuant to this Section shall be void and unenforceable unless subsequently approved by the Board or Community Association Manager. The Association shall have the right to evict the Tenant without securing the consent from the Owner. For the purpose of such eviction, the Association shall be deemed to be an agent of the landlord and all attorney fees and costs shall be the responsibility of the Owner and shall constitute a Charge and may be collected as a delinquent Assessment as provided for in this Declaration.
- 9.8. **Tenant Agreement to Covenants.** All of the provisions of the Governing Documents and the Rules and Regulations of the Association shall be applicable and enforceable against any person Occupying a Residential Living Unit as a Lessee or Guest to the same extent as against the Owner. A covenant on the part of each Occupant to abide by the Rules and Regulations of the Association and the provisions of the Governing Documents, designating the Association as the Owner's agent with the authority to terminate any Lease agreement and evict the Tenants in the event of breach of such covenant, shall be deemed to be included in every Lease agreement, whether oral or written, and whether specifically expressed in such agreement or not. All Leases shall be deemed to provide that a violation of the Governing Documents is grounds for damages, termination, and eviction and that the Tenant and the Owner agree that the Association may proceed against either the Owner or the Tenant and the Owner or the Tenant shall be responsible for the Association's costs and expenses, including attorney fees and costs, secured by a lien against the Lot.
- 9.9. **Collateral Assignment of Rents.** In the event an Owner is in default in payment of Assessments for Common Expenses or any other monetary amounts owed to the Association, the Association shall have the authority to collect rents directly from the Owner's Tenant. The authority granted in this Section is in addition to any authority granted by law.

- 9.10. **Attorney Fees and Costs.** All attorney fees and costs associated with any legal action taken against a Tenant or Occupant shall be the responsibility of the Owner. This includes, but is not limited to, all attorney fees and costs incurred by the Association in connection with a covenant enforcement matter, collateral assignment of rents, or legal action with regard to a Tenancy or Occupancy issue, termination of a Lease, or eviction of any Lessee or Occupant.
- 9.11. **Use of Common Areas and Association Property.** To prevent overtaxing the facilities, an Owner whose Residential Living Unit is Leased may not use the recreation or parking facilities during the Lease term.

10. **TRANSFER OF OWNERSHIP.** In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the property, 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 shall be subject to the following provisions:

Any person who was not approved as part of the conveyance to the present Owner must be approved in advance of taking Occupancy as provided herein, and for good cause may be disapproved, regardless of whether or not said person shall be obtaining an ownership interest in the Lot.

10.1. **Transfers.**

- 10.1.1. **Sale or Gift.** No Owner may transfer a Lot or any ownership interest in a Lot by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
- 10.1.2. **Devise or Inheritance.** Notwithstanding any other provision hereof, if any Owner acquires his title by devise or inheritance, his right to Occupy or use the Lot shall be subject to the approval of the Board of Directors. The approval shall not be unreasonably denied to any devise or heir who was the prior Owner's lawful spouse at the time of death or was related to the Owner by blood or adoption within the first degree.
- 10.1.3. **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 Lot before being approved by the Board of Directors under the procedures outlined herein.
- 10.1.4. **Transfer Committee.** To facilitate transfers proposed during times when many of its 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) Owners, or to the President, Vice President or Treasurer, any of whom may be deemed a Vice President for purposes of



executing a Certificate of Approval.

**10.2. Notice to Association.**

**10.2.1. Sale or Gift.** An Owner intending to make a sale or gift of his Lot or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or recipient, a copy of the sales contract, if any, and such other information as the Board may reasonably require including but not limited to a credit report, background check and proof of lawful residency. The Association may charge a reasonable Fee in addition to the costs of any background and credit checks for the cost of processing each applicant. The Board may require a personal interview with any purchaser or recipient and his spouse, if any, as a precondition to approval.

**10.2.2. Devise, Inheritance or Other Transfers.** The transferee must notify the Board of Directors 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 Board but may sell or Lease the Lot following the procedures in this Declaration.

**10.3. Failure to Give Notice.** If no notice is given, the Board of Directors, at its election may approve or disapprove at the time it learns of the transfer. 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.

**10.4. Board Action.** Within fifteen (15) days after receipt of the required notice and all information or interview requested, or not later than sixty (60) days after the notice required above is received, whichever occurs first, the Board 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 as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

**10.5. Disapproval.**

**10.5.1. With Good Cause.** Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes. If the Board disapproves a transfer for good cause, the Association has no duty to purchase the Lot or furnish an alternate purchaser, and the transaction shall not be made, or if

made, shall be rescinded in the manner determined by the Board. The previously stated Disapproval Criteria may be deemed to constitute good cause for disapproval.

- 10.6. Exception.** These transfer provisions 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, nor shall the Association's approval be required for the subsequent resale or Lease of a Living Unit by such mortgagee of the Lot so acquired but shall apply to the acquisition of title by any other person without regard to how the title was acquired. The Association retains the right to approve or deny Occupancy.
- 10.7. Unapproved Transfers.** Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.
- 10.8. Fees and Deposits Related to the Sale of Lots.** Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a Lot, the Association may charge the Owner a preset Fee for processing the application, such Fee shall not exceed the maximum amount allowed by law. A separate Fee may be charged for each person who is obtaining an interest in the Lot except if such persons are married.
- 10.9. Capital Contribution Reserve Fund Fee.** The purchaser of each Lot or Condominium Unit shall pay at closing to the Association a working capital contribution ("Capital Improvement Reserve Fund fee") in the amount of \$1000, or in such amount as may be modified or adjusted by affirmative vote of the Board of Directors in their sole discretion. Such fund shall be as defined as per the Bylaws.

## 11. ENFORCEMENT.

- 11.1. Enforcement.** The Master Association through its Board has the power to enforce all Covenants, Conditions, Restrictions and agreements applicable to Marsh Landing and the Board is authorized to promulgate and enforce rules and regulations governing the use of the Common Area. The Association may bring an action to enforce such rules and regulations by injunction, by damages, and by the levying and collection of fines against any Owner or Neighborhood Association if such Neighborhood Association fails to enforce the provisions of this Declaration or any rule or regulation promulgated by the Board. Fines imposed may constitute a lien on the Member's Lot or Condominium Unit and may be collected in the same manner as any other Assessment owed to the Association.
- 11.2. Owner and Member Compliance.** The Governing Documents of the Association shall apply to Members and all persons to whom a Member has delegated his right of use in, as well as to any other person Occupying any Residential Living Unit under Lease from the Owner or by permission or invitation of the Owner or his Tenants

(express or implied), and their Licensees, Invitees, or Guests. Failure of any Owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the Governing Documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each Owner shall be responsible for any and all violations by his Tenants, Licensees, Invitees or Guests and by the Guests, Licensees, and Invitees of his Tenants, at any time.

