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**AMENDED AND RESTATED BYLAWS OF
MARSH LANDING TOWNHOUSE CONDOMINIUM II ASSOCIATION, INC.**

- 1. GENERAL.** These are the Amended and Restated Bylaws of Marsh Landing Townhouse Condominium II Association, Inc., (hereinafter "Association), a Florida not-for-profit corporation formed for the purpose of operating a condominium, which is located in Lee County, Florida, upon the lands described in the Declaration of Condominium.
 - 1.1. Office.** The principal office of the Association shall be at the Condominium or other such location within the County 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 Condominium and the Florida Condominium Act, Chapter 718, Florida Statutes (the "Act"), 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 Units in the Association. In the case of a Unit subject to an agreement for deed, the purchaser in possession shall be deemed the Owner of the Unit for purposes of determining voting and use rights.
 - 2.2. Voting Interests.** The Members of the Association are entitled to one (1) vote for each Unit owned by them. The total number of possible votes (the Voting Interests) of the Association is the total number of Units. The vote of a 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. If a Parcel is owned by one (1) natural person, the right to vote shall be established by the record title to the Parcel. If a Parcel is owned by more than one individual, a corporation,

a partnership or a trust, the Board shall require the use of a Voting Certificate identifying the Member with authority to vote on behalf of each such Parcel.

- 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 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 Condominium 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.** The annual meeting of the Members shall be held during the first quarter of the calendar year in Lee County, Florida, each year at a day, place and time designated by the Board, for the purpose of transacting any business duly authorized to be transacted by the Members. During the annual meeting the ballots cast in the annual election of Directors shall be counted and results announced.
- 3.2. **Special Meetings.** Special Members' meetings shall be held whenever called by the President or by a majority of the Board, and shall be called by the President or Secretary within a reasonable time upon receipt of written notice from twenty-five percent (25%) of the Voting Interests of the Association. Members' meetings to recall a Member or Members of the Board may be called by ten percent (10%) of the Voting Interests of the Association who shall give notice of the meeting, stating the purpose of the meeting, pursuant to Section 718.112(2)(j) of the Act.
 - 3.2.1. **Purpose and Notice.** 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' Meeting.** Written notice of a meeting of Members stating the time and place and the objects, including a copy of any proposed contracts to be discussed, for which the meeting is called shall be given by the President or, if so delegated, the Secretary. A copy of the notice shall be posted at a conspicuous place on the Association Property and a copy shall be delivered either personally, electronically, or by first class mail to each Member entitled to attend the meeting. The delivery or mailing shall be to the address of the Member as it appears on the roster of Members. The delivery shall be not fewer than fourteen (14) days before the date of the meeting. Proof of posting shall be given by Affidavit, and proof of mailing of the notice shall be given by retention of post office receipts and electronic receipts. Attendance at any meeting by a Member constitutes waiver of notice by that Member unless the Member objects to the lack of notice at the beginning of the meeting. A Member may also waive notice of any meeting at any time by written waiver.

- 3.4. **Quorum.** A quorum at Members' meetings shall consist of persons entitled to cast a majority of the Voting Interests of the entire membership. Decisions made by a majority of the Voting Interests present and voting, in person or by proxy, at a meeting at which a quorum is present, shall be binding and sufficient for all purposes except such decisions as may by the Act or the Governing Documents require a larger percentage, in which case the percentage required in the Act or the Governing Documents shall govern. To the extent lawful, Members may join in any action taken at a meeting of the Members through written approval of such action executed after the meeting, and such approval shall be as though the Member duly approved the action of the meeting in question.
- 3.5. **Indivisible Vote.** Each Unit shall have one (1) indivisible vote. No individual may cast a vote assigned to a Unit where the voting rights assigned to the Unit are suspended pursuant to the terms of the Governing Documents and Florida law.
- 3.6. **Vote Required.** The acts approved by a majority vote of all those present at the meeting at which a quorum is present shall constitute the acts of the Members, except where approval by a greater number of Members is expressly required by law or by the Declaration, Articles of Incorporation, or these Bylaws.
- 3.7. **Voting Certificate.** If a Unit is owned by more than one individual, a corporation, a partnership or a trust, the Board will require the use of a Voting Certificate identifying the Member with authority to vote on behalf of each such Unit. A Voting Certificate may be revoked at any time by an Owner with a share of the Unit.
- 3.8. **Proxies.** Votes may be cast in person or by proxy. A proxy shall be valid only for the particular meeting for which it is given and any adjournment thereof, and in no event shall such proxy be valid for more than ninety (90) days after the original meeting date. A proxy may permit a proxy holder to appoint a substitute to act in his place. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the Unit, specify the date, time, and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. No proxy shall be valid if it names more than one (1) person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. No proxy, limited or general, shall be used in the election of Board Members.
- 3.9. **Participation at Meeting By Remote Communication.** Unless prohibited by the Act, 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:
- 3.9.1. Participate in the meeting.
- 3.9.2. Be deemed to be present in person and vote at the meeting if:
- 3.9.2.1. 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