- 11.3. Self-help Remedies.** Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the Lot or Condominium Unit, any construction or other violation that may be or exist thereon. The Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement, or removal.
- 11.4. Fines and Suspensions.** The Board may levy fines and suspensions against Members, or Members' Tenants or Guests, or both, who commit violations of Chapter 720, Florida Statutes, the provisions of the Governing Documents, or reasonable Rules of the Association, or who condone such violations by their Family members, Guests or Lessees or who fail to pay Assessments or other Charges. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any single fine exceed the maximum amount allowed by law. The maximum accrued fine for a continuing violation shall not exceed \$5,000.00. If allowed by law, fines shall be secured by a lien on the Owner's Lot or Condominium Unit. Suspensions of the use of Common Areas, Facilities, and non-essential services (e.g., bulk cable TV and /or Internet) may be imposed for a reasonable period of time to deter future violations. The procedure for imposing fines or suspending use rights shall be as outlined in the Bylaws and Florida Statutes.
- 11.5. Cured Violations.** If a violation has been cured in the manner specified in the written notice required in Florida Statutes, a fine or suspension may not be imposed.
- 11.6. Suspensions and Fines without Hearing.** The foregoing notwithstanding, if allowed by law, no prior notice or opportunity for a hearing is required for the imposition of a fine or suspension upon any Member for the nonpayment of any monetary obligation that is delinquent in excess of ninety (90) days. The suspension must be approved at a properly noticed Board meeting and upon approval, the Association must notify the Owner and if applicable, the Owner's Occupant, Lessee, or Invitee by mail or hand delivery of the suspension.
- 11.7. Voting Suspension and Board Eligibility.** The Association may suspend, with no prior notice or opportunity for a hearing, the voting rights of a Member for the

nonpayment of any monetary obligation that is delinquent in excess of ninety (90) days. The suspension must be approved at a properly noticed Board meeting and upon approval, the Association must notify the Owner by mail or hand delivery of the suspension. A person who is delinquent in the payment of any Fee, fine, or other monetary obligation to the Association for more than ninety (90) days is not eligible for Board membership.

**11.8. Mandatory Mediation.** In the event of any dispute as defined in Section 720.311, Florida Statutes, as that section may be amended from time to time, between an Owner and the Association arising from the operation of the Association, the parties must submit the dispute to mandatory mediation. Nothing herein shall be construed to require mediation of disputes relating to the collection of any Assessment, fine, or other financial obligations.

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

**11.10. Attorneys' Fees.** In any legal proceeding arising out of an alleged failure of a Guest, Tenant, Owner, Officer, Director, or the Association to comply with the requirements of the law, or the Governing Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney fees as may be awarded by the court.

**12. AMENDMENTS.** The provisions of this Declaration shall be automatically updated as Chapters 617 and 720 (or successor statute), as applicable, are amended from time to time.

**12.1. 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 twenty (20%) percent 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.

**12.2. Notice.** The subject matter of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**12.3. Vote Required.** Except as may otherwise be provided by law, or by specific provision of the Governing 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 purpose. No amendment shall change an Owner's share of liability for Assessments or voting rights unless the Owner consents to the amendment.

**12.4. Certificate and 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 where the Declaration is recorded and 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(s) are recorded in the Public Records of Lee County, Florida.

**12.5. Exceptions.** Wherever in this Declaration, the consent, approval, or affirmative vote of more than one-third (1/3) of the total Voting Interests 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.

### **13. GENERAL PROVISIONS.**

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

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

**13.3. Merger and Subdivision of Lots.** Upon application in writing by an Owner of adjoining Lots, the Board of Directors may authorize the merger or subdivision of adjoining Lots; provided, however, such merger or subdivision shall be in conformance with the provisions of any Supplemental Declaration that may be applicable to such Lots, including provisions which may further regulate merger or subdivision. No merger or subdivision of Lots shall be allowed unless approved by the Board. Such Plans and plans as may be necessary to show the merged or subdivided Lots shall be thereafter prepared at the expense of the requesting Owner, who shall additionally be responsible for all costs, including legal fees, associated with the merger or subdivision

of such Lots. The Board may impose conditions for use of the merged or subdivided Lot as a condition precedent to granting approval for such a merger or subdivision. From and after the time a merger or subdivision of Lots is approved, such Lots shall, for all purposes, be considered Lots in accordance with their new boundaries.

- 13.4. Severability.** Should any covenant, condition or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. Nothing contained in this Declaration is intended to affect vested rights. If any provision contained herein is deemed by a competent court of law to have such affect, then the law in effect at the time shall control and such provision will be deemed null and void but have no effect on the remaining provisions herein.
- 13.5. Interpretation; Disputes.** The Board of Directors is responsible for interpreting the provisions of this Declaration, its exhibits and rules promulgated by the Board. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, its exhibits or the rules promulgated by the Board the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties.
- 13.6. Non-Profit Status.** Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its non-profit status under applicable state or federal law.
- 13.7. Use of Singular and Plural and Gender.** Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.
- 13.8. Headings.** The headings used in the Governing Documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

**Prepared by and return to:**

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**AMENDED AND RESTATED BYLAWS OF MARSH LANDING COMMUNITY  
ASSOCIATION AT ESTERO, INC.**

1. **GENERAL.** These are the amended and restated Bylaws of Marsh Landing Community Association at Estero, Inc., hereinafter called the "Association", a non-profit corporation organized under the laws of the State of Florida for the purpose of administering a Homeowners Association pursuant to Florida Statutes.
  - 1.1. **Office.** The principal office of the Association shall be at such location as may from time to time be determined by the Board of Directors.
  - 1.2. **Seal.** A corporate seal for the Association may be, but is not required to be, adopted and updated as necessary by the Board and shall bear the name or abbreviated name of the Association, the word "Florida," the year of establishment, and shall identify the Association as a not-for-profit corporation. A common seal may be used in lieu of a raised corporate seal and in no event shall a seal be required to validate corporate actions unless specifically required by law.
  - 1.3. **Definitions.** All terms used in these Bylaws, whether capitalized or not, shall have the same meaning to the extent applicable, and except where the context would otherwise suggest, as set forth in the Articles of Incorporation for the Association, the Declaration of Covenants, Conditions, and Restrictions, and Chapter 720, Florida Statutes, all as amended from time to time.
2. **MEMBERS.**
  - 2.1. **Qualification.** The Members of the Association are the record Owners of legal title to the Lot or Condominium Unit in the Association.
  - 2.2. **Voting Interests.** The Members of the Master Association are entitled to one (1) vote for each Lot or Condominium Unit owned by them. The total number of possible votes (the Voting Interests) of the Association is the total number of Lot or Condominium Unit and Units. The vote of a Lot or Condominium Unit is not divisible. The Association may suspend the voting rights of a Member for the nonpayment of any monetary obligation due to the Association that is more than ninety (90) days delinquent.
  - 2.3. **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, the

decision or other response may be expressed by any person authorized to cast the vote of the Lot or Condominium Unit at an Association meeting, as stated above, unless the joinder of all record Owners is specifically required.

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

### **3. MEMBERS' MEETINGS; VOTING.**

- 3.1. Annual Meeting.** There shall be an annual meeting of the Members in each calendar year. The annual meeting shall be held in Lee County, Florida, in the first quarter of the calendar year at a day, place and time designated by the Board, for the purpose of electing Directors and to transact any other business authorized to be transacted by the Members, or stated in the notice of meeting sent to all Owners in advance thereof.
- 3.2. Special Meetings.** Special Members' meetings shall be held whenever called by the President, and shall be called by the President or Secretary within a reasonable time upon receipt of written notice from at least ten percent (10%) of the Voting Interests of the Association. Special Members' meetings may be called for any purpose permitted by law. The business conducted at a special Members meeting shall be limited to that stated in the notice of the special Members meeting, which shall include an agenda.
- 3.3. Notice of Members' Meetings.** Notices of all Members' meetings must state the date, time, place and specify the agenda items of the meeting. The notice must be mailed to each Member at the Member's designated address as it appears on the books of the Association or may be furnished by personal delivery or electronic transmission. The Members are responsible for providing the Association with any change of address. The notice must be mailed, transmitted, or delivered at least fourteen (14) days prior to the date of the meeting. If ownership of a Lot or Condominium Unit is transferred after notice has been mailed or transmitted, no separate notice to the new Owner is required. Attendance at any meeting by a Member constitutes waiver of notice by that Member unless the Member objects to the lack of notice at the beginning of the meeting. A Member may also waive notice of any meeting at any time by written waiver. Notice of Lot or Condominium Unit Owner meetings call to recall the Board members, maybe given by electronic transmission to the Owners who consent to receive notice by electronic transmission.
- 3.4. Quorum.** A quorum at Members' meetings shall consist of total Voting Interests entitled to cast at least thirty percent (30%) of the total Voting Interests of the Membership, either in person or by proxy, for authorization of any action, except as may otherwise be provided in the Declaration, the Articles of Incorporation, or these Bylaws. A quorum of the Master Association is one hundred thirteen (113) based on 376 Units.
- 3.5. Indivisible Vote.** Each Lot or Condominium Unit shall have one (1) indivisible vote. No individual may cast a vote assigned to a Lot or Condominium Unit where the voting



rights assigned to the Lot or Condominium Unit are suspended pursuant to the terms of the Governing Documents and Florida law.

- 3.6. Proxies.** Votes may be cast in person or by proxy. A proxy may be made by any person entitled to vote and shall be valid only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the Owner executing it. A proxy must be filed in writing and signed by the voting Member generating the proxy and filed with the Secretary of the Association before the appointed time of the meeting, or, at the discretion of the Presiding Officer of such meeting, before the time to which the meeting is adjourned. No proxy, limited or general, shall be used in the election of Board Members.
- 3.7. Participation at Meeting By Remote Communication.** Unless prohibited by Chapter 720, if authorized by the Board as provided in Section 617.0721 F.S., and subject to such guidelines and procedures as the Board may adopt, Members and proxy holders who are not physically present at a meeting may, by means of remote communication:
- 3.7.1.** Participate in the meeting.
- 3.7.2.** Be deemed to be present in person and vote at the meeting if:
- 3.7.2.1.** The corporation implements reasonable means to verify that each person deemed present and authorized to vote by means of remote communication is a Member or proxy holder; and
- 3.7.2.2.** The corporation implements reasonable measures to provide such Members or proxy holders with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Members, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrent with the proceedings.
- 3.8. Adjournment.** Any duly called meeting of the Members may be adjourned to be reconvened at a later time by vote of the majority of the Voting Interests present, regardless of whether a quorum has been attained. If the date, time, and place of its continuance are announced at the meeting being adjourned, then it shall not be necessary to give further notice of the meeting. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted when the meeting is reconvened, but only if a quorum is present.
- 3.9. Order of Business.** The order of business at annual Members' meetings and, as far as applicable at all other Members' meetings, shall be substantially as follows:
- A.** Call to order by President;
- B.** Collection of election ballots not yet cast
- C.** At the discretion of the President, appointment by the President of a chairman of the meeting (who need not be a Member or a Director);

- D. Appointment by the President (or chairman) of inspectors of election;
- E. Election of Directors;
- F. Calling of the roll, certifying of proxies and determination of a quorum; or, in lieu thereof, certification and acceptance of registration procedures establishing the number of persons present in person or by proxy;
- G. Proof of notice of the meeting or waiver of notice;
- H. Disposal of unapproved minutes, if any;
- I. Reports of Officers, if any;
- J. Reports of committees, if any;
- K. Unfinished business;
- L. New business;
- M. Adjournment.

Such order may be waived in whole or in part by direction of the chairman.