3.9.2.2. 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.

3.10. 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. 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.

3.11. 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.** Election of a Chairman of the meeting, unless the President or Vice-President of the Association is present then they shall preside.
- B.** Collection of election ballots.
- C.** Checking of signatures and unit identifications on ballot outer envelopes against the eligible voter lists.
- D.** Registering proxies and counting votes.
- E.** Announcement of the results of the election of Directors.
- F.** Proof of notice of the meeting or waiver of notice;
- G.** Disposal of unapproved minutes, if any;
- H.** Reports of Officers, if any;
- I.** Reports of Committees, if any;
- J.** Unfinished business;
- K.** New business;
- L.** Adjournment.

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

3.12. 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.

3.13. 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, as defined in F.S. 718.111(12), 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, and manner of record inspections and any copying.

3.14. 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 Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the Owners only when such is specifically required.

4.1. Number and Terms of Service. The affairs of the Association shall be administered and directed by a Board composed of not less than three (3) Directors. Directors shall serve a term of three (3) years. 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.

4.2. Qualifications. Each director must be a Member or the spouse of a Member. If a 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 Unit on the Board at any given time.

4.2.1. Conflicts of Interest. No Director, or member of his immediate Family, may transact business with the Association, or have any financial interest in any contractor or entity that provides goods or services to the Association. No Director may transact personal business with any Association contractor except on terms at fair market value. No director may serve as the manager or managing agent for the Association during his term as Director or within two years after the term expires. A Director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the Director relative to his performance as a Director. A Director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members. The Directors shall establish a conflict of interest policy for the employees of the Association.

- 4.3. Board of Directors Election; Notice and Procedure.** The regular election of Directors shall occur as the first item of business at the annual meeting. The Act and the Florida Administrative Code ("FAC") which may be amended from time to time, contain detailed and specific provisions on the manner in which notices must be sent to Owners and the manner in which the elections must actually be held. Notwithstanding any terms to the contrary set forth in these Bylaws, the Association shall adhere to the provisions of the Act and the Florida Administrative Code and to the extent the Act or the FAC conflict with these Bylaws, the Act and FAC shall control.
- 4.3.1. First Notice; Candidates.** 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.
- 4.3.2. Second Notice; Candidate Information Sheets.** Not less than fourteen (14) days nor more than thirty-four (34) days before the election, the Association shall mail, transmit, or deliver a second notice of the election to all Members entitled to vote therein, together with a written secret ballot containing the names of all properly pre-qualified candidates, which that 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 mailing and copying to be borne by the Association. The candidate information sheet must be received by the Association not less than thirty-five (35) days prior to the election.
- 4.3.3.** There is no quorum requirement necessary for an election. However, at least twenty percent (20%) of the Voting Interests of the Association must cast a ballot in order to have a valid election, and elections shall be decided by a plurality of those votes cast.
- 4.3.4.** In the event of a tie for a designated position on the Board, the tie shall be resolved by agreement of the candidates, if possible; otherwise a runoff election must be held in accordance with real 61B-23.0021 of the Florida Administrative Code.
- 4.3.5.** 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.
- 4.3.6.** The Board may establish additional election rules as it deems appropriate to ensure a fair election process. Substantial compliance with these Bylaws and the Act relative to election procedures is sufficient.