- 3.10. Parliamentary Rules.** Robert's Rules of Order (latest edition) shall be used as a general, non-binding guide in the conduct of Members' meetings, Board meetings, and committee meetings to ensure fairness, impartiality, and respect for minority views without unduly burdening majority rights. Meetings shall also be conducted in accordance with these Bylaws and the procedures established by the Board from time to time, including the form of voting documents to be used. The ruling of the Chair of the meetings, unless he or the Board designates a third person as Parliamentarian, shall be binding on all matters of procedure, unless contrary to law. The failure or alleged failure to adhere to Robert's Rules of Order shall not be used as a basis to legally challenge any action of the Association.
- 3.11. Minutes.** Minutes of all meetings of Members and of the Board of Directors shall be kept in a business-like manner and shall not be discarded at any time. These, plus records of all receipts and expenditures and all other official records shall be available for inspection by Members and Board Members at all reasonable times. However, the Directors may adopt reasonable rules regarding the frequency, time, location, notice requirements, manner of inspection, and copying of said records.
- 3.12. Action Without a Members Meeting.** Unless prohibited by law, any action required to be taken or which may be taken at any Members meeting may be taken without a Members meeting, without prior notice, and without a vote of the Members if a consent in writing, setting forth the action so taken shall be signed by the Members (or persons authorized to cast the vote of any such Member as elsewhere herein set forth) holding not less than the minimum number of Voting Interests that would be necessary to approve such action. Within ten (10) days after obtaining such authorization by written consent, notice must be given to Owners who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

4. **BOARD OF DIRECTORS.** The administration of the affairs of the Master Association shall be by a Board of Directors. All powers and duties granted to the Master 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 Owners only when such is specifically required.
- 4.1. **Number and Terms of Service.** The affairs of the Association shall be managed by not less than seven (7) Directors, two (2) each from the condominiums, villas, single-family homes and one (1) at-large, all of whom shall be Members of the Association. Condominium owners elect two (2) Directors representing condominiums. Villa owners elect two (2) Directors representing villas. Single family homeowners elect two (2) Directors representing single family homes. The entire membership of the Master Association elects the one (1) Director at-large. Directors once duly elected and qualified will serve until their successors are duly elected or until such Director's death, resignation or removal as provided herein. The term of each Director's service shall be two (2) years.
- 4.2. **Qualifications.** Each Director must be a Member or the spouse of a Member. If a Lot or Condominium Unit is owned by a corporation, partnership or trust, any officer, director, partner or trustee, as the case may be, shall be eligible to be a Director. No more than one natural person may represent any one Lot or Condominium Unit on the Board at any given time.
- 4.3. **Board of Directors Election Meetings; Notice and Procedure.** The regular election of Directors shall occur as the first item of business at the annual meeting.
- 4.3.1.1. Not less than sixty (60) days before a scheduled election, the Association shall provide to each Member entitled to vote, a first notice of the date of the election. Any person desiring to be a candidate for the Board of Directors shall give written notice to the Association not less than forty (40) days before the scheduled election. Not less than fourteen (14) days before the election, the Association shall mail or deliver a second notice of the election to all Members entitled to vote therein, together with a ballot containing the names of all properly pre-qualified candidates which shall include an information sheet (if provided by the candidate), no larger than 8½ inches by 11 inches furnished by the candidate, to be included with the mailing of the ballot, with the costs of copying and mailing to be borne by the Association.
- 4.3.1.2. There is no quorum requirement necessary for an election. However, at least twenty percent (20%) of the Voting Interests must cast a ballot in order to have a valid election, and elections shall be decided by a plurality of those votes cast.
- 4.3.1.3. The candidates receiving the highest number of votes from each of the three (3) housing types shall be elected. The candidate receiving the highest number of votes running from the At-Large position shall be elected. The three (3) Directors currently representing each of their neighborhoods will serve the remainder of their present terms.

- 4.3.1.4. In the event that there are only as many (or fewer) candidates pre-qualified for election as there are open seats on the Board, no election shall be held, and the pre-qualified candidates shall automatically become Members of the Board after the annual meeting.
- 4.3.1.5. The Board may establish additional election rules or procedures as it deems appropriate to ensure a fair election process. Substantial compliance with these Bylaws and Chapter 720 relative to election procedures is sufficient.
- 4.3.2. **Electronic Voting.** The Association may conduct the election of Directors through an internet-based online voting system if a written consent is received from the Owner and the provisions of Section 720.317, Florida Statutes, are allowed.
- 4.4. **Vacancies.** Vacancies on the Board may be filled by appointment by a majority vote of the remaining Directors for the remainder of the unexpired term, unless the Board votes to have the vacancy filled by a special election of the Owners. When a Director has been recalled by the membership, the vacancy created by his removal cannot be filled with the same natural person as has been removed from the Board. When a majority of the Board has been recalled, vacancies shall be filled by the membership, as provided by law.
- 4.5. **Removal.** Any or all Directors may be removed with or without cause by a majority vote of the entire Voting Interests, either by a written petition, or at any meeting called for that purpose, in the manner required by Chapter 720. A Special Members Meeting for recall may be called by Owners holding ten percent (10%) of the Voting Interests in the Association. Any Director who is removed from office is not eligible for election to the Board, or be appointed to the Board, until the next annual election. Any Officer so removed shall return all books, records, and property of the Association to the Association within seventy-two (72) hours of their removal. A Director or an Officer charged by information or indictment with any of the following crimes must be removed from office:
  - 4.5.1. Forgery of a ballot envelope or voting certificate used in a homeowners' association election.
  - 4.5.2. Theft or embezzlement involving the Association's funds or property.
  - 4.5.3. Destruction of or the refusal to allow inspection or copying of an official record of a homeowners' association which is accessible to Owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence.
  - 4.5.4. Obstruction of justice as provided in Chapter 843.
- 4.6. **Resignation.** Any Director of the Association may resign at any time, by a written instrument, including but not limited to notice provided via electronic mail to the President or Secretary. Resignations shall take effect at the time specified in the written instrument, and if no time is specified, resignations shall take effect at the time of receipt of such resignation. Resignations cannot be rescinded after being given, even if not

effective until a later date. The acceptance of a resignation shall not be necessary to make it effective. Any Director or Officer more than 90 days delinquent in the payment of any monetary obligation due the Association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

- 4.7. **Organizational Meeting.** The organizational meeting of each newly-elected Board of Directors to elect Officers shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present. Unless otherwise noticed, the organizational meeting shall be held no later than ten (10) days following the annual meeting of the Members.
- 4.8. **Regular Meetings of the Board.** Regular meetings of the Board may be held at such time and place as may be determined from time to time by a majority vote of the Directors. Notice of regular meetings shall be mailed, transmitted, or delivered to each Director at least forty-eight (48) hours prior to the date of such meeting and notice shall be posted in a conspicuous place on the premises at least forty-eight (48) hours prior to the meeting.
- 4.9. **Special Meetings of the Board.** Special meetings of the Directors may be called by the President at any time and must be called at the written request of a majority of the Directors. Members may call a special meeting by delivering to the Board a written petition setting forth the purpose of the special meeting of Members in good standing holding twenty (20%) percent of the total Voting Interests and such special meeting must be held within sixty (60) days after the Board's receipt of the petition. Except in the case of an emergency, not less than forty-eight (48) hours' notice of such meetings shall be given. Notice may be mailed, transmitted, or delivered, which notice shall state time, place, and purpose of the meeting and notice shall be posted in a conspicuous place on the premises at least 48 hours prior to the meeting.
- 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 provided herein. If all Directors are present at a meeting, no notice to Directors shall be required and any business may be transacted at such meetings.
- 4.11. **Notice to Owners of Board Meetings.** Meetings of the Board shall be open to Members except for meetings between the Board and its attorney with respect to proposed or pending litigation where the discussion would otherwise be governed by the attorney-client privilege. The right of Owners to attend Board meetings includes the right to speak on all designated agenda items subject to reasonable rules adopted by the Board governing the manner, duration, and frequency of doing so. Notices of all Board meetings shall be posted conspicuously in the community at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting at which rules affecting the use of a Lot or Condominium Unit or special Assessments are to be considered shall specifically contain a statement that rules or special Assessments will be considered and the nature of the rule or Assessments and shall be mailed, transmitted, or delivered to Members and posted at least fourteen (14) days in advance.
- 4.12. **Quorum of Board of Directors.** At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business. 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.

- 4.13. Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum has been attained shall constitute the acts of the Board, except when approval by a greater number of Directors is required by the Governing Documents or by applicable statutes. A Director who is present at a meeting of the Board is deemed to have voted in favor of every 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 of each meeting. Directors may not vote by proxy or secret ballot at Board meetings, except that secret ballots may be used in the election or removal of Officers. Directors and Officers must disclose to the Association any activity that may be reasonably construed to be a conflict of interest at least fourteen (14) days before voting on an issue or entering into a contract that is the subject of a conflict.
- 4.14. Adjourned Meetings.** A majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specified later time. If the date, time, and place of its continuance are announced at the meeting being adjourned, then it shall not be necessary to give further notice of the meeting. When the meeting is reconvened, provided a quorum is present, any business that might have been transacted at the meeting originally called may be transacted.
- 4.15. Joinder by Directors.** The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of such Director for the purpose of determining a vote, but not for determining a quorum.
- 4.16. Presiding Officer.** The presiding Officer at Directors' meetings shall be the President, and in his absence, the Vice President. In the absence of the presiding Officer, the Directors present shall designate one of their number to preside. The presiding Officer may permit legal counsel or a managing agent to chair portions or the entirety of a Board meeting.
- 4.17. Committees.** The Board may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. Unless otherwise expressly required by law, the meetings of committees do not have to be conducted with the same formalities as required for meetings of the Board.
- 4.18. Director Compensation.** The Directors shall not receive compensation for their services to the Association. However, the Directors may be reimbursed for actual and proper out-of-pocket expenses incurred in conducting Association business.
- 4.19. Newly Appointed Directors.** The newly elected or appointed Director must complete the department-approved education for newly elected or appointed Directors within 90 days after being elected or appointed.

5. **OFFICERS.** The executive Officers of the Association shall be a President, a Vice-President, who must be Directors; a Treasurer; and a Secretary, all of whom shall be elected annually by the Board and who may be removed with or without cause by vote of a majority of all the Directors at any meeting. 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 and there may be assistant Secretaries and Treasurers. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time determine. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices, such as a Member of a committee, created herein.
- 5.1. **President.** The President shall be the Chief Executive Officer of the Association; they 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. They shall execute bonds, mortgages and other contracts requiring seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other Officer or agent of the Association.
- 5.2. **Vice-President.** The Vice-President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. They shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.
- 5.3. **Secretary.** The Secretary shall record the votes and keep the minutes of all proceedings of the Directors and the Members. They shall attend to the giving and serving of all notices to the Members and Directors and other notices required by law. They shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. They shall keep and have custody of the records of the Association, except those of the Treasurer. They shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President.
- 5.4. **Treasurer.** The Treasurer shall be responsible for Association funds and securities, and the keeping of full and accurate accounts in books belonging to the Association. The Treasurer is responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board. The Treasurer shall oversee the disbursement of Association funds, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at meetings of the Board, or, if ever they may require it, a full accounting of all transactions and of the financial condition of the Association. The Treasurer shall prepare an annual budget of estimated revenues and expenses to present to the Board for approval.
- 5.5. **Indemnification of Officers.** Every Director and Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connections with any proceedings to which he may be a party, or in which he may become involved, by reason of his being or

having been an Officer or Director of the Association, or any settlement thereof, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance of this duties, provided that in the event of a settlement, the indemnification herein shall apply only when the Board approved such settlement and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled and not provided for.

- 6. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.** All of the powers of the Association existing under the laws of Florida generally, Florida Not-For-Profit Corporation Statute, the Act, and the Governing Documents, all as amended from time to time, shall be exercised exclusively by or under the direction of the Board, or a duly authorized Board member, Officer, committee member, agent, contractor, or employee, when said powers or duties have been delegated by the Board, subject only to the approval by Members when such is specifically required. The powers of the Directors shall include, but not be limited to, the following:
- 6.1. Adoption and amendment of the Rules and Regulations concerning the details of the operation and use of the Association Property, subject to a right of the Owners to overrule the Board as provided herein;
  - 6.2. Levying fines against the Owners for violations of the Rules and Regulations established by it to govern the conduct of the Owners;
  - 6.3. To suspend the right of any Member to use the recreational facilities of the Association so long as said Member is delinquent in the payment of Common Expense;
  - 6.4. Enforcing obligation of the Owners, allocating profit and expenses and doing anything and everything necessary and proper for the sound management of the Association;
  - 6.5. Employment and dismissal of the personnel necessary for the Maintenance and operation of the Common Elements, including a manager, independent contractors, and other such employees as they deem necessary, and to prescribe their duties;
  - 6.6. Enter into a contract with any person, firm or entity for the operation, Maintenance, or repair of the Association Property. However, any such contract shall not be in conflict with the rights of Owners in accordance with the Act;
  - 6.7. Determination of the expenses required for the operation of the Association;
  - 6.8. Collection of Assessments for Common Expenses from Owners required to pay same;
  - 6.9. Foreclose the lien against any property for which assessments are not paid as provided in the Declaration or to bring an action at law against the Owner personally obligated to pay the same;
  - 6.10. Obtaining and reviewing insurance for the Association Property;
  - 6.11. Operation, care, upkeep and Maintenance of the Common Elements;
  - 6.12. To exercise all powers specifically set for in the Association Documents and Chapter 720



and all powers incidental thereto;