- 4.3.7. 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 718.128, Florida Statutes, are allowed. A voting machine may also be used by those attending the meeting in person, and a Unit Owner who needs assistance in voting due to blindness, disability or inability to read or write may obtain assistance from a Member of the Board or other Unit Owner but no Unit Owner shall permit another person to cast their ballot and any such ballots improperly cast shall be deemed invalid.
- 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 the Act. A Special Members Meeting for recall may be called by Owners holding ten percent (10%) of the Voting Interests in the Association.
- 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. In an Association of more than 10 Units, the Board of Directors shall meet at least once each quarter. At least four times each year, the meeting agenda must include an opportunity for Members to ask questions of the Board.
- 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 two (2) 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 forty-eight (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, and must contain an agenda of topics to be discussed. Notice of any Board meeting at which rules affecting the use of a Unit, special Assessments, or if an agenda item relates to the approval of a contract for goods or services are to be considered, the agenda shall specifically contain a statement that rules, special Assessments or contracts will be considered and the nature of the rule, Assessments, or contracts and shall be mailed, transmitted, or delivered to Members and posted at least fourteen (14) days in advance. If an agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice.
- 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 they 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.
- 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. 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 their 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. Directors shall serve without pay but shall be entitled to reimbursement for expenses reasonably incurred. This provision shall not preclude the Board from employing an Officer or Director as an agent or employee of the Association.

5. OFFICERS. The executive Officers of the Association shall be the President, one or more Vice Presidents, a Treasurer, and a Secretary all of whom shall be elected annually by and from the Board, and who may be peremptorily removed by a majority vote of 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. Any person may hold two or more offices except that the President shall not also be the Secretary.

5.1. President. The President shall be the Chief Executive Officer of the Association, shall preside at all meetings of the Board and Association meetings. The President shall have general supervision over the affairs of the Association and shall have all of the powers and duties which are usually vested in the office of President of a corporation.

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 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 have custody of all property of the Association, including funds, securities, and evidence of indebtedness. They shall keep the books of the Association in accordance with good accounting practices and shall perform all other duties incident to the office of the Treasurer of a corporation.

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 them in connections with any proceedings to which they may be a party, or in which they may become involved, by reason of them being or having been an Officer or Director of the Association, or any settlement thereof, whether or not they are a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty or willful misfeasance or malfeasance of these 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 Condominium 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.** Operation, care, upkeep and Maintenance of the Common Elements;
- 6.2.** Determination of the expenses required for the operation of the Condominium and Association;
- 6.3.** Collection of Assessments for Common Expenses from Owners required to pay same;
- 6.4.** Employment and dismissal of the personnel necessary for the Maintenance and operation of the Common Elements;
- 6.5.** Adoption and amendment of the Rules and Regulations concerning the details of the operation and use of the Condominium Property, subject to a right of the Owners to overrule the Board as provided herein;
- 6.6.** Maintaining bank accounts on behalf of the Association and designating the signatories required therefor;
- 6.7.** Enter into a contract with any person, firm or entity for the operation, Maintenance, or repair of the Condominium Property. However, any such contract shall not be in conflict with the rights of Owners in accordance with the Act;
- 6.8.** Purchasing Units at foreclosure or other judiciary sales, in the name of the Association or its designee;

- 6.9.** Selling, Leasing, mortgaging or otherwise dealing with Units acquired by, and subleasing Units Leased by, the Association, or its designee;
- 6.10.** Organizing corporations to act as designated agents of the Association in acquiring title to or Leasing Units by the Association;
- 6.11.** Obtaining and reviewing insurance for the Condominium Property;
- 6.12.** Making repairs, additions, and Improvements to, or alterations of, the Condominium Property, in accordance with the provisions of the Declaration after damage or destruction by Casualty or as result of condemnation or eminent domain proceedings;
- 6.13.** Enforcing obligation of the Owners, allocating profit and expenses and doing anything and everything necessary and proper for the sound management of the Condominium;
- 6.14.** Levying fines against the Owners for violations of the Rules and Regulations established by it to govern the conduct of the Owners;
- 6.15.** Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and Maintenance of the Common Elements, provided, however, that the consent of the Owners of at least two-thirds (2/3) of the Unit Owners voting at a duly called meeting and held for such purpose in accordance with the provisions of these Bylaws, shall be required for the borrowing of any sum in excess of ten thousand dollars (\$10,000.00);
- 6.16.** Contract for the management of the Condominium and delegate to such contractor such powers and duties of the Board as the Board may deem appropriate under the circumstances, except those which may be required by the Declaration and these Bylaws to be approved by the Board or other Owners; to contract for the management or operation of portions of the Condominium Property susceptible to separate management or operation thereof; and to grant concessions for the purpose of providing services to the Owners. In exercising this power, the Association may contract with affiliates of itself provided that such contracts do not involve undisclosed or unlawful self-dealing or undisclosed relationships with Board Members;
- 6.17.** At its discretion, to authorize Owners or other persons to use Common Elements, including but not limited to social rooms, meeting rooms, pool terraces, etc. for private parties and gatherings and to impose reasonable Charges for such private uses;
- 6.18.** To exercise all powers specifically set for in the Condominium Documents and the Act and all powers incidental thereto;
- 6.19.** To suspend the right of any Member to use the recreational facilities of the Condominium so long as said Member is delinquent in the payment of Common Expense;
- 6.20.** To impose lawful fees in connection with the approval of the Transfer, Lease, Sale, or Sublease of Units, not to exceed amounts permitted by Florida Statutes as amended from time to time;
- 6.21.** Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like;