- 6.13. To Exercise Emergency Powers.** In the event of any emergency, as defined in Article below, the Board of Directors may exercise the emergency powers described in this Article, and any other emergency powers authorized by Section 617.0207, Florida Statutes, Section 617.0303, Florida Statutes, and Chapter 720, all as amended from time to time.
- 6.13.1.** The Board may name as assistant Officers persons who are not Directors, which assistant Officers shall have the same authority as the Executive Officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any Officer of the Association.
  - 6.13.2.** The Board may relocate the principal office or designate alternative principal offices or authorize the Officers to do so.
  - 6.13.3.** During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.
  - 6.13.4.** Corporate action taken in good faith during an emergency under this Article to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.
  - 6.13.5.** Any Officer, Director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.
  - 6.13.6.** These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.
  - 6.13.7.** For purposes of this Article only, an emergency exists only during a period of time that the Association, or the immediate geographic area in which the Association is located, is subjected to:
    - 6.13.7.1.** a state of emergency declared by local civil or law enforcement authorities;
    - 6.13.7.2.** a hurricane warning;
    - 6.13.7.3.** a partial or complete evacuation order;
    - 6.13.7.4.** federal or state “disaster area” status;
    - 6.13.7.5.** a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the Association, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism; or

- 6.13.7.6. an unanticipated set of circumstances, which, if not acted upon with immediacy, is likely to cause imminent and significant financial harm to the Association, the Members, or Association Property.

An "emergency" also exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence or impending occurrence of a catastrophic event, such as a hurricane, earthquake, act of war or terrorism, or other similar event. A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

7. **FISCAL MANAGEMENT.** The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions.

- 7.1. **Fiscal Year.** The fiscal year of the Association shall be the calendar year. Upon a majority vote of the Board, it may adopt a different fiscal year.
- 7.2. **Budget.** The Board of Directors shall adopt a budget of Common 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 Owners of each Lot or Condominium Unit not less than fourteen (14) days before that meeting. The proposed budget must be detailed and must show the amounts budgeted by income and expense classifications, including without limitation as those specified in Chapter 720.

If an annual budget has not been adopted at the time the first installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last installment and shall be continued at such rate until a new budget is adopted and Assessments are calculated, at which time any overage or shortage shall be added to or subtracted from each Lot or Condominium Unit's next installment due.

- 7.3. **Reserves.** The Board may establish in the budget one or more reserve accounts for capital expenditures, deferred Maintenance, or contingency reserves for unanticipated operating expenses. Board adopted reserve funds are not controlled by Chapter 720 Florida Statutes and therefore may be spent, waived, or used as approved by the Board. Membership adopted reserves are restricted by Chapter 720, Florida Statutes and therefore Membership adopted reserves may only be used, waived, or reduced on a yearly basis according to Chapter 720 Florida Statutes. The purpose of reserves is to provide financial stability and to avoid the need for special Assessments. The annual amounts proposed to be so reserved shall be shown in the annual budget.
- 7.4. **Regular Assessments.** All regular Assessments for Common Expenses shall be paid in monthly or quarterly installments (as determined by the Board), in advance of the first day of each period and shall become delinquent 10 days thereafter. Written notice of each monthly or quarterly installment shall be sent to all Members by or on behalf of the Treasurer, but failure to receive such notice does not excuse the obligation to pay. By resolution, the Board may establish the place for payment, the method of payment, and a late payment fee. The Association shall have the right to accelerate Assessments of an

Owner delinquent in the payment of Common Expenses. Accelerated Assessments shall be due and payable on the date a claim of lien is filed and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

- 7.5. Special Assessments.** Special Assessments may be made when necessary to meet unusual, unexpected, emergency, or non-recurring expenses or for such other purposes as are authorized by the Declaration or these Bylaws. Special Assessments shall be due at such time as is specified in the resolution of the Board approving such Assessment. Written notice of any Board meeting at which a non-emergency special Assessment will be considered, must be mailed to all Owners at least fourteen (14) days in advance, which notice shall state that Assessments will be considered and the nature of any such Assessments. The notice to Owners that any special Assessment has been levied must contain a statement of the purpose(s) of the Assessment, and the funds collected must be spent for the stated purpose(s). If any funds remain upon completion of the purpose(s) such excess funds may, at the discretion of the Board, either be returned to the Owners or applied as a credit towards future Assessments. The foregoing shall be limited to the extent that any special Assessment for betterments, alterations or Improvements, shall first require the approval of a majority of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present.
- 7.6. Assessments for Charges.** Charges (and/or fines) by the Association against Members for other than Common Expenses shall be payable in advance. These charges may be collected by Assessment in the same manner as Common Expenses, and when approval of a Member or when expressly provided for in the Declaration or the exhibits annexed thereto as the same be amended from time to time, which Charges include without limitation Charges for the use of the Association Property or recreational area, Maintenance services furnished at the expense of a Member and other services furnished for the benefit of a Member.
- 7.7. Capital Contribution Reserve Fund.** The purchaser of each Lot or Condominium Unit shall pay at closing to the Association a working capital contribution ("Capital Contribution Reserve Fund fee") in the amount set forth in the respective purchase and sale agreement as \$1000, or as may be modified or adjusted by affirmative vote of the Board of Directors in their sole discretion. The Association shall maintain the Capital Contribution Reserve Fund as a separate line item in the annual budget for use as a working capital account, to meet unforeseen expenditures or to acquire equipment or services deemed necessary by the Board. Capital Contribution Reserve Fund fees are not advanced payments of Assessments and future Assessments for operating expenses levied against a Lot or Condominium Unit and shall be payable without any reduction for the Capital Contribution Reserve Fund fees which have been paid. However, Capital Contribution Reserve Fund fees shall be collected as Assessments, and are the legal obligation of the Transferee, and shall be secured by continuing lien enforceable in the same manner as an assessment for Common Expenses.
- 7.8. Liability for Assessments and Charges.** A Member shall be liable for all Assessments and Charges coming due while the Owner of a Lot or Condominium Unit, and such Member and Member's grantees or successors, after a conveyance or other transfer of title, shall be jointly and severally liable for all unpaid Assessments and Charges due and

payable up to the time of such voluntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any Common Elements or Association Property or by abandonment of the Lot or Condominium Unit for which the Assessments or Charges are due. Where a mortgagee holding a first mortgage of record obtains title to a Lot or Condominium Unit by foreclosure, such mortgagee shall be liable for such Lot or Condominium Unit's unpaid Assessments, Charges, or share of the Common Expenses which became due prior to acquisition of such mortgagee's title as provided in Chapter 720. Such mortgagee or its successors and assigns are liable for all Assessments and Charges accruing after their taking of title.

- 7.9. Association Depository.** The depository of the Association, in which the funds of the Association shall be deposited, shall be financial institutions authorized to do business in Florida which carry **FDIC** insurance or equivalent insurance, provided that such insurance is backed by the full faith and credit of the United States of America. All deposits shall be within the limits of such insurance. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by persons as are authorized by the Directors or by electronic transfer protocols approved by the Board of Directors. The Board may designate as many of its Members as it deems appropriate for check signing or other withdrawals, and may also designate third parties (such as community association managers as authorized signatories).

All funds collected by the Association shall be maintained separately in the Association's name, except that for investment purposes only, reserve funds may be commingled with operating funds, but must always be accounted for separately and the balance in a commingled account may not, at any time, be less than the amount identified as reserve funds. Any expenses or deposits taken from an Owner must be maintained separately and may not be commingled with any other Association funds.

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.

- 7.10. Fidelity Bonding.** The Association shall obtain and maintain adequate fidelity bonding in the minimum principal sum set forth in Chapter 720, for each person (whether or not a Director) who controls or disburses Association funds, and the President, Secretary, and Treasurer. The Association shall bear the cost of any such bonding of Directors and Officers. In the case of a community association manager or management firm, the cost of bonding may be allocated as the parties may agree. All persons providing management services to the Association, or otherwise having the authority to control or disburse Association funds, shall provide the Association with a certificate of insurance evidencing compliance with this paragraph, naming the Association as an insured under said policy.
- 7.11. Financial Reports.** A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with Rule 61B-22, Florida Administrative Code, as amended from time to time, and with Chapter 720.
- 7.12. Financial Information.** Not later than ninety (90) days after the close of each fiscal year, the Association shall prepare a financial statement showing in reasonable detail the

financial condition of the Association as of the close of its fiscal year and a profit and loss statement for the year, detailed by accounts. The Association shall provide each Member with a copy of the financial report or a written notice that a copy of the financial report is available upon request at no charge to the Member.

8. **RULES AND REGULATIONS; USE RESTRICTIONS.** The Board may, from time to time, adopt and amend administrative Rules and Regulations concerning the Leasing, transfer, use, appearance, Maintenance, and Occupancy of the Lot or Condominium Units, Common Elements, Limited Common Elements, and Association Property, and to enact rules, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration. The Board may establish reasonable approval procedures and guidelines pertaining to the Leasing and conveyance of Residential Living Units. The aforementioned rules may be promulgated by a vote of the Association's Board of Directors at a duly noticed meeting of the Board.
9. **COMPLIANCE AND DEFAULT: REMEDIES.** In addition to the remedies provided in the Association Documents, the following provisions shall apply:
- 9.1. **Correction of Health and Safety Hazards.** Any violations of the Association rules which creates conditions of the Property which are deemed by the Board to be a hazard to the public health or safety may be dealt with immediately as an emergency matter by the Association, and the cost thereof shall be charged to the Owner.
- 9.2. **Liens for Assessments.** If any Member fails or refuses to make payments of any Assessment when due, the amount thereof shall constitute a lien on the Member's Lot or Condominium Unit. The Board shall have the authority to exercise and enforce all rights and remedies under the Florida Statutes, the Declaration, and these Bylaws, or otherwise available at law or in equity for the collection of all unpaid Assessments and enforcement of all Rules and Regulations.
- 9.3. **Fines and Suspension of Rights.** The Directors may, pursuant to F.S. 720.305, impose fines not to exceed the maximum permissible by law, and suspend the right to use Common Elements, Common Facilities, or any other Association Property, as permitted by the Act, for failure by Owners, Occupants, Tenants, Guests, Licensees, Invitees, or any Family member thereof to comply with the provisions of the Board policies and resolutions, the Association Documents, including the Rules and Regulations, and applicable laws.
- 9.3.1. A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice for a hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law, or as defined in the Declaration. A suspension shall be imposed and enforceable for a reasonable amount of time, as determined by the Board, and subject to the confirmation or rejection of the independent committee specified herein.
- 9.3.2. **Notice.** If the Association imposes a fine or suspension, the Association must first provide written notice of such fine or suspension at his or her designated mailing or e-mail address in the Association's official records and, if applicable, to any Tenant, Licensee, or Invitee of the Owner. The party against whom the fine or suspension is sought to be levied or imposed shall be afforded a hearing

after reasonable notice of not less than fourteen (14) days, and the notice shall include:

- (1) a statement of the date, time, and place of the hearing; and
- (2) a specific designation of the provisions of Chapters 617 or 720, Florida Statutes, the Governing Documents, or the rules which are alleged to have been violated; and
- (3) a short and plain statement of the specific facts giving rise to the alleged violation(s); and
- (4) the specific action required to cure such violation; and
- (5) the possible amounts of any proposed fine and possible use rights of Common Areas or Facilities to be suspended.

**9.3.3. Hearing.** At the hearing, the party against whom the fine or suspensions may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony presented by the Association. The hearing shall be conducted before a panel of three (3) Owners appointed by the Board, none of whom may then be serving as Directors or Officers, or who are employees of the Association, or the spouse, parent, child, brother or sister of an Officer, Director, or employee. If the committee, by majority vote, does not agree with the proposed fine or suspension, it may not be levied or imposed. If the committee agrees with the proposed fine or suspensions, the Board of Directors shall levy same. An Owner has the right to attend a hearing by telephone or other electronic means. Written notice of the hearing committee's decision shall be sent to the Owner at his or her designated mailing or e-mail address in the Association's official records and, if applicable, any Occupant, Licensee, or Invitee of the Owner, and shall include any applicable fines or suspensions that the committee approved or rejected, and how the Owner or any Occupant, Licensee, or Invitee of the Owner may cure the violation, if applicable. The committee may hold the hearing by telephone or other electronic means.