- 6.22.** To adopt hurricane shutter specifications for the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code, or shall be structured to ensure that installed shutters are in compliance with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board, provided that the Board may condition approval upon the Member's agreement to execute appropriate documentation regarding same.
- 6.23.** To 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 the Act, all as amended from time to time.
- 6.23.1.** 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.
- 6.23.2.** The Board may relocate the principal office or designate alternative principal offices or authorize the Officers to do so.
- 6.23.3.** 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.
- 6.23.4.** 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.
- 6.23.5.** 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.
- 6.23.6.** These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

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 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 The Condominium Act.

If an adopted budget requires Assessments against the Units in any fiscal year which exceed one hundred fifteen percent (115%) of the Assessments for the preceding fiscal year, the Board shall conduct a special meeting of the Members to consider a substitute budget if the Board receives, within twenty-one (21) days after adoption of the annual budget, a written request for a special meeting from at least ten percent (10%) of all Voting Interests. The special meeting shall be conducted within sixty (60) days after adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board shall deliver to each Member or mail to each Member at the address last furnished to the Association, a notice of the meeting. An Officer or manager of the Association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement. Such affidavit shall be filed among the official records of the Association. At the special meeting, Members shall consider and enact a substitute budget. The adoption of the substitute budget requires a vote of not less than a majority vote of all the Voting Interests. If a meeting of the Members has been called and a quorum is not attained or a substitute budget is not adopted by the Members, the budget adopted by the Board of Directors goes into effect as scheduled. In determining whether Assessments exceed one hundred fifteen percent (115%) of similar Assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or Assessments for betterments to the Condominium Property must be excluded from the computation.

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 Unit's next installment due.

- 7.3. Statutory Reserves for Capital Expenditures and Deferred Maintenance.** In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures, deferred maintenance, and structural integrity reserve studies as required by law, subject to the Condominium Act, as amended from time to time. These accounts shall include but not be limited to roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance or replacement cost, and for any other item for which the deferred maintenance or replacement cost exceeds an estimated cost of \$10,000.00. The amount to be reserved for each item shall be computed by a means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the item. The Association may adjust replacement reserve Assessments annually to take into account any changes in

estimates or extension of the useful life of a reserve item due to deferred maintenance. These reserves shall be fully funded unless the Members determine by a majority of the voting interests present at a duly called meeting of the Association, or in any other manner provided by law, to waive or reduce funding of reserves for any given fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the Unit Owners as required in above. Reserve funds, and all interest earned on said funds, shall be used only for the purposes for which the reserve account was established and is maintained, unless their use for other purposes is approved in advance by a majority vote of the Members at a duly called meeting of the Association, or in any other manner provided by law.

- 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. 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.
- 7.6. Assessments for Charges.** Charges 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 Condominium 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. Liability for Assessments and Charges.** A Member shall be liable for all Assessments and Charges coming due while the Owner of a 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

Unit for which the Assessments or Charges are due. Where a mortgagee holding a first mortgage of record obtains title to a Unit by foreclosure, such mortgagee shall be liable for such 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 the Act. Such mortgagee or its successors and assigns are liable for all Assessments and Charges accruing after their taking of title.

- 7.8. 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 those persons as are authorized by the Directors or by electronic transfer protocols approved by the Board of Directors.

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.

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.

- 7.9. Commingling of Funds Prohibited.** All funds of the Association shall be maintained separately in the Association's name. No community association manager or business entity required to be licensed or registered under Section 468.432, Florida Statutes, as amended from time to time, no agent, employee, Officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other community association as defined in Section 468.431, Florida Statutes, as amended from time to time, or with those of any other entity. Reserve funds and operating funds of the Association may be commingled for investment purposes, as provided by law.