**9.3.4. Collection of Fines.** Any fine not paid within five (5) days of the Written Notice shall become delinquent. Fines may be treated as an Assessment subject to the provisions for the collection Assessments set forth in this Declaration and any fine of \$1,000.00 or more may become a lien against a Lot or Condominium Unit. Fines may also be collected utilizing any lawful method. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney fees and costs.

- 9.4. **Suspensions.** The Board of Directors has the right to suspend certain use rights and voting rights in accordance with the following:
- 9.4.1. **Suspension of Use Rights.** If an Owner is more than ninety (90) days delinquent in paying a fee, fine, or other monetary obligation due to the Association, the Board may suspend the right of the Owner or the Lot or Condominium Unit's Occupants, Guests, Tenants or other Invitees to use Common Elements, Common Facilities, or any other Association Property until the fee, fine, or other monetary obligation is paid in full. Suspension does not apply to Limited Common Elements intended to be used only by that Lot or Condominium Unit, Common Elements needed to access the Lot or Condominium Unit, utility services provided to that Lot or Condominium Unit, or parking spaces. The Notice and Hearing requirements do not apply to suspensions imposed for financial delinquencies.
- 9.4.2. **Suspension of Voting Rights.** The Board of Directors may suspend the voting rights of a Lot or Condominium Unit or an Owner due to nonpayment of any fee, fine, or other monetary obligation due to the Association which is more than ninety (90) days delinquent. The suspension ends upon full payment of all obligations currently due or overdue to the Association. The notice and hearing requirements do not apply to suspensions imposed for financial delinquencies.
- 9.5. **Member Inquiries.** When a Member files a written inquiry by certified mail with the Board, the Board shall respond in writing to the Member within thirty (30) days of receipt of said inquiry. The Board's response shall either give a substantive response to the inquirer, or notify the inquirer that legal advice has been requested, or notify the inquirer that advice has been requested from the Association's counsel or the Division. If the Board requests advice from the Division, the Board shall, within ten (10) days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the Board shall, within sixty (60) days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer, as provided herein, precludes the Association from recovering attorneys' fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. Absent a different rule adopted by the Board of Directors, the Board shall only be obligated to respond to one inquiry per month pertinent to any particular Lot or Condominium Unit. In the event of a grievance of a Member against the Association, the Board of Directors, or a Member thereof, written notice in detail of the grievance shall be given the Directors prior to the institution of litigation, (including but not limited to arbitration), and they shall be allowed a period of thirty (30) days in which to resolve the grievance.
- 9.6. **Mandatory Arbitration.** Where required by the Chapter 720, binding arbitration and non-binding mediation shall be used in an attempt to resolve disputes prior to commencing litigation. When Chapter 720 does not so require, the Board may seek to resolve disputes by such means or by immediate petition of the courts as it deems appropriate.
- 9.7. **Costs and Attorneys' Fees.** In an action brought by or on behalf of the Association against an Owner, the prevailing party shall be entitled to recover the cost thereof, together with reasonable attorneys' fees.

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

10. **BYLAW AMENDMENTS.** Amendments to the Bylaws shall be adopted in the following manner:

10.1. **Proposal of Amendments.** An amendment may be proposed by the President of the Association, a majority of Directors, or by twenty (20%) of the entire Voting Interests.

10.2. **Notice.** The subject matter of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

10.3. **Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of at least two-thirds (2/3rds) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum has been attained, or by the written agreement of at least two-thirds (2/3rds) of the entire Voting Interests. Amendments correcting errors, omissions, scrivener's errors, violations of applicable law, conflicts between the Association Documents, or if determined necessary and desirable by the Board to comply with the requirements of the secondary mortgage market, may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

10.4. **Effective Date.** An amendment when adopted shall become effective after being recorded in the Lee County Public Records according to law.

10.5. **Automatic Amendment.** The provisions of these Bylaws shall be automatically updated as Chapters 617 and 720 (or successor statute), as applicable, are amended from time to time. These Bylaws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration or the Articles of Incorporation. Whenever Chapter 720, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these Bylaws, the Board may operate the Association pursuant to the less stringent requirements without the need to change these Bylaws. The Board of Directors, without a vote of the Owners, may also adopt by majority vote, amendments to these Bylaws as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and Chapter 720, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

10.6. **Proviso.** To the extent required by applicable law and judicial precedent, no amendment shall change the configuration of any Lot or Condominium Unit or the share in the Common Elements appurtenant to it, or increase the Lot or Condominium Unit Owner's proportionate share of the Common Expenses, unless the record Owner of the Lot or Condominium Unit concerned and all record Owners or other holders of the mortgages



on such Lot or Condominium Unit shall join in the execution of the amendment, and all other Owners approve the amendment.

**11. MISCELLANEOUS.** The following miscellaneous provisions shall apply to these Bylaws and the Association Documents.

**11.1. Conflicts.** The term "Governing Documents," as used in these Bylaws and elsewhere shall include the Declaration, Articles of Incorporation, these Bylaws, the Rules and Regulations of the Association and the Plat. In the event of a conflict between the language in the Declaration and the Plat, the Plat shall control. In the event of a conflict between language in any of the other Governing Documents, the following priorities shall control:

- 1) Declaration of Covenants, Conditions, and Restrictions;
- 2) Articles of Incorporation;
- 3) Bylaws; and
- 4) Rules and Regulations.

**11.2. Severability.** In the event that any provision of these Bylaws is deemed invalid, the remaining provisions shall be deemed in full force and effect.

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

**11.4. Headings.** The headings herein and in the exhibits annexed hereto are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the particular document or any provision thereof.

**11.5. Signature of President and Secretary.** Wherever the signature of the President of the Association is required hereunder and the President is not available, the signature of a Vice President or other authorized officer may be substituted therefore, and wherever the signature of the Secretary of the Association is required hereunder and the Secretary is not available, the signature of an Assistant Secretary or other authorized officer may be substituted therefore, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.