- 7.10. Fidelity Bonding.** The Association shall obtain and maintain adequate fidelity bonding in the minimum principal sum set forth in the Act, 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 the Act.

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. The financial report may be delivered by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the Association's notice requirements.

8. RULES AND REGULATIONS; USE RESTRICTIONS. The Board may, from time to time, adopt and amend administrative Rules and Regulations concerning the transfer, use, appearance, Maintenance, and Occupancy of the Units, Common Elements, Limited Common Elements, and Association Property, and to enact rules, policies, guidelines, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration.

9. COMPLIANCE AND DEFAULT: REMEDIES. In addition to the remedies provided in the Condominium 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 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. 718.303, 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 Condominium 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 and opportunity for hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law. 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. The Member and, if applicable, the party against whom the fine or suspension is sought to be imposed (if different from the Member), shall be afforded an opportunity for hearing by being given notice of not less than fourteen (14) days. Notice shall be deemed effective when mailed by United States mail, certified, return receipt requested, to the address of the Member listed in the official records of the Association. The notice shall include:

9.3.2.1. A statement of the date, time, and place of the hearing;

9.3.2.2. A statement of the provisions of the Declaration, Articles, Bylaws, Rules and Regulations, Board policies and resolutions, or laws that have allegedly been violated; and

9.3.2.3. A short and plain statement of the matters asserted by the Association.

9.3.3. Hearing. The Member and, if applicable, the party against whom the fine or suspension is sought to be imposed (if different from the Member), shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing shall be held before a committee of Members appointed by the Board, which may not include Board Members, immediate Family members of Board members nor persons residing in a Board Member's household. If the committee does not confirm the fine or suspension, the fine or suspension may not be imposed. Members shall be jointly and severally liable for the payments of fines imposed against and suspension imposed upon Occupants, Tenants, Guests, Licensees, Invitees, or any Family members thereof.

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 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 Unit, Common Elements needed to access the Unit, utility services provided to that 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 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. At least ninety (90) days before an election, the Association must notify a Unit Owner that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation.

- 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 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 Act, binding arbitration and non-binding mediation shall be used in an attempt to resolve disputes prior to commencing litigation. When the Act 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 Condominium Property free from unreasonable disruptions and annoyance of the minority.

10. THE MASTER ASSOCIATION. By taking title to a Lot, an Owner also becomes a Member of Marsh Landing Community Association, Inc., (the "Master Association") and is subject to the terms and conditions of the Declaration of Covenants, Conditions, and Restrictions for the Master Association.

- 10.1. Master Association Assessments.** Pursuant to the Master Declaration, the Master Association has the right to assess its Members for all expenses incurred in the performance of its duties. These Assessments are collected directly by the Master Association from each Member.

10.2. Master Association Voting Rights. In accordance with the provision of the Governing Documents, all Owners are automatically and irrevocably Members of the Master Association. Voting rights are set forth in the Master Association Bylaws.

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

11.1. Proposal of Amendments. An amendment may be proposed by the President of the Association, a majority of Directors, or by twenty-five percent (25%) of the entire Voting Interests.

11.2. Proposed Amendment Format. Proposals to amend existing Bylaws shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be lined through with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF BYLAWS. SEE BYLAW NUMBER FOR PRESENT TEXT."

11.3. 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.

11.4. Adoption of Amendments. A resolution for the adoption of a proposed amendment may be adopted by a vote of at least 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 has been attained, or by the written agreement of at least a majority of the entire Voting Interests. Amendments correcting errors, omissions, scrivener's errors, violations of applicable law, conflicts between the Condominium 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.

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

11.6. Automatic Amendment. 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 the Act, 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 the Act, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

11.7. Proviso. To the extent required by applicable law and judicial precedent, no amendment shall change the configuration of any Unit or the share in the Common Elements

appurtenant to it, or increase the Unit Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners or other holders of the mortgages on such Unit shall join in the execution of the amendment, and all other Owners approve the amendment.

12. MISCELLANEOUS. The following miscellaneous provisions shall apply to these Bylaws and the Condominium Documents.

12.1. 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 Condominium;
- 2) Articles of Incorporation;
- 3) Bylaws; and
- 4) Rules and Regulations.

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

12.3. 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.

12.4. 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.